



LEGISLATIVE COUNCIL

REGULATION COMMITTEE

# Delegated Legislation Monitor No. 10 of 2024



25 September 2024

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Regulation Committee

# **Delegated Legislation Monitor No. 10 of 2024**

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**New South Wales. Parliament. Legislative Council. Regulation Committee.**

Delegated Legislation Monitor No. 10 of 2024

'September 2024'

Chair: Hon Natasha Maclaren-Jones MLC

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## Committee details

### Committee members

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<b>Hon Susan Carter MLC</b>	Liberal Party	
<b>Hon Greg Donnelly MLC</b>	Australian Labor Party	
<b>Hon Dr Sarah Kaine MLC</b>	Australian Labor Party	
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**Committee Chair**

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# Overview of the Delegated Legislation Monitor

## Operation of the Committee's technical scrutiny function

- 1.1** The Regulation Committee was first established on a trial basis on 23 November 2017 in the 56th Parliament.<sup>1</sup> The Committee was reappointed in the 57th Parliament on 8 May 2019 and in the 58th Parliament on 10 May 2023.<sup>2</sup>
- 1.2** On 19 October 2023, the Legislative Council amended the resolution of the House establishing the Regulation Committee to require the Committee to scrutinise delegated legislation that is subject to disallowance.<sup>3</sup>
- 1.3** Paragraph (3) of the amended resolution requires that:
- The committee, from the first sitting day in 2024:
- (a) is 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.
- 1.4** In accordance with paragraph (3), the Committee will consider any instrument that is disallowable, during the period within which it may be disallowed. That 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.
- 1.5** 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.
- 1.6** 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

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

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

<sup>3</sup> *Minutes*, NSW Legislative Council, 19 October 2023, pp 639-640.

- (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.

- 1.7** 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.
- 1.8** Each sitting week, the Committee will publish a Delegated Legislation Monitor setting out its progress and conclusions relating to the technical scrutiny of disallowable instruments. The monitor will set 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.
- 1.9** 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. 10 of 2024**

- 1.10** For this monitor, the Committee has reviewed 16 instruments published on the NSW legislation website or in the NSW Government Gazette between 22 July 2024 and 16 August 2024. The Committee has:
- raised scrutiny concerns and sought further information in respect of three instruments, as set out in Chapter 1,
  - concluded its review in respect of two instruments, as set out in Chapter 2, and
  - concluded that 11 instruments raise no scrutiny concerns, as set out in Appendix 1.
- 1.11** A further 48 instruments notified between 5 August 2024 and 13 September 2024 remain under review, for consideration in a future monitor.



## Chapter 1 New scrutiny matters for engagement

This chapter sets out statutory instruments the Committee has reviewed which raise scrutiny concerns relating to the grounds set out in the *Legislation Review Act 1987*, section 9(1)(b). In this chapter the Committee provides an overview of the instruments in question and identifies the Committee's concerns that require further engagement with the minister or body responsible for making the instrument.

### Local Government (General) Amendment (Elections) Regulation 2024

SI number / GG reference	2024 No 327
Notified on NSW legislation website (LW)	02/08/2024
Tabled in Legislative Council (LC)	06/08/2024
Last date of notice for disallowance motion	22/10/2024

#### Overview

- 1.1 The [Local Government \(General\) Amendment \(Elections\) Regulation 2024](#) (the amending regulation) makes various amendments to the *Local Government (General) Regulation 2021* (the regulation) in relation to the conduct of local government elections.
- 1.2 The amending regulation is made under the *Local Government Act 1993*, including section 748, the general regulation-making power, and Schedule 6, item 14. The amending regulation commenced on 2 August 2024.
- 1.3 The objects of the amending regulation of relevance to the Committee include removing the requirement for a postal vote certificate to be printed on an envelope and extending the prohibition on the use of technology assisted voting, other than telephone voting for electors who are blind or have low vision, to 1 September 2028.
- 1.4 The Committee has identified scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii), which were conveyed to the Minister for Local Government in a letter dated 19 September 2024. This correspondence can be found in Appendix 4.

#### Scrutiny concerns

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

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

- 1.6** The amending regulation, Schedule 1[18] inserts section 333M(1A) and (1B) into the regulation, Part 11, Division 7A. Section 333M(1) provides that technology assisted voting, other than telephone voting for electors who are blind or have low vision, must not be used at an election held on or before 1 September 2028. Sections 333M(1A) and (1B) provide:
- (1A) Telephone voting by electors who are blind or have low vision is permitted, but the election manager may, at any time, determine that telephone voting is not permitted at a specified election, or during a specified period during an election.
  - (1B) A determination under subsection (1A) must be in writing and published on a website maintained by the election manager.
- 1.7** The regulation, section 333A provides that Part 11, Division 7A applies to an election administered by the Electoral Commissioner. Section 275 defines *election manager*, for Part 11, to mean the Electoral Commissioner, in relation to elections administered by the Electoral Commissioner. Section 333L reads as follows:
- 333L Electoral Commissioner may determine that technology assisted voting is not to be used**
- (1) The Electoral Commissioner may determine that technology assisted voting is not to be used at a specified election.
  - (2) A determination under this section must be in writing and published on the Electoral Commission’s website.
- 1.8** The Committee has sought clarification regarding the rationale behind, and need for, section 333M(1A) and (1B), and the intended interaction with sections 333A and 333L, given it appears the matters the subsections provide for may be sufficiently dealt with by existing provisions.
- 1.9** Secondly, the Committee has sought clarification regarding the intended operation of section 347(3), as inserted by the amending regulation, Schedule 1[30]. The subsection provides that, at a particular stage of the preliminary scrutiny of postal ballot-papers, the returning officer is to disallow a ballot-paper, without opening the envelope within which it is contained, if not satisfied the accompanying postal vote certificate has been properly signed and witnessed or that the elector is entitled to vote in the ward or area to which the certificate relates.
- 1.10** The amending regulation enables postal vote certificates to be issued other than in the form of an envelope on which the certificate is printed. Consequently, a postal vote certificate may be returned, with a ballot-paper, in an ordinary envelope addressed to the returning officer. In light of this change, the Committee has queried whether it may sometimes be necessary to open an envelope containing a postal vote certificate in order to determine whether a ballot-paper should be disallowed.
- 1.11** Finally, in relation to the amending regulation, Schedule 1[39], the Committee has queried the circumstances in which an application for a postal vote is required to, or may, be witnessed, where section 360(1) makes it an offence for a witness to witness the signature of an elector to an application unless the witness knows or is satisfied that the statements contained in the application are true.

### Committee conclusion

- 1.12 In light of the above, the Committee has requested the advice of the Minister for Local Government regarding the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii).

## Museum of Applied Arts and Sciences Regulation 2024

SI number / GG reference	2024 No 328
Notified on NSW legislation website (LW)	02/08/2024
Tabled in Legislative Council (LC)	06/08/2024
Last date of notice for disallowance motion	22/10/2024

### Overview

- 1.13 The [Museum of Applied Arts and Sciences Regulation 2024](#) (the regulation) repeals and remakes, with minor changes, the *Museum of Applied Arts and Sciences Regulation 2017*, which would have otherwise been repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2). The regulation commenced on 2 August 2024.
- 1.14 As provided by the explanatory note, the regulation provides for the meetings of the trustees of the Museum of Applied Arts and Sciences (the Museum) and the management of the Museum.
- 1.15 The Committee has identified scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) that have been conveyed to the Minister for the Arts in a letter dated 19 September 2024. This correspondence can be found in Appendix 4.

### Scrutiny concerns

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

- 1.16 Under this ground, the Committee is generally concerned with clarity and certainty in delegated legislation and may seek clarification where a provision is ambiguous or uncertain.
- 1.17 The regulation, section 3 provides that **Chief Executive** means the person employed in the Public Service as the Chief Executive of the Museum. Under the *Museum of Applied Arts and Sciences Regulation 2017*, the person responsible to the trustees of the Museum for the administration and management of the Museum was the Director of the Museum. The regulation confers this responsibility on the Chief Executive instead. However, the *Government Sector Employment Act 2013*, Schedule 1, Part 2 provides that the head of the Trustees of the Museum of Applied Arts and Sciences Staff Agency is the 'Director of the Museum of Applied Arts and Sciences'.

- 1.18** The Committee has sought confirmation as to whether 'Chief Executive' is the current and appropriate title for the administrative head of the Museum, given that there appears to be two different titles for potentially the same office under the regulation and the *Government Sector Employment Act 2013*.
- 1.19** The Committee also sought clarification regarding whether there are any procedural differences between an ordinary meeting and a special meeting of the trustees other than *nbo* may call each meeting.

### Committee conclusion

- 1.20** In light of the above, the Committee has requested the advice of the Minister for the Arts regarding the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii).

## Pipelines Amendment Regulation 2024

SI number / GG reference	2024 No 328
Notified on NSW legislation website (LW)	02/08/2024
Tabled in Legislative Council (LC)	06/08/2024
Last date of notice for disallowance motion	22/10/2024

### Overview

- 1.21** The [Pipelines Amendment Regulation 2024](#) (the amending regulation) makes various amendments to the *Pipelines Regulation 2023* (the regulation). The amending regulation, which commenced on 2 August 2024, is made under *Pipelines Act 1967* (the Act), including section 31A(4), and Schedule 2, clauses 1, 6, 10, 11 and 13.
- 1.22** The objects of the amending regulation of relevance to the Committee include setting out requirements for the protection of pipelines and land used in the construction or operation of pipelines, and providing for the making of directions in response to cyber security incidents.
- 1.23** The Committee has identified scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(iii), (iv) and (vii), which were conveyed to the Minister for Energy in a letter dated 19 September 2024. This correspondence can be found in Appendix 4.

### Scrutiny concerns

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

- 1.24 Under these grounds, the Committee is required to consider the consistency of the regulation with the objects and intended effects of the Act, including whether a provision appears to be beyond the scope of the delegated legislation-making powers under the Act under which it was made.
- 1.25 The amending regulation, section 26C(1)(b), as inserted by Schedule 1[2], provides that the Minister may, by written order served on a licensee, direct the licensee to make arrangements, satisfactory to the Minister, to *remove or dispose* of property brought into a licence area or relinquished area by a person engaged or involved in the operations authorised by the licence (*licence operations property*). Section 26C references the Act, Schedule 2, clause 13 as the relevant regulation-making power.
- 1.26 The Committee has sought clarification regarding whether clause 13 provides the requisite regulation-making power for section 26(1)(b), given the clause provides that the regulations may enable the Minister to direct a licensee or former licensee to *remove* property brought onto land in connection with a pipeline. As there is no reference in the clause to the *disposal* of property, the Committee is concerned section 26C(1)(b) may be beyond power, or not accord with the spirit of the Act, in this respect.

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

- 1.27 Under this ground, the Committee is required to consider whether the form or intention of the regulation calls for elucidation and may seek clarification where the meaning of a provision is ambiguous or uncertain.
- 1.28 The amending regulation, section 16C(1)(d), as inserted by Schedule 1[2], provides that the Minister may, by written order served on a licensee, direct the licensee to make good, to the satisfaction of the Minister, damage to a licence area or relinquished area caused by a person engaged or involved in the operations authorised by the licence or by the removal of the property, *other than in the manner specified in the direction*.
- 1.29 The Committee has requested clarification regarding the intended operation of section 26C(1)(d), specifically, the phrase 'other than in the manner specified in the direction', as it is unclear to the Committee how a direction may direct a licensee to make good damage in a manner *other than* the manner specified in the direction.

### Committee conclusion

- 1.30 In light of the above, the Committee has requested the advice of the Minister for Energy regarding the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(iii), (iv) and (vii).



## Chapter 2 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).

### Public Notaries Appointment Amendment (Fees) Rule 2024

SI number / GG reference	NSWGG-2024-290-12
Published in Government Gazette (GG)	26/07/2024
Tabled in Legislative Council (LC)	06/08/2024
Last date of notice for disallowance motion	22/10/2024

#### Overview

- 2.1** As set out in Monitor No. 9 of 2024, the [Public Notaries Appointment Amendment \(Fees\) Rule 2024](#) (the amending rule) amends the *Public Notaries Appointment Rules* made under the *Public Notaries Act 1997* (the Act) to increase the fees payable for services provided by the Legal Profession Admission Board (the Board) in relation to the appointment of public notaries and certificates of appointment. These fees include a \$110 fee for an 'Annual Notification in Form 6' and a \$110 fee for an 'Other application/certificate – Public Notary'.
- 2.2** The amending rule was made by the Board under the Act, section 9 and commenced on 26 July 2024.
- 2.3** The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (iv) in relation to the amending rule in a letter sent to the Presiding Member of the Board on 23 August 2024. A response was received from the Presiding Member of the Board on 6 September 2024.
- 2.4** The Committee's concerns related to the authorisation and basis for the annual notification fee, the matters for which the 'Other application/certificate' fee may be charged, and the amounts set.
- 2.5** Under the Act, the Board has the functions of approving persons as suitable candidates for appointment as a public notary by the Supreme Court of New South Wales, establishing and maintaining a roll of public notaries and publishing information on the roll, and making rules about, among other matters, applications and qualifications for appointment and the keeping of records concerning public notaries.

### Scrutiny concerns

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

2.6 Under these grounds, the Committee is required to consider the consistency of the rule with the objects and intended effects of the Act, including whether the effect of the rule appears to detract from the operation of the Act, as envisioned by Parliament, and whether fees are imposed without or beyond power.

#### *I.*

2.7 The Act, section 7 requires the officer of the Board designated as the registrar of public notaries to enter in the roll the name of each notary and their firm, if applicable, the notary's or firm's address, and any other particulars relating to the person prescribed by rules of the Supreme Court.

2.8 The *Supreme Court Rules 1970*, Part 82, rule 5 prescribes the date of a notary's appointment, particulars of penalties resulting from disciplinary action and the date on, and provision under which, a notary is removed from the roll as additional particulars to be entered in the roll.

2.9 The *Public Notaries Appointment Rules*, rule 12, as inserted by notice in Government Gazette No 68 of 4 April 2003, provides as follows:

12 (a) **In order to update the roll of Public Notaries** the Registrar, during the month of July in a year, shall forward to each person whose name is on the roll a notice in Form 6. [emphasis added.]

(b) A Public Notary shall return the Notice to the Registrar completed with any necessary additions or alterations within one month of receipt of the Notice together with the fee payable to the Board as set out in the Notice.

(c) If the Public Notary fails to comply with Rule 12(b) the Registrar may move the Court to cause the name of the Public Notary to be removed from the roll. The Registrar shall give the Public Notary 28 days notice of the intention to so move the Court.

2.10 Form 6 directs a public notary to indicate whether '1. The particulars as set out above are correct.' or '2. The particulars as set out above as amended are correct.'. The particulars listed are 'Name', 'Address', 'Firm Name', 'Telephone No', 'Facsimile No' and 'DX No'.

2.11 The Act, section 9 enables the Board to make rules for or with respect to:

(f) the fees payable to the Board in relation to the examination of candidates for appointment as, and the appointment of, public notaries, and certificates of appointment of public notaries,

2.12 In the Committee's view, this provision alone does not expressly authorise the fee imposed by rule 12, in contrast to the fees prescribed for an 'Application for Appointment as Public Notary', 'Certificate of Current Appointment' and 'Replacement original Certificate of Appointment'. This led the Committee to consider whether the fee is authorised more generally as a fee for service.



**2.13** The Presiding Member, by letter dated 6 September 2024, asserted that, in relation to the Act, section 9(f), the word 'appointment', in context, has a broad meaning and 'is used in this Act in reference to a whole of life process' that 'implies ongoing supervision'.

History also points in favour of a broad interpretation of power to levy the fee. Prior to the current Act, the Roll was maintained by the Supreme Court itself. Section 10 of the repealed *Public Notaries Act 1985* (NSW) provided that a person on the Roll immediately before the 30th of June each year should pay the prescribed fee and lodge a statement of particulars. The fee in that Act was stated to be set under the regulations made under the *Supreme Court Act 1970*.

**2.14** More specifically, the Committee expressed concern that, should Form 6 be returned with a public notary having indicated that '1. The particulars as set out above are correct', a not insignificant fee is being imposed where no service appears to have been provided to that notary.

**2.15** This suggests a fee more in the nature of an annual 'licensing' fee to raise revenue, perhaps analogous to a fee for the annual renewal of an Australian practising certificate issued under the *Legal Profession Uniform Law (NSW)*. While the Act does not appear to confer functions of an ongoing nature on the Board in relation to a public notary, other than in relation to keeping and sharing information, particularly for the purposes of the roll, an annual practising certificate fee is a reimbursement of the range of costs incurred by the Bar Association or Council, or Law Society or Law Society Council, in association with the regulation of legal practice or maintaining professional standards of legal practice, and other costs specified in the local regulations, such as costs associated with the maintenance and operation of the library of the Bar Association or Law Society.<sup>4</sup>

**2.16** The Committee also raised the potentially unusual result of a public notary paying a \$110 fee if no changes are required to the list of particulars sent to them in July, in circumstances where the amending rule prescribes a \$0 fee for a 'Notification of change of particulars', down from \$105 for the previous year. That is, the fee for an actual change of particulars, outside the annual notification process, is waived from 5 July 2024, but a notary is required to pay a fee of \$110 for notifying the Board that their details are unchanged.

**2.17** Further, the Committee queried the basis on which the Board is authorised to require confirmation or amendment of some of the particulars specified in Form 6, and, in particular, to charge fees in relation to this. While the Committee accepts the Board has a valid administrative basis to collect contact details of applicants for appointment through Form 1, and a basis to make rules regarding the keeping of records concerning public notaries pursuant to the Act, section 9(e), the specified purpose of the annual notification process provided for by rule 12 is to allow the registrar to 'update the roll'. As neither the Act, section 7(2) or the *Supreme Court Rules 1970*, Part 82, rule 5 require the roll to include a public notary's telephone, facsimile or DX number, the Committee queried whether requiring payment of a fee in connection with confirming or amending those or other details is consistent with the stated purpose of rule 12.

**2.18** In relation to public notaries who return Form 6 with changes, the Committee queried whether, in the Board's view, \$110 is a reasonable fee for the service provided i.e. an amount limited to the recovery of the administrative costs involved in updating a notary's details in the roll.

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<sup>4</sup> See the *Legal Profession Uniform Law Application Act 2014*, section 38 and the *Legal Profession Uniform Law Application Regulation 2015*, clauses 5 and 6.

**2.19** In response to these queries, the Presiding Member advised:

There is also, of course, a public purpose in ensuring that persons appointed as public notaries continue to be eligible to be a public notary. There is also an expectation set by the Court and the public that the Roll is up to date. ... From time to time, the Board is required to certify to overseas institutions that a particular individual is on the Roll of notaries. ...

The process of notification (and the need to levy the fee) is part of the consumer protection role of the Board. It is certainly not a revenue raising mechanism. The fee charged is a genuine estimate of the marginal cost to the Board of performing this consumer protection role. I note that every year, the process of notification required by the Board detects a change of particulars in many public notaries and also detects many notaries who are no longer eligible. The annual notification of particulars process is therefore a beneficial process.

For these reasons, the Board continues to believe that it has the power to levy the fee in question.

**2.20** Regarding the reasonableness of the fee, the Presiding Member added:

... The fees that the Board collects must cover its expenditure. The Board receives no funding or grants from the State of New South Wales for conducting the consumer protection role it has been vested with in relation to public notaries. The \$110 fee is a genuine pre-estimate of marginal cost to the Board of conducting the work. The fee does not cover the real costs to the Board, as would be recoverable under an activity based costing model, (such expenses would include a contribution for leasing of computers, accommodation, postal or insurance costs). The process is, at present, a manual one involving sending out the notice by post, sending a reminder by post, and then processing it. The proposed fee does not cover all of these marginal costs.

The Board increased the fee by \$5 since last year in line with the CPI movements. ... Notwithstanding [financial pressures], for 2024-25, the Board resolved to remove the change of particulars fee. The Board considered that the fee discouraged public notaries from notifying changes until the annual notification of particulars. It is anticipated that the removal of the fee will encourage notaries to update their details sooner, therefore allowing the Roll to be more up to date. This is a loss of \$3,045 based on last year's fees.

During 2023-24, the Board received \$107,070 for annual notification of particulars fees.

On the user pays model upon which the Board must operate, I respectfully suggest that it is reasonable that public notaries contribute to the ongoing cost of the Board's consumer protection role in maintaining an accurate Roll of public notaries.

**2.21** Finally, the Committee alerted the Board to the fact that Form 6 available on its website differs from Form 6 as published in the Gazette, including by listing the additional particulars of mobile number and mailing and email address, but not DX number. The Committee was not able to locate a notice in the Gazette amending Form 6 as originally inserted. If the form being sent by the Board is Form 6 as published on the Board's website, the Committee was concerned about the use of an external document inconsistent with the form inserted into the *Public Notaries Appointment Rules*.

**2.22** The Presiding Member responded as follows:

I am grateful for your pointing out the difference between the published form and the gazetted form. The Board is currently upgrading its computer systems, at the cost of many millions of dollars. For the 2025 annual notification period, public notaries will be able to notify their annual particulars through a webform. That will lead to the end of the physical form. The Board will remove Form 6 (along with most of the other prescribed forms) once the new online system is established. The Board accepts that the forms used should reflect the appropriate gazetted form and will take appropriate steps to ensure that is achieved in introducing the new computer system in early 2025.

- 2.23** The Presiding Member more generally noted, in relation to these and previous scrutiny concerns raised by the Committee, that:

The issues raised [by the Committee] are progressing through the Board's committees who are the subject experts on those topics. Those committees will report back to the Board as to what changes should be made to the Rules. The issue of late fees for public notaries was not able to be considered for the August agenda of the Board.<sup>5</sup> It will be included in the agenda for 8 October 2024 along with the matters raised by your letter of 23 August 2024. Many of the issues overlap and a consolidated response may be more appropriate.

## *II.*

- 2.24** The Committee sought clarification regarding the matters for which the Board charges an 'Other application/certificate' fee that are not captured by the other fees listed in the schedule substituted by the amending rule.

- 2.25** The Committee queried whether these other matters fall within the fee-making power in the Act, section 9(f) and whether the \$110 fee is otherwise a reasonable charge for a service provided.

- 2.26** The Presiding Member responded that:

The Board's view is that these other fees also come within the meaning, in context, of "appointment". In terms of reasonableness of the fee, the Board earned no fees for "other applications" in 2023-24 and \$1,100 in 2022-23.

## **Committee conclusion**

- 2.27** The Committee appreciates the Board's engagement with the Committee's scrutiny concerns and commitment to review the *Public Notaries Appointment Rules* in light of them. The Committee makes special note of the Board's receptiveness and congenial responses to concerns raised to date.

- 2.28** While the Committee considers it is the Supreme Court's functions under the Act, and the dispute resolution and professional discipline functions conferred on the Legal Services Commissioner, Bar Association or Council, and Law Society or Law Society Council under the Act, Part 3, that are more apt to be characterised as 'ongoing supervision functions', the Committee is receptive to the view that the Board, in gathering and sharing information for the purposes of keeping the roll up to date, performs a function of a consumer protection nature.

<sup>5</sup> The Committee concluded its scrutiny of this matter in Monitor No. 7 of 2024.

- 2.29** Further, the Committee considers that the annual fee charged under the repealed *Public Notaries Act 1985*, section 10 may be distinguishable on the basis it was paid to the officer of the Supreme Court prescribed by the rules as the Registrar, being, at least originally<sup>6</sup>, the Prothonotary of the court, in circumstances where the court exercised disciplinary and other functions in relation to notaries, rather than the Board, or the Legal Services Commissioner, Bar Association or Council, or Law Society or Law Society Council.
- 2.30** In any case, the Committee appreciates that, in transitioning to an online annual notification process, consideration is being given to this process as a whole and the potential need for changes to the *Public Notaries Appointment Rules*. The Committee appreciates the service the Board is providing in keeping the roll up to date and is understanding of the need to recover the costs of undertaking this function. The Committee emphasises that its concerns are of a technical nature, primarily relating to the wording of the relevant provisions and how the exercise of this particular function of the Board may be provided for in a way that squarely accords with the Act and the *Public Notaries Appointment Rules*.
- 2.31** To that end, and given the Board is making plans for broader changes to its administrative record-keeping practices, the Committee recommends that the Board consider whether it may be appropriate to make changes to the *Public Notaries Appointment Rules* to address any of the following matters:
- whether a positive obligation should be imposed on public notaries to notify the Board of changes to any roll details, as required in part by rule 10, and not just once a year, for which the Board may recover the reasonable costs incurred in updating the roll,
  - whether, under the new online annual roll update, there will be a continued need and justification for public notaries whose details are unchanged that year to pay a fee to offset the costs incurred by the Board in undertaking the update,
  - whether it should be made clear that the Board may require public notaries to provide details *other than* those required to be included in the roll, such as a telephone, facsimile or DX number, or mailing or email address, and recover the reasonable costs incurred in keeping records of these contact details up to date, and
  - whether clarification can be provided regarding the matters for which the 'Other application/certificate' fee is charged, to provide greater certainty to public notaries regarding the fees they may be required to pay.
- 2.32** In light of the Presiding Member's willingness to provide a further response to the Committee regarding scrutiny concerns previously raised, the Committee requests that the Board provide an update, before the first sitting day of 2025, on any changes the Board proposes to make to relevant processes for updating the roll and other administrative records maintained by the Board, or to the *Public Notaries Appointment Rules* in connection with this.
- 2.33** Given the Presiding Member's response, and previous correspondence, the Committee considers the scrutiny concerns identified under the *Legislation Review Act*, section 9(1)(b)(iii) and (iv) are likely to be resolved by the Board in the next six to 12 months. On this basis, the Committee concludes its scrutiny of the amending rule.

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<sup>6</sup> The Committee has not reviewed each version of the *Supreme Court Rules 1970* in force between the commencement of the *Public Notaries Act 1985* and the repeal of that Act as the matter is not key to the Committee's conclusion.

## Statutory and Other Offices Remuneration Act 1975—Judges and Magistrates Group—Annual Determination

SI number / GG reference	NSWGG-2024-289-6
Published in Government Gazette (GG)	26/07/2024
Tabled in Legislative Council (LC)	06/08/2024
Last date of notice for disallowance motion	22/10/2024

### Overview

- 2.34** The [Judges and Magistrates Group—Annual Determination](#) (the determination) of the Statutory and Other Offices Remuneration Tribunal (the Tribunal) fixes remuneration to be paid to office holders in the Judges and Magistrates Group on and from 1 July 2024. The determination is made under the *Statutory and Other Offices Remuneration Act 1975* (the Act), section 13 and is disallowable by virtue of the Act, section 19A.
- 2.35** Section 13 provides that 'the Tribunal shall, in each year, make a determination of the remuneration to be paid to office holders as on and from 1 July in that year.' Section 10A provides that the term *office holder* means the holder of an office specified in Schedule 1, 2 or 3.

### Scrutiny concerns

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

- 2.36** Under this ground, the Committee may raise potential errors in drafting that affect the meaning or interpretation of the regulation, and any other matters requiring clarification.
- 2.37** The Committee wrote to the Tribunal on 27 August 2024 regarding three scrutiny concerns identified under this ground. The Tribunal responded on 11 September 2024. This correspondence can be found in Appendix 4.

#### *I.*

- 2.38** The first matter raised by the Committee was the inclusion of the remuneration payable to the Chief Judge or another judge of the Land and Environment Court in Determination No. 1, given their remuneration appears to be established by the *Land and Environment Court Act 1979*, section 9.
- 2.39** Section 9 provides that:
- (2) Each Judge shall have the same rank, title, status and precedence and, except as provided by subsection (2A), the same remuneration and other rights as a Judge of

the Supreme Court (other than the Chief Justice and the President of the Court of Appeal).

- (2A) The Chief Judge shall have the same remuneration as the President of the Court of Appeal.

**2.40** The Committee noted that while the Act, Schedule 2, Part 1 references various commissioners under the *Land and Environment Court Act 1979*, there is no reference to the Chief Judge or another judge of the Land and Environment Court in Schedules 1-3. The Committee sought confirmation that the remuneration for these judicial officers is included in Determination No. 1 for information only.

**2.41** The Tribunal verified that:

[T]he remuneration of the Chief Judge and Judges of the Land and Environment Court is established by section 9 of the *Land and Environment Court Act 1979*. These offices and their corresponding remuneration are listed in the Determination for convenience, to reflect that the Chief Judge has the same remuneration as the President of the Court of Appeal while a Judge of the Land and Environment Court has the same remuneration as a Judge of the Supreme Court.

The Determination has listed the salaries for Chief Judge and Judge of the Land and Environment Court since the 2012 Annual Determination and continues to do so for consistency.

## *II.*

**2.42** The second matter raised by the Committee was whether the reference to the Chief Commissioner of the Industrial Relations Commission in Determination No. 2 remains necessary, and whether it should be replaced with a reference to the Senior Commissioner. Similarly, in Determination No. 5, the Committee queried whether the reference to the Chief Commissioner should be a reference to the Senior Commissioner, or, alternatively, to a Presidential Member of the Commission within the meaning of the *Industrial Relations Act 1996*.

**2.43** The Committee recognises that the *Industrial Relations Amendment Act 2023*, Schedule 1.2[113], which commenced on 1 July 2024, abolished the office of Chief Commissioner of the Industrial Relations Commission and replaced it with the office of President of the Commission. The *Industrial Relations Act 1996*, Schedule 4, clause 74(2) provides that 'A person who, immediately before the commencement day, held office as Chief Commissioner is taken to have been appointed as a Commissioner for the remainder of the person's term of appointment and is to be known as the Senior Commissioner.'

**2.44** In response to the Committee's query, the Tribunal confirmed that:

The reference to the Chief Commissioner of the Industrial Relations Commission (IRC) in Determination No. 2 is intended to refer to the Senior Commissioner. The Tribunal does understand that the *Industrial Relations Amendment Act 2023* commenced on 1 July 2024.

**2.45** The Tribunal also clarified the rationale for referencing the Chief Commissioner rather than the Senior Commissioner in the determination:

At the time of making the Determination, the IRC web site referred to the Chief Commissioner. In making the determination, the Tribunal used the term "Chief

Commissioner” to align with the then publicly available information. The Tribunal notes that Schedule 4, clause 74(3) of the IR Act provides the same remuneration to the person holding office and no material effect will arise from using the former name of the office in the Determination.

### III.

- 2.46 The final matter raised by the Committee was whether adopting the Australian Taxation Office's Taxation Determination TD2024/3 as the basis for reasonable travel allowances for judges and magistrates in Determination No.6 is consistent with the 'temporary freeze on wages' policy declared in the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* (the regulation), clause 5A.<sup>7</sup>
- 2.47 Clause 5A(1) provided that 'A policy that the Tribunal is not to make a determination that has the effect of awarding an increase in remuneration that takes effect before 1 July 2025 is declared'. The Act, section 6AB required the Tribunal to give effect to this declared government policy in making a determination under section 13 to alter the remuneration payable to judicial and other office holders.
- 2.48 The regulation, clause 3 defined **remuneration** as having the same meaning as in the Act, Part 3. That part defines **remuneration** to mean remuneration by way of salary or allowances payable in money to an office holder. In turn, **allowance** is defined as follows:
- allowance** does not include a travelling or subsistence allowance, but includes a travelling or subsistence allowance for travel within Australia by the holder of an office specified in Schedule 1 who is—
- (a) a Judge or Acting Judge of a court, or
  - (b) any other judicial officer (within the meaning of the *Judicial Officers Act 1986*) nominated by the Minister by notice in writing to the Tribunal for the purposes of this definition.
- 2.49 Comparing the travel allowances in the *Annual Determination—Judges and Magistrates Group* published in Government Gazette No 343 of 4 August 2023, which were based on TD2023/3, it appears that there has been an increase in some of the relevant reasonable travel allowances.<sup>8</sup> The Committee raised concerns that the reference to TD2024/3 therefore seems to have the effect of awarding an increase in remuneration that takes effect before 1 July 2025, contrary to the policy set out in the regulation, clause 5A.
- 2.50 In response to the Committee's concerns, the Tribunal stated that:
- In responding to submissions from affected office holders regarding the application of the provisions of the Regulation to conveyance allowances, the Tribunal examined its history in some detail, including the legal position and determined that there should be

<sup>7</sup> The Committee acknowledges that in the period between sending the correspondence to the Tribunal, and receiving a response, the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* was repealed and remade. The Committee notes that the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2024*, section 6 reproduces, with minor changes in drafting style, the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013*, clause 5A.

<sup>8</sup> See, for example, Table 3, which provides for reasonable amounts for domestic travel expenses for employees with an annual salary of \$255,671 or more.

no increase. It took the view that the travel allowances provided for in Determination No. 6 are of a different character. The Tribunal's report sets out the principles on which the travel allowances are determined which include that they are provided to ensure that an officer is not financially disadvantaged as a result of having to travel on official business and that office holders are not expected to gain or lose financially as a result of such required travel.

...

Taking the relevant factors into consideration, the Tribunal formed the view that such allowances are essentially a reimbursement for costs normally incurred and it was appropriate that they be adjusted in the normal way, by reference by [sic] the relevant determination of the Australian Taxation Office.

### **Committee conclusion**

- 2.51** The Committee welcomes the prompt response provided by the Tribunal and its engagement with the scrutiny concerns identified under the *Legislation Review Act 1987*.
- 2.52** The Committee appreciates the confirmation that the inclusion of the remuneration payable to the Chief Judge or another judge of the Land and Environment Court in Determination No. 1 is for information only. The Committee is understanding of the references to the Chief Commissioner of the Industrial Relations Commission, given the timing of the making of the determination, and recommends that future references to this former office be to the Senior Commissioner instead, to avoid any potential ambiguity. The Committee makes no further comment on these matters.
- 2.53** Regarding travel allowances, the Committee acknowledges the valid policy reasons for exempting travel allowances for judges and magistrates from the wage freeze policy provided for by clause 5A to ensure they 'are not financially disadvantaged as a result of having to travel on official business'. In sum, the Committee is of the view the travel allowance serves as a reimbursement for expended travel costs.
- 2.54** The Committee notes the position of the Tribunal regarding the classification of travel allowances, being that because of the practical factors set out above, travel allowances are not subject to the wage freeze and should therefore be adjusted by reference to the latest determination of the ATO.
- 2.55** Though of the view that the intended purpose of clause 5A is likely to be to temporarily prevent increases to salaries, and not travel allowances, the Committee notes that an alternate view of the matter could be taken, in that the broadly stated definitions of **remuneration** and **allowance** may be read as capturing the travel allowances provided for by Determination No. 6 in relation to judges to whom the Act, Schedule 1 applies, which would have the effect of requiring these allowances to also be subject to the wage freeze.
- 2.56** In light of this alternate view and the Committee's aim of ensuring delegated legislation is clear and precise, the Committee suggests that consideration be given to amending the Act or regulation to make clear that the travel allowances provided for by Determination No. 6 are excluded from the wage freeze.



**2.57** Subject to the above comments, the Committee is of the view that the scrutiny concerns under the Legislation Review Act, section 9(1)(b)(vii) have been appropriately addressed. Therefore, the Committee concludes its scrutiny of the determination.



## Appendix 1 Instruments with no scrutiny concerns

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

<b>Instrument</b>	<b>SI number/ GG reference</b>
Administrative Decisions Review Regulation 2024	2024 No 372
Civil Liability Regulation 2024	2024 No 376
Crimes (Criminal Organisations Control) Regulation 2024	2024 No 377
Crimes (High Risk Offenders) Regulation 2024	2024 No 378
Crown Land Management Amendment Regulation 2024	2024 No 380
Dormant Funds Regulation 2024	2024 No 381
Education Standards Authority Regulation 2024	2024 No 382
Insurance Regulation 2024	2024 No 383
National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Regulation 2024	2024 No 384
Transport Administration (General) Amendment (Parramatta Light Rail) Regulation 2024	2024 No 388
Trees (Disputes Between Neighbours) Regulation 2024	2024 No 389

## Appendix 2 Instruments where engagement is ongoing

The Committee is engaging with the minister or body responsible for the making of the instruments set out in the table below. The Committee will set out a further or concluding view relating to the scrutiny concerns identified for the instruments in a future monitor, having regard to that engagement.

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<b>Monitor No</b>	<b>Instrument</b>	<b>SI number / GG reference</b>
8	Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024	2024 No 250
8	Liquor Amendment (Vibrancy Reforms) Regulation 2024	2024 No 254
9	Government Sector Finance Regulation	2024 No 251
9	Transport Legislation Amendment (Penalties, Fees and Charges) Regulation	2024 No 263

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## Appendix 3 Minutes

### Draft minutes no. 15

Monday 23 September 2024

Regulation Committee

Room 1136, Parliament House, Sydney, 11.02 am

#### 1. Members present

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

Mrs Carter

Mr Donnelly

Mr Murphy

Mr Nanva

#### 2. Apologies

Ms Boyd, *Deputy Chair*

#### 3. Disclosure by Member

Mr Murphy disclosed a direct pecuniary interest in relation to the *Public Notaries Appointment Amendment (Fees) Rule 2024*, noting that he is a Public Notary and is therefore subject to the fee referred to in the Rule. Mr Murphy offered to be excluded from relevant deliberations should any member of the Committee wish for this to occur.

#### 4. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 14 be confirmed.

#### 5. Correspondence

The Committee noted the following items of correspondence:

##### *Sent:*

- 19 September 2024 – Letter from Chair to Minister for Local Government, the Hon Ron Hoenig MP regarding scrutiny concerns identified in the *Local Government (General) Amendment (Elections) Regulation 2024*
- 19 September 2024 – Letter from Chair to Minister for Energy, the Hon. Penny Sharpe MLC regarding scrutiny concerns identified in the *Pipelines Amendment Regulation 2024*
- 19 September 2024 – Letter from the Chair to Minister for the Arts, the Hon. John Graham MLC regarding scrutiny concerns identified in the *Museum of Applied Arts and Sciences Regulation 2024*
- 19 September 2024 – Letter from Chair to Minister for Education and Early Learning, the Hon. Prue Car MP regarding minor matters identified in the *Children (Education and Care Services) Supplementary Provision Regulation 2024*
- 19 September 2024 – Letter from Chair to the Minister for Building, the Hon. Anoulack Chanthivong regarding minor matters identified the *Home Building Amendment (Supervision Practice Standard) Regulation 2024*
- 19 September 2024 – Letter from Chair to Minister for Police and Counter-terrorism, the Hon. Yasmin Catley MP regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 9.
- 19 September 2024 – Letter from Chair to Minister for Planning and Public Spaces, the Hon. Paul Scully MP regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 9.

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

The Chair submitted her draft report entitled *Delegated Legislation Monitor No. 10 of 2024*, which having been previously circulated, was taken as being read.

Resolved on the motion of Mrs Carter: That the secretariat prepare draft amendments to the Committee conclusion at paragraphs 2.51 – 2.57 of the report addressing the intended purpose of the Judges and Magistrates Group—Annual Determination, clause 5A, with the text to be determined in consultation with the Committee.

Resolved, on the motion of Mr Donnelly: That:

The draft report as amended 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 Wednesday 25 September 2024.

**7. Correspondence arising from Monitor No. 10 of 2024**

Resolved, on the motion of Mr Murphy: That the Chair write to relevant ministers or bodies reflecting the conclusions of the Committee set out in Monitor No. 10 of 2024.

**8. Structure of the Delegated Legislation Monitor**

Committee were briefed by the secretariat regarding a proposed change to the structure of the Delegated Legislation Monitor.

Resolved, on the motion of Mr Murphy: That:

The Delegated Legislation Monitor be restructured to merge chapters 1 and 2 into a single chapter that sets out scrutiny concerns relating to the grounds set out in the *Legislation Review Act 1987*, section 9(1)(b), including:

- an overview of the instrument and the scrutiny concerns conveyed to the minister or body responsible for making the instrument,
- the response from the minister or body responsible for making the instrument to the scrutiny concerns raised, and
- the Committee's concluding comments on the instrument.

The secretariat to provide a weekly email update to the Committee identifying any outgoing, incoming or outstanding correspondence.

**9. Adjournment**

The Committee adjourned at 11.20 am.

**10. Next Meeting**

Monday 14 September 2024, 11.00 am, Room 1136 (consideration of the Committee report entitled 'Scrutiny of Delegated Legislation Monitor No. 11 of 2024').

Madeleine Dowd  
**Committee Clerk**

## Appendix 4 Correspondence

Appendix 4 contains the following items of correspondence sent to, and received from, ministers or bodies regarding instruments referred to in this monitor:

- Sent 23 August 2024 – Letter from Chair to Presiding Member, Legal Profession Admission Board, the Hon Justice Payne the *Public Notaries Appointment Amendment (Fees) Rule 2024*.
- Sent 27 August 2024 – Letter from Chair to the Statutory and Other Offices Remuneration Tribunal regarding the *Statutory and Other Offices Remuneration Act 1975—Judges and Magistrates Group—Annual Determination*.
- Received 6 September 2024 – Letter from the Presiding Member, Legal Professional Admission Board, the Hon Justice Payne regarding the *Public Notaries Appointment Amendment (Fees) Rule 2024*.
- Sent 10 September 2024 – Letter from Chair to the Statutory and Other Offices Remuneration Tribunal regarding the *Statutory and Other Offices Remuneration Act 1975—Former Chief and Senior Executives—Annual Determination*.
- Received 11 September 2024 – Letter from Statutory and Other Offices Remuneration Tribunal regarding the *Statutory and Other Offices Remuneration Act 1975—Judges and Magistrates Group—Annual Determination*.
- Sent 19 September 2024 – Letter from Chair to Minister for Local Government, the Hon Ron Hoenig MP regarding the *Local Government (General) Amendment (Elections) Regulation 2024*.
- Sent 19 September 2024 – Letter from Chair to Minister for Energy, the Hon. Penny Sharpe MLC regarding the *Pipelines Amendment Regulation 2024*.
- Sent 19 September 2024 – Letter from the Chair to Minister for the Arts, the Hon. John Graham MLC regarding the *Museum of Applied Arts and Sciences Regulation 2024*.



23 August 2024

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

D24/042037

By email

Dear Judge

### **Public Notaries Appointment Amendment (Fees) Rule 2024**

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). The Committee thanks the Board for its prompt and considered engagement with identified scrutiny concerns to date.

As part of the Committee's requirement to review all statutory rules that are subject to disallowance while they are so subject, the Committee has reviewed the following instrument, notice of the making of which was tabled in Parliament on 6 August 2024:

- *Public Notaries Appointment Amendment (Fees) Rule 2024*

The Committee has identified issues under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (iv). I am writing to you as the Presiding Member of the Legal Profession Admission Board 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 Regulation Committee's technical scrutiny function*, on the [NSW Parliament website](#).



## Scrutiny concerns

	Provision	Issue
1	Rule 3, proposed Second Schedule, 'Annual Notification in Form 6' fee	<p>The Committee is concerned this fee is beyond power, and seeks the Board's advice regarding the authorisation and basis for this fee.</p> <p>The <i>Public Notaries Act 1997 (the Act)</i>, section 9(f) expressly authorises the imposition of fees in relation to the 'appointment' and 'certificates of appointment' of public notaries. The Committee accepts that this authorises the setting of fees for an 'Application for Appointment as Public Notary', 'Certificate of Current Appointment' and 'Replacement original Certificate of Appointment', setting aside any consideration of the amounts imposed. The Committee does not consider that the provision expressly authorises the fee for 'Annual Notification in Form 6', and has significant reservations regarding whether the fee is authorised more generally as a fee for service.</p> <p>The <i>Public Notaries Appointment Rules</i>, rule 12, as inserted by notice in Government Gazette No 68 of 4 April 2003, provides for an annual process to update the roll whereby the registrar sends a Form 6 notice to each notary, which must be completed and returned by the notary within a month, together with the fee of \$110 prescribed by the <i>Public Notaries Appointment Amendment (Fees) Rule 2024</i>. The Committee notes this fee was first prescribed, by notice in Government Gazette No 116 of 25 July 2003, in the amount of \$30, and has gradually increased over the years. The particulars listed in Form 6 are the notary's name, address, firm name, telephone number, facsimile number and DX number. The form directs a notary to indicate whether the particulars listed are correct, or are correct as amended by the notary, to sign and date the form and to return it, with the accompanying fee, to the address specified. The Committee seeks the Board's comments on a number of concerns regarding this process and the associated fee.</p> <p>First, the Committee alerts the Board that Form 6 available on its website differs from Form 6 as published in the Gazette, including by listing the additional particulars of mobile number, mailing address and email, but not DX number. The Committee has not been able to locate a notice in the Gazette amending Form 6 as originally inserted. If the form being sent is Form 6 as published on the Board's website, the Committee queries the use of this form as an external document inconsistent with the form inserted into the <i>Public Notaries Appointment Rules</i>.</p> <p>Secondly, the Committee is concerned that, should the form be returned with the notary having indicated that 'The particulars as set out above are correct', a not insignificant fee is being imposed where no service is provided. This suggests a fee more in the nature of an annual 'licensing' fee to raise revenue, especially when compared with the \$0 fee for a 'Notification of change of particulars' prescribed by the <i>Public Notaries Appointment Amendment (Fees) Rule 2024</i>, down from \$105 for the previous year. That is, the fee for an actual change of particulars, outside the annual notification process, is, in effect, waived from 5 July 2024, but a notary is</p>

		<p>required to pay a fee of \$110 for notifying the Board that their details are unchanged. On the other hand, if a notary were to return the form with changes, the Committee queries whether, in the Board's view, \$110 is a reasonable fee for the service provided i.e. an amount limited to the recovery of the administrative costs involved in updating a notary's details in the roll.</p> <p>Finally, the Committee queries the basis on which the Board is authorised to require confirmation or amendment of some of the particulars specified in Form 6, and, in particular, to charge fees in relation to this. The Committee accepts that the Board has a valid administrative basis to collect contact details of applicants for appointment through Form 1, and a basis to make rules regarding the keeping of records concerning public notaries pursuant to the Act, section 9(e). However, the specified purpose of the notification process provided for by rule 12 is to allow the Registrar to 'update the roll'. The Act, section 7(2) requires only a notary's name, firm name and the notary's or firm's address to be entered in the roll, and the <i>Supreme Court Rules 1970</i>, Part 82, rule 5 adds that the roll must include the date of a notary's appointment, particulars of penalties resulting from disciplinary action and the date on, and provision under which, a notary is removed from the roll. Insofar as the Board is seeking to have notaries pay a fee in connection with confirming or amending other details, including their telephone number, facsimile number and DX number, the Committee queries whether this is consistent with the stated purpose of rule 12.</p>
2	Rule 3, proposed Second Schedule, 'Other application/certificate – Public Notary' fee	The Committee requests clarification regarding the matters that fall under this catch-all that are not captured by the other fees listed in the schedule. Noting that the fees power in the Act, section 9(f) is expressly limited to fees in relation to the examination of candidates for appointment as, and the appointment of, public notaries, and certificates of appointment, the Committee queries whether these other matters fall within those categories, and whether the \$110 fee is otherwise a reasonable charge for a service provided.
3	Rule 3, proposed Second Schedule, 'Late Application – Public Notary' fee	The Committee's concerns regarding this fee are discussed in Delegated Legislation Monitor No. 7 of 2024. The Committee has concluded its scrutiny of this fee and appreciates the Board's engagement on this matter.

Please provide a response to the issues identified as nos 1 and 2 by **6 September 2024**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

The issue identified as no 3 is for information and noting only and does not require a response.

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

Kind regards

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



27 August 2024

The Hon. Greg Pearce  
Statutory and Other Offices Remuneration Tribunal

D24/042445

By email

Dear Mr Pearce

### **Statutory and Other Offices Remuneration Act 1975—Annual Determinations**

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).

The Committee is now required to review all statutory rules that are subject to disallowance while they are so subject and has reviewed the following instruments, notice of the making of which was tabled in Parliament on 6 August 2024:

- *Statutory and Other Offices Remuneration Act 1975—Judges and Magistrates Group—Annual Determination*
- *Statutory and Other Offices Remuneration Act 1975—Former Chief and Senior Executives—Annual Determination*

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 instruments calls for elucidation. I am writing to you as the person holding office as the Statutory and Other Offices Remuneration Tribunal (***the Tribunal***) to seek clarification on the issues outlined below.

The Committee will consider your response and publish its conclusions regarding the instruments in a future Delegated Legislation Monitor. Consistent with its establishing resolution, the Committee may, if it has outstanding concerns, draw the instruments to the attention of the House or recommend to the House that the instruments, or part of the instruments, 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 Regulation Committee's technical scrutiny function*, on the [NSW Parliament website](#).

**Statutory and Other Offices Remuneration Act 1975—Judges and Magistrates Group—  
Annual Determination**

	<b>Provision</b>	<b>Issue</b>
<b>1</b>	Determination No. 1 – Remuneration of Judges effective on and from 1 July 2024	The Committee notes that the <i>Statutory and Other Offices Remuneration Act 1975 (the Act)</i> , Schedule 2, Part 1 references various commissioners under the <i>Land and Environment Court Act 1979</i> . The Act, Schedules 1-3 do not appear to refer to the Chief Judge or another judge of the Land and Environment Court. The Committee seeks confirmation that the remuneration for these judicial officers has been included in Determination No. 1 for information only, noting that their remuneration appears to be established by the <i>Land and Environmental Court Act 1979</i> , section 9 instead.
<b>2</b>	Determination No. 1 – Remuneration of Judges effective on and from 1 July 2024	Determination No. 1 provides for the 'Remuneration of Judges', however, the Committee notes that not all office holders listed are necessarily judicial officers. For example, the President of the Industrial Relations Commission need only be 'an Australian lawyer of at least 7 years standing', as provided by the <i>Industrial Relations Act 1996</i> , section 149, and the reference to the Deputy President of the Industrial Relations Commission is a reference to a Deputy President who is <i>not</i> a judicial member (see the Act, Schedules 2 and 4).
<b>3</b>	Determination No. 2 – Remuneration of other Judicial Officers not referred to in Determination No. 1 effective on and from 1 July 2024  Determination No. 5 – Annual leave loading	The Committee notes that the <i>Industrial Relations Amendment Act 2023</i> , Schedule 1[113] abolished the office of Chief Commissioner of the Industrial Relations Commission and replaced it with the office of President of the Commission, the remuneration for which is set out in Determination No. 1.  The <i>Industrial Relations Act 1996</i> , Schedule 4, clause 74(2) provides that 'A person who, immediately before the commencement day, held office as Chief Commissioner is taken to have been appointed as a Commissioner for the remainder of the person's term of appointment and is to be known as the Senior Commissioner.' On this basis, the Committee queries whether the reference to the Chief Commissioner of the Industrial Relations Commission in Determination No. 2 remains necessary, and whether it should be replaced with a reference to the Senior Commissioner. Similarly, in Determination No. 5, the Committee queries whether the reference to the Chief Commissioner should be a reference to the Senior Commissioner, or, alternatively, to a Presidential Member of the Commission within the meaning of the <i>Industrial Relations Act 1996</i> .
<b>4</b>	Determination No. 6 – Travel allowance for Judges and Magistrates	Determination No. 6 provides that the travel allowances for Judges and Magistrates will be based on the reasonable travel allowances as determined by the Australian Taxation Office in TD2024/3. The Committee notes that the travel allowances for Judges and Magistrates in the Annual Determination dated 26 July 2023 were based on TD2023/3. Comparing TD2024/3 and TD2023/3, it appears that there has been an increase in some of the relevant reasonable travel allowances (see, for example, Table 3, which provides for reasonable amounts for domestic travel expenses for employee's with an annual salary of \$255,671 or more).

	<p>The Committee notes that the <i>Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013 (the regulation)</i>, clause 5A declares a 'temporary wages policy' whereby the Tribunal is not to make a determination that has the effect of awarding an increase in remuneration that takes effect before 1 July 2025. The Committee understands that a travel allowance, in certain circumstances, is a form of remuneration under the Act, section 10A.</p> <p>Given the temporary wages policy, the Committee seeks clarification on whether the reference to TD2024/3 as the basis for a travel allowance is consistent with the regulation, clause 5A.</p>
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### Statutory and Other Offices Remuneration Act 1975—Former Chief and Senior Executive Service—Annual Determination

	Provision	Issue
5	Section 1, paragraphs 2 and 4	<p>The Act, Part 3A provides the framework for the Tribunal to determine remuneration packages for executive office holders. In the Committee's view, the former chief executives and senior executives to which this Annual Determination relates do not appear to fall within the definition of <b>executive office holder</b>, which, under the Act, section 24A means a chief executive office holder or a senior executive office holder, in turn defined by reference to the holders of certain positions referred to in the <i>Public Sector Employment and Management Act 2002</i>.</p> <p>While the Chief Executive of the Ministry for Police and Emergency Services and the Director-General of the Ministry of Health, if not obsolete, appear to satisfy the definition of <b>a chief executive office holder</b> in the Act, section 24A, the Committee queries who else satisfies the definition of an <b>executive office holder</b>.</p> <p>The Committee seeks clarification on the application of the Act, Part 3A to the former chief executives and senior executives to which this Annual Determination relates, and whether this determination can and should be made under the Act, Part 3B instead.</p>
6	Section 1, paragraph 5	<p>Paragraph 5 provides that 'The Tribunal has historically determined remuneration ranges which applied to certain executives in the Health Service – the Specialist Medical Skills Determination and the General Medical Skills Determination.' The Committee seeks clarification on the legislative basis for the Tribunal to set these remuneration ranges, noting that the Act, Part 3A does not appear to apply to executives in the NSW Health Service other than potentially the Director-General of the Ministry of Health (see issue 5 above).</p> <p>In addition, the Committee seeks further information on the basis upon which an office is identified as requiring specialist or general medical skills.</p>
7	Determinations No. 1 -3	<p>The <i>Health Services Act 1997</i>, section 121G provides that 'The remuneration package of a NSW Health Service senior executive must be within the range determined under the <i>Statutory and Other Offices Remuneration Act 1975</i> for the band in which the executive is employed,</p>

	except as provided by subsection (2)'. The Committee seeks clarification on the corresponding 'executive bands' for the remuneration packages set out in Determinations No. 1-3.
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Please provide a response to the issues identified as nos 1 and 3-7 by **10 September 2024**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

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

If you have any questions about this correspondence, please contact Madeleine Dowd, Director – Regulation Committee, on \_\_\_\_\_ or [Regulation.Committee@parliament.nsw.gov.au](mailto:Regulation.Committee@parliament.nsw.gov.au).

Kind regards

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





# LEGAL PROFESSION ADMISSION BOARD

The Hon Natasha Maclaren-Jones MLC  
Committee Chair  
Regulation Committee  
Legislative Council  
Parliament House  
Sydney

Sent only by email to [regulation.committee@parliament.nsw.gov.au](mailto:regulation.committee@parliament.nsw.gov.au)

6 September 2024

Dear Chair

Thank you for your letter of 23 August 2024. I continue to be grateful for the close attention paid by your Committee to the work of the Board.

Item 1 raises three distinct issues. I have therefore split my reply in relation to item 1 into three parts.

## **Item 1(a): Basis for the fee**

As you note, the Board has acted for many years on the basis that it has power to levy the fee. The basis that the Board is able to levy the fee involves consideration of the *Public Notaries Act 1997* (NSW), the *Supreme Court Act 1970* (NSW), the *Supreme Court Rules 1970* (NSW) and the inherent jurisdiction of the Supreme Court. The word “appointment”, in context, has a broad meaning.

The preamble to the Act identifies that the Act provides for the appointment and regulation of the practice of public notaries. That implies ongoing supervision. The Board approves applications whilst appointments are made by the Supreme Court.

Section 47 of the *Interpretation Act 1987* includes the power to remove any appointed person. That, in context, points to “appointment” including the ability to appoint and remove. The word “appointment” is used in this Act in reference to a whole of life process during the “appointment” of a public notary. A public notary will lose their appointment for misconduct, failure to renew their practising certificate, or voluntarily relinquishing it. It is not akin to being awarded a degree or diploma which is conferred for life.

Section 8 provides that the Board may publish the name and the address of the person’s firm where they practice. That, in context, again provides an ongoing supervision function over an appointment, as publishing the name of the firm where a public notary formerly worked has no beneficial value to the public.

History also points in favour of a broad interpretation of power to levy the fee. Prior to the current Act, the Roll was maintained by the Supreme Court itself. Section 10 of the repealed *Public Notaries Act 1985* (NSW) provided that a person on the Roll immediately before the 30th of June each year should pay the prescribed fee and



lodge a statement of particulars. The fee in that Act was stated to be set under the regulations made under the *Supreme Court Act 1970*.

A notary public is appointed by the Supreme Court of New South Wales rather than the Board. An appointment as a notary includes a continuing obligation to the Court as a public notary. A breach by a public notary of that continuing obligation renders them liable to disciplinary procedures under the *Legal Profession Uniform Law*. One of the ways in which a notary public ceases to be one is by ceasing to hold a practising certificate as a lawyer. That matter cannot be ascertained except through an annual review process.

There is also, of course, a public purpose in ensuring that persons appointed as public notaries continue to be eligible to be a public notary. There is also an expectation set by the Court and the public that the Roll is up to date. The Rules reflect that expectation as they provide for the Registrar to commence proceedings in the Supreme Court if the annual particulars are not supplied. From time to time, the Board is required to certify to overseas institutions that a particular individual is on the Roll of notaries. If the Board does not undertake the annual return of particulars, the likelihood is that the consumer protection functions of the Board will be frustrated.

The process of notification (and the need to levy the fee) is part of the consumer protection role of the Board. It is certainly not a revenue raising mechanism. The fee charged is a genuine estimate of the marginal cost to the Board of performing this consumer protection role. I note that every year, the process of notification required by the Board detects a change of particulars in many public notaries and also detects many notaries who are no longer eligible. The annual notification of particulars process is therefore a beneficial process.

For these reasons, the Board continues to believe that it has the power to levy the fee in question.

#### **Item 1(b) – prescribed forms.**

I am grateful for your pointing out the difference between the published form and the gazetted form. The Board is currently upgrading its computer systems, at the cost of many millions of dollars. For the 2025 annual notification period, public notaries will be able to notify their annual particulars through a webform. That will lead to the end of the physical form. The Board will remove Form 6 (along with most of the other prescribed forms) once the new online system is established. The Board accepts that the forms used should reflect the appropriate gazetted form and will take appropriate steps to ensure that is achieved in introducing the new computer system in early 2025.

#### **Item 1(c) – reasonableness of the fee**

The Committee is aware that the Board is a statutory corporation. The fees that the Board collects must cover its expenditure. The Board receives no funding or grants from the State of New South Wales for conducting the consumer protection role it has been vested with in relation to public notaries. The \$110 fee is a genuine pre-estimate of marginal cost to the Board of conducting the work. The fee does not cover the real costs to the Board, as would be recoverable under an activity based costing model, (such expenses would include a contribution for leasing of computers, accommodation, postal or insurance costs). The process is, at present, a manual one

involving sending out the notice by post, sending a reminder by post, and then processing it. The proposed fee does not cover all of these marginal costs.

The Board increased the fee by \$5 since last year in line with the CPI movements. You will be aware that Treasury announced that the Board would not receive interest on its bank account starting from 2024-25. This will mean an estimated \$450,000 loss for 2024-25. That has put pressure on the Board as to how to fund its future operations. Notwithstanding this, for 2024-25, the Board resolved to remove the change of particulars fee. The Board considered that the fee discouraged public notaries from notifying changes until the annual notification of particulars. It is anticipated that the removal of the fee will encourage notaries to update their details sooner, therefore allowing the Roll to be more up to date. This is a loss of \$3,045 based on last year's fees.

During 2023-24, the Board received \$107,070 for annual notification of particulars fees.

On the user pays model upon which the Board must operate, I respectfully suggest that it is reasonable that public notaries contribute to the ongoing cost of the Board's consumer protection role in maintaining an accurate Roll of public notaries.

## **Item 2 – other fees**

The Board's view is that these other fees also come within the meaning, in context, of "appointment". In terms of reasonableness of the fee, the Board earned no fees for "other applications" in 2023-24 and \$1,100 in 2022-23.

## **Item 3 – Late application fee**

The Committee has raised a number of issues with rules made by the Board. As I have said, I am grateful for its continued engagement with the work of the Board. The issues raised are progressing through the Board's committees who are the subject experts on those topics. Those committees will report back to the Board as to what changes should be made to the Rules. The issue of late fees for public notaries was not able to be considered for the August agenda of the Board. It will be included in the agenda for 8 October 2024 along with the matters raised by your letter of 23 August 2024. Many of the issues overlap and a consolidated response may be more appropriate.

## **Conclusion**

The Committee's letter will be tabled at the Board's next meeting on 8 October 2024 along with this letter. Thank you again for bringing these matters to the attention of the Board.

Yours sincerely

The Hon Justice Payne  
**Presiding Member**



10 September 2024

The Hon. Greg Pearce  
Statutory and Other Offices Remuneration Tribunal

D24/045184

By email

Dear Mr Pearce

**Statutory and Other Offices Remuneration Act 1975—Former Chief and Senior Executives—Annual Determination**

I write to you regarding the letter of 27 August 2024 in which the Regulation Committee sought clarification regarding scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) identified for the following instruments:

- *Statutory and Other Offices Remuneration Act 1975—Judges and Magistrates Group—Annual Determination*
- *Statutory and Other Offices Remuneration Act 1975—Former Chief and Senior Executives—Annual Determination*

As mentioned, the Committee is required to consider all instruments of a legislative nature that are subject to disallowance while they are so subject.

While the Committee appreciates the Tribunal's correspondence dated 10 September 2024 regarding the above instruments, it has come to our attention that the annual determination for Former Chief and Senior Executives is not subject to disallowance. Therefore, the Committee does not require a response from the Tribunal in relation to that annual determination.

Given that the Committee publishes in its Delegated Legislation Monitor all correspondence relevant to the scrutiny concerns identified by the Committee, the Tribunal may wish to send an updated copy of its correspondence without reference to the annual determination for Former Chief and Senior Executives. If the Tribunal chooses to do so, the Committee advises that only that version of the correspondence will be published in the monitor.

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

Kind regards

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



# Statutory & Other Offices Remuneration Tribunal

Ref: A9069214

The Hon Natasha MacLaren-Jones MLC  
Committee Chair  
NSW Legislative Council Regulation Committee  
Via email: [Regulation.Committee@parliament.nsw.gov.au](mailto:Regulation.Committee@parliament.nsw.gov.au)

Dear Ms McLaren-Jones,

**Re: D24/045184: Statutory and Other Offices Remuneration Act 1975 – Former Chief and Senior Executives – Annual Determinations**

The Tribunal appreciates the Committee's follow up correspondence dated 10 September 2024 explaining that the annual determination for Former Chief and Senior Executives is not subject to disallowance and therefore does not require a response.

The Tribunal has updated its response removing reference to the annual determination for Former Chief and Senior Executives (**Attachment A**).

If you have any enquiries about this matter, please contact Jim Lloyd, Principal Advisor on  
or

Yours sincerely

The Hon Greg Pearce  
**Statutory and Other Offices Remuneration Tribunal**  
Date: 11 September 2024

**Attachments:**  
Attachment A – Updated response to identified issues

## Appendix A – Responses to identified issues

### Judges and Magistrates Group

1. The Tribunal understands that the remuneration of the Chief Judge and Judges of the Land and Environment Court is established by section 9 of the *Land and Environment Court Act 1979*. These offices and their corresponding remuneration are listed in the Determination for convenience, to reflect that the Chief Judge has the same remuneration as the President of the Court of Appeal while a Judge of the Land and Environment Court has the same remuneration as a Judge of the Supreme Court.

The Determination has listed the salaries for Chief Judge and Judge of the Land and Environment Court since the 2012 Annual Determination and continues to do so for consistency.

2. Noted.
3. The reference to the Chief Commissioner of the Industrial Relations Commission (IRC) in Determination No. 2 is intended to refer to the Senior Commissioner. The Tribunal does understand that the *Industrial Relations Amendment Act 2023* commenced on 1 July 2024.

At the time of making the Determination, the IRC web site referred to the Chief Commissioner. In making the determination, the Tribunal used the term “Chief Commissioner” to align with the then publicly available information. The Tribunal notes that Schedule 4, clause 74(3) of the IR Act provides the same remuneration to the person holding office and no material effect will arise from using the former name of the office in the Determination.

4. The Tribunal took time to consider the Temporary wages policy set out by section 5A of the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* as it applied at the time of making the determination and in that context, determined not to increase the salaries, as had been the case in 2023. We note that the Regulation has since been repealed and replaced by the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2024*. In responding to submissions from affected office holders regarding the application of the provisions of the Regulation to conveyance allowances, the Tribunal examined its history in some detail, including the legal position and determined that there should be no increase. It took the view that the travel allowances provided for in Determination No. 6 are of a different character. The Tribunal’s report sets out the principles on which the travel allowances are determined which include that they are provided to ensure that an officer is not financially disadvantaged as a result of having to travel on official business and that office holders are not expected to gain or lose financially as a result of such required travel.

Section 5A of the former provisions of the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* contained a provision in slightly different terms but to similar effect and in 2020, the Tribunal took the same approach.

Taking the relevant factors into consideration, the Tribunal formed the view that such allowances are essentially a reimbursement for costs normally incurred and it was appropriate that they be adjusted in the normal way, by reference by the relevant determination of the Australian Taxation Office.



19 September 2024

The Hon. Ron Hoenig  
Minister for Local Government

D24/046933

By email

Dear Minister

**Local Government (General) Amendment (Elections) Regulation 2024**

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).

The Committee is now required to review all statutory rules 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 6 August 2024.

- *Local Government (General) Amendment (Elections) Regulation 2024*

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 Regulation Committee's technical scrutiny function* on the [NSW Parliament website](#).



## Scrutiny concerns

	Provision	Issue
1	Schedule 1[18], section 333M(1A) and (1B)	<p>The Committee seeks clarification regarding how section 333M(1A) and (1B), as inserted by Schedule 1[18], are intended to interact with the <i>Local Government (General) Regulation 2021 (the regulation)</i>, sections 333A and 333L.</p> <p>Given the regulation, section 333A(1) provides that Part 11, Division 7A applies to an election administered by the Electoral Commissioner, and the definition of <i>election manager</i> for Part 11, the Committee queries whether the references to the election manager in the subsections are taken to be references to the Electoral Commissioner specifically.</p> <p>If so, the Committee would appreciate information regarding the rationale behind, and need for, section 333M(1A) and (1B), in circumstances where it appears the matters the subsections provide for are already covered by section 333L.</p> <p>Specifically, that telephone voting by electors who are blind or have low vision is permitted at elections before 1 September 2028 can be inferred from section 333M(1) read alongside the other provisions of Division 7A, and the power for the Electoral Commissioner to determine otherwise is provided for in section 333L. The Committee is of the view that 'at a specified election' in section 333L(1) includes 'during a specified period during an election', being an addition to section 333M(1A). Further, the requirement for the Electoral Commissioner to make such a determination in writing and publish it on the Electoral Commission's website is stipulated in section 333L(2).</p>
2	Schedule 1[30], section 347(3)	<p>Section 347(3) provides that, at a certain stage in the preliminary scrutiny of postal ballot-papers, the returning officer is to disallow a ballot-paper, <i>without opening the envelope</i>, if not satisfied the postal vote certificate has been properly signed and witnessed or that the elector is entitled to vote in the ward or area to which the certificate relates.</p> <p>In light of the changes that mean a postal vote certificate may be issued in a form other than a postal vote certificate envelope, the Committee queries whether it may be necessary to, in some cases, open an envelope addressed to the returning officer and that appears to enclose a postal vote certificate, in order to determine whether the certificate has been properly signed and witnessed, etc. Or can this be easily determined without opening the envelope, for example because the window through which the certificate can be viewed is large enough to allow the relevant matters to be determined?</p> <p>The Committee would appreciate clarification regarding the operation of section 347(3) in the context of the different steps in preliminary scrutiny.</p>
3	Schedule 1[39], section 360(1)	<p>Schedule 1[39] amends section 360(1), which makes it an offence for a witness to witness the signature of an elector to <i>an application for</i> a postal vote unless the witness knows that the statements contained in the application are true, or is satisfied by the applicant's answers to the witness's inquiries or by other means that the statements contained in the application are true.</p> <p>The Committee queries the circumstances in which an application for a postal vote is required to, or may, be witnessed. More specifically, the Committee queries whether this is addressed by the 'approved form' for an</p>

	application under section 314, and whether this is only relevant in the circumstance described in section 389(2).
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Please provide a response to the issues identified as nos 1–3 by **03 October 2024**, 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 – Regulation Committee, on                      or [Regulation.Committee@parliament.nsw.gov.au](mailto:Regulation.Committee@parliament.nsw.gov.au).

Kind regards

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



19 September 2024

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

D24/046932

By email

Dear Minister

### **Pipelines Amendment Regulation 2024**

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).

The Committee is now required to review all statutory rules 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 6 August 2024.

- *Pipelines Amendment Regulation 2024*

The Committee has identified issues under the *Legislation Review Act 1987*, section 9(1)(b)(iii), (iv) 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 Regulation Committee's technical scrutiny function*, on the [NSW Parliament website](#).

## Scrutiny concerns

	Provision	Issue
1	Schedule 1[2], section 26C(1)(b)	<p>The <i>Pipelines Regulation 2023 (the regulation)</i>, section 26C(1)(b) provides that the Minister may, by written order served on a licensee, direct the licensee to make arrangements, satisfactory to the Minister, to remove or dispose of property brought into a licence area or relinquished area by a person engaged or involved in the operations authorised by the licence (<i>licence operations property</i>).</p> <p>The Committee considers that a direction to make arrangements to 'dispose' of property may not accord with the spirit of the <i>Pipelines Act 1967 (the Act)</i> or may be beyond the scope of the regulation-making powers in the Act, Schedule 2, clause 13. The clause, which is referenced as the relevant regulation-making power in section 26C, provides that the regulations may provide that the Minister may direct a licensee or former licensee to <u>remove</u> property brought onto land in connection with a pipeline. In the Committee's view, a direction to make arrangements to <u>dispose</u> of property appears to be different to, and potentially more onerous than, arrangements to remove property. The Committee requests clarification as to whether the Act, Schedule 2, clause 13 provides the requisite regulation-making power for section 26C(1)(b).</p>
2	Schedule 1[2], section 26C(1)(d)	<p>The regulation, section 26C(1)(d) provides that the Minister may, by written order served on a licensee, direct the licensee to 'make good, to the satisfaction of the Minister, damage to the licence area or relinquished area caused by a person engaged or involved in the operations or by the removal of the property, <i>other than in the manner specified in the direction.</i>'</p> <p>The Committee seeks clarification as to how a direction may direct a licensee to make good damage in a manner <i>other than</i> the manner specified in the direction. The Committee requests information to elucidate the intended meaning and operation of section 26C(1)(d), specifically, the phrase 'other than in the manner specified in the direction'. For example, is the intention to refer to directions that are general in nature, such that it is left to the licensee to decide on the appropriate way to make good the damage?</p>
3	Schedule 1[3], section 38B	<p>In reviewing section 38B, the Committee noticed that the Act, section 16B(b) makes it a condition of a licence that the licensee 'comply with a cyber security direction given under section 16A'. The Committee notes that the <i>Energy Legislation Amendment (Clean Energy Future) Act 2024</i>, Schedule 3[12] repealed the Act, section 16A. The Committee considers it would be appropriate to amend section 16B in a future amendment to the Act to omit this reference to section 16A, given there does not appear to be a savings and transitional provision addressing or preserving the effect of section 16A.</p>

Please provide a response to the issue identified as nos 1 and 2 by **03 October 2024**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

The issue identified as no 3 is for information and noting only and does not require a response.

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

Kind regards

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



19 September 2024

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

D24/046969

By email

Dear Minister

### **Museum of Applied Arts and Sciences Regulation 2024**

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).

The Committee is now required to review all statutory rules 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 6 August 2024.

- *Museum of Applied Arts and Sciences Regulation 2024*

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 Regulation Committee's technical scrutiny function*, on the [NSW Parliament website](https://www.parliament.nsw.gov.au).

## Scrutiny concerns

	Provision	Issue
1	Section 3, definition of <b>Chief Executive</b>	<p>The <i>Museum of Applied Arts and Sciences Regulation 2024 (the regulation)</i>, section 3 provides that <b>Chief Executive</b> means the person employed in the Public Service as the Chief Executive of the Museum of Applied Arts and Sciences (<b>the Museum</b>). Under the <i>Museum of Applied Arts and Science Regulation 2017</i>, the person responsible to the trustees of the Museum for the administration and management of the Museum was the Director of the Museum. The regulation confers this responsibility on the Chief Executive instead. The Committee notes the <i>Government Sector Employment Act 2013</i>, Schedule 1, Part 2 provides that the head of the Trustees of the Museum of Applied Arts and Sciences Staff Agency is the 'Director of the Museum of Applied Arts and Sciences'.</p> <p>Given that there appears to be two different titles for the head of the Museum, one under the regulation, and another in the <i>Government Sector Employment Act 2013</i>, the Committee seeks confirmation as to whether 'Chief Executive' is the current and appropriate title for the head of the Museum, and, if yes, whether there will be an Administrative Arrangements Order to update the reference from Director to Chief Executive in the <i>Government Sector Employment Act 2013</i>, Schedule 1, Part 2.</p>
2	Sections 4 and 5	<p>Sections 4 and 5 list those persons who may call an ordinary meeting or a special meeting of the trustees. The Committee seeks confirmation that other than <i>who</i> may call an ordinary meeting or a special meeting, there is no procedural difference between the two types of meetings. For example, the conduct of business at both meetings, as well as when and how often the meetings occur, is the same.</p>

Please provide a response to the issues identified as nos 1 and 2 by **03 September 2024**, 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 – Regulation Committee, on \_\_\_\_\_ or [Regulation.Committee@parliament.nsw.gov.au](mailto:Regulation.Committee@parliament.nsw.gov.au).

Kind regards

The Hon Natasha Maclaren-Jones MLC  
Committee Chair







