



LEGISLATIVE COUNCIL

REGULATION COMMITTEE

Delegated Legislation Monitor No. 6 of 2024

19 June 2024



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Regulation Committee

Delegated Legislation Monitor No. 6 of 2024

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Delegated Legislation Monitor No. 6 of 2024

'June 2024'

Chair: Hon Natasha Maclaren-Jones MLC

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Table of contents

	Committee details	iv
	Overview of the Delegated Legislation Monitor	v
	Operation of the Committee's technical scrutiny function	v
	Conclusions and structure of Monitor No. 6 of 2024	vi
Chapter 1	Concluded Scrutiny Matters	1
	Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) Regulation 2024	1
	Overview	1
	Scrutiny concerns	1
	Committee conclusion	2
Appendix 1	Instruments with no scrutiny concerns	3
Appendix 2	Minutes	4
Appendix 3	Correspondence	7

Committee details

Committee members

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

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Hon Natasha Maclaren-Jones MLC
Committee Chair

Secretariat

Dom Bowes, Principal Council Officer
Bethanie Patch, Senior Council Officer
Robin Howlett, Administration Officer
Madeleine Dowd, Director

Overview of the Delegated Legislation Monitor

Operation of the Committee's technical scrutiny function

- 1.1 The Regulation Committee was first established on a trial basis on 23 November 2017 in the 56th Parliament.¹ The Committee was reappointed in the 57th Parliament on 8 May 2019 and in the 58th Parliament on 10 May 2023.²
- 1.2 On 19 October 2023, the Legislative Council amended the resolution of the House establishing the Regulation Committee to require the Committee to scrutinise delegated legislation that is subject to disallowance.³
- 1.3 Paragraph (3) of 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 in 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

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

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

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

- (iii) that the regulation may not have been within the general objects of the legislation under which it was made
- (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made
- (v) that the objective of the regulation could have been achieved by alternative and more effective means
- (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act
- (vii) that the form or intention of the regulation calls for elucidation, or
- (viii) that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.⁴

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

1.8 Each sitting week, the Committee will publish a monitor setting out its progress and conclusions relating to technical scrutiny of regulations. The monitor will set out matters where the Committee has sought further information from the responsible Minister or Department, the Committee's conclusions in relation to instruments where concerns have been raised and a list of those regulations 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 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. 6 of 2024

1.10 In this Monitor, the Committee has reviewed seven new instruments notified on the NSW Legislation Website between 27 May to 7 June 2024. The Committee has concluded that each of those seven instruments raise no scrutiny concerns and they are set out in the list of instruments in Appendix 1.

⁴ *Legislation Review Act 1987*, section 9(1)(b).

- 1.11** Chapter 1 of this monitor contains the conclusions of the Committee in respect of one instrument, where concerns were initially raised in Monitor No. 4.
- 1.12** A further five instruments notified on 7 June 2024 remain under review, for consideration in a future Monitor.

Chapter 1 Concluded Scrutiny Matters

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

Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) Regulation 2024

S.I. Number	2024 No 96
Notified on Legislation Website (LW)	5/04/24
Tabled in Legislative Council (L.C)	7/05/24
Last date of notice for disallowance motion	13/08/24

Overview

- 1.1 The [Electricity Infrastructure Investment Amendment \(Consumer Trustee and Infrastructure Planner\) Regulation 2024](#) (the amending regulation) amends the *Electricity Infrastructure Investment Regulation 2021* (the 2021 Regulation).
- 1.2 The amending regulation was made under the *Electricity Infrastructure Investment Act 2020* (the Act) and commenced on publication on 5 April 2024, other than Schedule 1[2]-[8], which will commence on 1 July 2024.
- 1.3 The Act and the 2021 Regulation provide, in general terms, for the coordinated investment in new electricity generation, storage, network and related infrastructure in New South Wales.
- 1.4 The statutory regime:
 - establishes statutory roles and functions relevant to electricity infrastructure, including the consumer trustee, the regulator, the financial trustee and the infrastructure planner, and
 - provides for the conduct of competitive tenders for long-term energy services (LTES) and the declaration of access schemes for renewable energy zones (REZ). An access scheme authorises or prohibits access to, and use of, specified network infrastructure in a REZ.

Scrutiny concerns

- 1.5 The Committee raised a scrutiny concern regarding the amending regulation in Monitor No. 4 of 2024 under the *Legislation Review Act 1987*, section 9(1)(b)(vii) on the basis that one aspect of the regulation called for elucidation. The scrutiny concern was conveyed to the Minister for

Energy in correspondence dated 16 May 2024. A response was provided to the Committee dated 28 May 2024 (see Appendix 3).

- 1.6** The Committee's concern related to the rationale for citing the Act, section 66(5)(a) as a relevant regulation-making power for clause 42CA. This clause provides for the functions of the infrastructure planner, in regard to standard development agreements the planner may enter into with a project participant under an access scheme. The heading to the clause provides it is made under the Act, ss 63(4)(d) and 66(5)(a).
- 1.7** Noting that section 66(5)(a) provides that the regulations may make further provision for or with respect to the appointment of persons under the Act, Part 8, the Committee queried the relevance of this provision to the making of the amending regulation.
- 1.8** In her response, the Minister agreed with the Committee's assessment and made an undertaking to amend the 2021 Regulation accordingly. The Minister also agreed to address a minor typographical matter the Committee had identified.

Committee conclusion

- 1.9** The Committee appreciates the prompt response provided by the Minister and notes the undertaking to amend the regulation to address the issues identified. This undertaking will be published on the Committee's webpage and will be updated when the relevant undertaking has been implemented.
- 1.10** Based on this undertaking, the Committee is of the view that the scrutiny concern identified under section 9(1)(b)(vii) of the *Legislation Review Act 1987* has been appropriately addressed. Therefore, the Committee concludes its scrutiny of the regulation.

Appendix 1 Instruments with no scrutiny concerns

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

Instrument	SI Number/ Government Gazette
Liquor Amendment (Same Day Liquor Delivery) Regulation 2024	2024 No 177
Casino Control Amendment (Manager Appointment Extension) Regulation 2024	2024 No 193
Land Tax Management Regulation 2024	2024 No 196
State Debt Recovery Regulation 2024	2024 No 198
Notice of Reservation of a National Park	GG n2024-971
District Court General Practice Note 1 Pronunciation of Names and Forms of Address	GG n2024-989
Order Fixing Fees	GG n2024-1059

Appendix 2 Minutes

Draft minutes no. 11

Monday 17 June 2024

Regulation Committee

Room 1136, Parliament House, Sydney, 11.02 am

1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Boyd, *Deputy Chair (via teleconference)*

Mrs Carter

Mr Donnelly

Ms Mihailuk *(via teleconference)*

Mr Murphy

Mr Nanva *(via teleconference)*

2. Apologies

Dr Kaine

3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 10 be confirmed.

4. Correspondence

The Committee noted the following items of correspondence:

Sent:

- 5 June 2024 – Letter from the Chair to the Minister for Water, the Hon Rose Jackson, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 5 of 2024.
- 5 June 2024 – Letter from the Chair to Ms Sally Webb, Deputy Secretary, Safety Environment and Regulation, Transport for New South Wales, regarding scrutiny concerns concluded in No. 5 of 2024.
- 5 June 2024 – Letter from the Chair to Mr Jim Lloyd, Statutory and Other Offices Remuneration Tribunal regarding scrutiny concerns concluded in No. 5 of 2024.
- 7 June 2024 – Letter from the secretariat to the Scrutiny of Acts and Regulation Committee (SARC) regarding a proposal to deliver a paper at the Australia – New Zealand Scrutiny of Legislation Conference in December 2024.

Received:

- 28 May 2024 – Letter from the Minister for Energy, the Hon Penny Sharpe regarding scrutiny concerns identified in Delegated Legislation Monitor No. 4 of 2024.

5. Examination of Supreme Court Act 1970—Practice Note SC CL 11

Committee noted that following the resolution of the Committee at its meeting dated 3 June 2024, the secretariat re-examined the Supreme Court Act 1970—Practice Note SC CL 11 against the scrutiny principles in the *Legislation Review Act 1987* and concluded that no further action was required.

Committee also noted the advice regarding this instrument circulated to the Committee via email on 5 June 2024.

6. Postponement of repeal of certain statutory rules

Committee noted the introduction of the [Statute Law \(Miscellaneous Provisions\) Bill 2024](#) on 6 June 2024. The Bill, in Schedule 1[4], makes provision for postponing the repeal of certain statutory rules which would otherwise have contravened the maximum number of permissible postponements under the *Subordinate Legislation Act 1989*. If passed, the Bill will delay the repeal of the following instruments to 1 September 2025:

- *Boarding Houses Regulation 2013,*
- *Child Protection (Working with Children) Regulation 2013,*
- *Crimes (Administration of Sentences) Regulation 2014,*
- *Electricity Supply (General) Regulation 2014,*
- *Electricity Supply (Safety and Network Management Regulation 2014,*
- *Heritage Regulation 2012,*
- *Local Land Services Regulation 2014,*
- *Lord Howe Island Regulation 2014,*
- *Prevention of Cruelty to Animals Regulation 2012,*
- *Protection from Harmful Radiation Regulation 2013,*
- *Veterinary Practice Regulation 2013.*

Resolved, on the motion of Mrs Carter: That the secretariat review the proposed statutory exemptions for the *Road Rules 2014* under the *Subordinate Legislation Act 1989*, section 10 and update the Committee at the next meeting on 5 August 2024.

7. Consideration of Chair's draft report

The Chair submitted her draft report entitled *Delegated Legislation Monitor No. 6 of 2024*, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mrs Carter: That:

The draft report be the report of the Committee and that the Committee present the report to the House;

The Committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The Committee secretariat be authorised to update the report where necessary to reflect changes to Committee conclusions or new Committee conclusions resolved by the Committee;

Correspondence sent to, and received from, relevant Ministers or bodies that is referred to in the Monitor, will be published as an appendix to the Monitor;

The report be tabled in the House on Wednesday 19 June 2024.

8. Correspondence arising from Monitor No. 6 of 2024

Resolved, on the motion of Mrs Carter: That the Chair write to relevant ministers or bodies reflecting the concerns identified in the monitor and seeking a response, where required, within two weeks after the correspondence is sent.

9. Correspondence arising in the winter recess (Monday 24 June – Friday 26 July 2024)

Resolved, on the motion of Mrs Carter: That:

The Committee authorise the Chair to send correspondence to the relevant ministers or bodies regarding identified scrutiny concerns prior to the publication of Monitor No. 7, in the period of Monday 24 June – Friday 26 July 2024.

Correspondence sent to ministers or bodies regarding identified scrutiny concerns in the period of Monday 24 June – Friday 26 July 2024 will be provided to Committee members for information.

10. Adjournment

The Committee adjourned at 11.09 pm.

11. Next Meeting

Monday 5 August 2024, 11.00 am, Room 1136 (consideration of the Committee report entitled 'Scrutiny of Delegated Legislation Monitor No. 7 of 2024').

Madeleine Dowd
Committee Clerk

Appendix 3 Correspondence

Appendix 3 contains the following items of correspondence sent to, and received from, Ministers or bodies regarding instruments referred to in this Monitor:

1. Sent 16 May 2024 – Letter from Chair to the Minister for Energy, the Hon Penny Sharpe regarding scrutiny concerns identified in Delegated Legislation Monitor No. 4 of 2024.
2. Received 28 May 2024 – Letter from the Minister for Energy, the Hon Penny Sharpe regarding scrutiny concerns identified in Delegated Legislation Monitor No. 4 of 2024.



16 May 2024

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

D24/023538

By email

Dear Minister,

Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) 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 section 9(1)(b) of the *Legislation Review Act 1987*.

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 7 May 2024.

- *Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) Regulation 2024*

The Committee has identified issues under section 9(1)(b)(vii) of the *Legislation Review Act 1987*, which are set out in Delegated Legislation Monitor No. 4 of 2024, as attached for your reference. Noting the conclusions set out in the Monitor, the Committee has subsequently resolved to write 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 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 scrutiny function*, on the [NSW Parliament website](#).

Scrutiny concerns

	Provision	Issue
1	Clause 42A(2), as substituted by Schedule 1[10]	Clause 42A(2) concerns the functions of the consumer trustee in conducting a competitive tender. The substitution of clause 42A(2)(b) inserted a full stop rather than a conjunction at the end of the subclause (2)(b)(iii). The Committee considers that the end of subclause (2)(b)(iii) should read ', and' to ensure the consumer trustee must undertake all functions listed in paragraphs (a)-(d), which appears to have been the intended operation of the clause.
2	Clause 42CA, as inserted by Schedule 1[12]	<p>Clause 42CA references the <i>Electricity Infrastructure Investment Act 2020</i> (the Act), section 66(5)(a) as one of the regulation-making powers for this provision. Section 66(5)(a) permits the regulation to make further provision for or with respect to the appointment of person or bodies under the Act, Part 8. This power does not appear to be relevant to clause 42CA, which relates to functions of an infrastructure planner.</p> <p>The Committee would welcome clarification regarding the rationale for citing the power in section 66(5)(a) in the heading of clause 42CA, and queries whether the intention may have been to refer to section 66(5)(d).</p>

Please provide a response to the issue identified as no 2 by **30 May 2024**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

The issue identified as no 1 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 [redacted] or Regulation.Committee@parliament.nsw.gov.au.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

The Hon Penny Sharpe MLC

Minister for Climate Change, Minister for Energy,
Minister for the Environment, Minister for Heritage,
Leader of the Government in the Legislative Council



Your ref: D24/023538
Our ref: MD24/3757

The Hon Natasha Maclaren-Jones MLC
Committee Chair
Legislative Council Regulation Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: regulation.committee@parliament.nsw.gov.au

Dear Ms ~~Maclaren-Jones~~ *Natasha,*

Thank you for your letter regarding the Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) Regulation 2024. I appreciate you bringing this matter to my attention.

I agree with both of the Regulation Committee's findings. Since I intend to amend the Electricity Infrastructure Investment Regulation 2021 for unrelated matters shortly, I have requested the Department correct the errors you have identified at the next available opportunity.

Thank you for taking the time to bring this matter to my attention.

Sincerely

Penny Sharpe MLC

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

28/5/24.

