



LEGISLATIVE COUNCIL

REGULATION COMMITTEE

# Delegated Legislation Monitor No. 12 of 2024



22 October 2024

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Regulation Committee

# **Delegated Legislation Monitor No. 12 of 2024**

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

Delegated Legislation Monitor No. 12 of 2024

'October 2024'

Chair: Hon Natasha Maclaren-Jones MLC

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## Committee details

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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. 12 of 2024**

- 1.10** For this monitor, the Committee has reviewed 25 instruments published on the NSW legislation website or in the NSW Government Gazette between 29 July 2024 and 13 September 2024. The Committee has:
- concluded its scrutiny of three instruments, as set out in Chapter 1,
  - concluded that 19 instruments raise no scrutiny concerns, as set out in Chapter 2, and
  - raised scrutiny concerns in relation to three instruments, for consideration in a future monitor, as set out in Chapter 3.
- 1.11** A further 15 instruments notified between 12 August 2024 and 4 October 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).

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

SI number / GG reference	2024 No 327
Published on 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 As set out in Delegated Legislation Monitor No. 10 of 2024, 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 raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) regarding this instrument in Delegated Legislation Monitor No. 10 of 2024. In a letter dated 19 September 2024, the Committee wrote to the Minister for Local Government regarding three matters identified under this scrutiny ground. The Minister responded on 2 October 2024. This correspondence can be found in Appendix 2.

#### 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.

*I.*

- 1.6 The amending regulation, Schedule 1[18] inserts section 333M(1A) and (1B) into the regulation, Part 11, Division 7A.
- 1.7 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.
- 1.8 Section 333M(1A) and (1B) provides:
- (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.
- 1.9 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. The effect is that 'election manager' in section 333M(1A) and (1B) is taken to be a reference to the Electoral Commissioner.
- 1.10 Section 333L, an existing section of the regulation, 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.
- 1.11 It was not clear to the Committee the rationale behind, and need for, section 333M(1A) and (1B) and the intended interaction of those subsections with sections 333A and 333L, given it appears the matters the subsections provide for may have already been covered by existing provisions.
- 1.12 Specifically, the Committee noted the fact 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 Part 11, Division 7A, and the power for the Electoral Commissioner to determine otherwise is already provided for in section 333L.
- 1.13 Further, the Committee considered that 'at a specified election' in section 333L(1) includes 'during a specified period during an election', being an addition to section 333M(1A). Additionally, 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).
- 1.14 In response, the Minister provided the following context to the amending regulation:

As with most of the measures contained in the Local Government (General) Amendment (Elections) Regulation 2024 (the Amendment Regulation), sections 333M(1A) and (1B) were inserted into the Local Government (General) Regulation 2021 (the Regulation) at the request of the NSW Electoral Commission (the Commission) to give effect to its planning for the 2024 ordinary local government elections.

An earlier amendment was made to the Regulation (inserting section 333M) following the 2021 ordinary local government elections in response to issues with the availability of iVote at those elections, restricting the availability of technology assisted voting (TAV) at council elections to telephone voting for electors who are blind or have low vision until 1 September 2024. At the request of the Commission, this timeframe was extended to 1 September 2028 by the Amendment Regulation.

**1.15** In response to the Committee's concerns regarding section 333M(1A) and (1B), the Minister stated that:

Sections 333M(1A) and (1B) were also inserted at the request of the Commission to clarify that the NSW Electoral Commissioner has a discretion to determine that telephone voting is not permitted at a specified election, or during a specified period during an election.

Because Division 7A of Part 11 of the Regulation in which those provisions appear apply only to elections administered by the NSW Electoral Commissioner, the "election manager" referred to in those sections is the NSW Electoral Commissioner.

Sections 333M(1A) and (1B) were modelled on special provisions legislated under the *Electoral Act 2017* restricting the availability of TAV at the 2023 State election (see clause 14 of Schedule 7). Like section 330M(1A) and (1B), these provisions complement an existing provision of the *Electoral Act 2017* that confers on the NSW Electoral Commissioner a discretion to determine that TAV is not to be used at a specified election (section 162).

Section 333M contemplates that telephone voting for electors who are blind or have low vision is a species of TAV, and **it could be argued that its open to the Commissioner to exercise a discretion under section 333L to determine that telephone voting is not to be used at a specified election.** However, unlike section 333M(1A), section 333L would not permit the Commissioner to determine that telephone voting is not permitted "during a specified period during an election", for example because technical difficulties mean that telephone voting is temporarily unavailable during an election. [Emphasis added.]

It is imperative to public confidence in our democratic system of government that electors can have confidence in how elections are conducted and in their outcomes. For this reason and to minimise the risk of legal challenges to election outcomes (for example because telephone voting was unavailable for any period during a council election due to technical difficulties), it is critical that the prescription of the rules governing the conduct of council elections conveys absolute clarity and certainty. Relying on a possible argument that section 333L may apply to telephone voting under section 333M falls well short of the clarity and certainty required.

*II.*

- 1.16** The amending regulation, Schedule 1[30] inserts section 347 into the regulation and provides the steps for the preliminary scrutiny of postal ballot-papers. Section 347(3) provides that, at a particular intermediate stage in the preliminary scrutiny, the returning officer is to disallow a ballot-paper, without opening the enclosing envelope, 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.
- 1.17** The amending regulation now enables a postal vote certificate to be issued other than in the form of an envelope on which the certificate is printed. As a result, a postal vote certificate may be returned, with a ballot-paper, in an ordinary envelope addressed to the returning officer.
- 1.18** In light of this change, the Committee 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.
- 1.19** In response to the Committee's query, the Minister stated that:

The preliminary scrutiny rules for postal votes prescribed under section 347 reflects the Commission's actual practice.

Section 347(3) needs to be read in the context of the subsections that precede it. Section 347(1) addresses how the preliminary scrutiny is to be undertaken in a range of scenarios including where the postal vote certificate is printed on the envelope, where it is visible through a window on the envelope, or where it is otherwise enclosed within the envelope. **Section 347(1) permits the returning officer to open the envelope to ascertain whether the postal vote certificate is enclosed** and to re-seal the envelope in certain circumstances prescribed under that subsection. [Emphasis added.]

A decision by the returning officer under section 347(3) to accept the ballot paper for further scrutiny or to reject the ballot without opening the envelope will necessarily be informed by the steps previously taken by the returning officer under section 347(1). The reference in section 347(3)(b) to disallowing the ballot papers without opening the envelopes, is to be read as meaning without opening or reopening the envelope depending on what steps were taken under section 347(1).

*III.*

- 1.20** The amending regulation, Schedule 1[39] amends the regulation, section 360(1), which provides that:
- (1) A witness must not witness the signature of an elector to an application for 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.
- Maximum penalty—5 penalty units.

1.21 The Committee could not locate a provision of the regulation generally requiring or allowing a person to witness an *application* for a postal vote<sup>4</sup>, other than in the circumstances described in section 389(2):

- (2) If a person who is unable to sign his or her name in writing makes his or her mark as his or her signature to an electoral paper, the mark is taken to be his or her personal signature, if it is identifiable as such, and is made in the presence of a witness who signs the electoral paper as such witness.<sup>5</sup>

1.22 The Committee queried the circumstances in which an application for a postal vote is required to, or may, be witnessed, including whether this is provided for by the 'approved form' for an application under section 314.

1.23 In response, the Minister submitted that:

The offence under section 360(1) predates the Amendment Regulation.

... Under section 314 of the Regulation an application for a postal vote is to be made in the form and manner approved by the election manager. **The Commission requires postal vote applications for local government elections to be witnessed.** [Emphasis added.]

### Committee conclusion

1.24 The Committee appreciates the Minister's engagement with the scrutiny concerns raised by the Committee and acknowledges the explanation provided in relation to each of these.

1.25 With regard to section 333M(1A) and (1B), the Committee understands the subsections complement existing provisions of the *Electoral Act 2017*, and that the intention is to ensure that the NSW Electoral Commissioner has discretion to determine that telephone voting is not permitted 'during a specified period during an election'.

1.26 The Committee maintains the view, however, that the Electoral Commissioner's power under section 333L 'to determine that technology assisted voting is not to be used at a specified election' likely renders section 333M(1A) and (1B) redundant.

1.27 Section 333M(1) makes clear that telephone voting is a form of technology assisted voting. Further, it is the view of the Committee that a power to determine that telephone voting is not to be used 'at a specified election', conferred by section 333L, includes a power to determine that telephone voting is not to be used 'during a specified period during an election'.

1.28 The Committee has reservations about reading such a broad power down so as not to enable the Electoral Commissioner discretion regarding whether their determination apply in relation to the whole election, part of the election, or in certain circumstances.

<sup>4</sup> Compare the regulation, section 318, which requires the *making* of a postal vote to be witnessed.

<sup>5</sup> The regulation, section 275 defines *electoral paper*, for Part 11, to include any written application or form relating to an election under the *Local Government Act 1993*.

- 1.29** Given the risk that new provisions covering the same matters as existing provisions may suggest that those existing provisions operate differently, or in a more limited way, than previously understood, the Committee is generally concerned about potential redundancy in delegated legislation.
- 1.30** While the Committee considers that the matters provided for by section 333M(1A) and (1B) may unnecessarily duplicate section 333L, the Committee considers the risk of any issues regarding the operation of these provisions is minimal and notes that section 333M is a temporary provision.
- 1.31** Regarding the inclusion of 'without opening the envelope' in section 347(3)(b), the Committee notes that section 347 provides sequential, prescriptive and distinct actions for the preliminary scrutiny of postal ballot-papers by the returning officer.
- 1.32** As such, the Committee considers that, in examining an envelope under section 347(1), the returning officer is seeking *exclusively* to ascertain whether or not it contains the required documents, i.e., a ballot paper and postal vote certificate, if a postal vote certificate envelope has not been used.
- 1.33** While there are different ways the returning officer may determine this, if the postal vote certificate is visible, either through a window in the envelope or because the certificate is printed on the envelope, it appears that under section 347(1) the returning officer would have no need to, or in fact would be prevented from proceeding to, open the envelope to inspect the documents inside.
- 1.34** Hence, in circumstances where it is not clear on this initial examination of the envelope that the postal vote certificate has been properly signed and witnessed and the elector is entitled to vote in the ward or area to which the certificate relates, it is not clear to the Committee how the returning officer could be satisfied of this at the later stage of scrutiny to which section 347(3) applies *without* opening the envelope to review the certificate.
- 1.35** The Committee considers that if the intention is that the returning officer, while undertaking the required steps under section 347(1), should, or is able to, inspect the documents within the envelope in order to be satisfied of the matters referred to in section 347(3)(a), the regulation should be amended to put this beyond doubt.
- 1.36** Finally, the Committee recommends that, for clarity and legal certainty, the circumstances in which an application for a postal vote is required to, or may, be witnessed be made clear in the regulation.
- 1.37** Relatedly, to ensure that persons seeking to apply for a postal vote can readily understand their obligations under the regulation, the Committee recommends that the requirement for applications to be witnessed should be made clear on the relevant approved form, noting that the current online application form does not appear to include, for example, a reference to this requirement or a space for a witness's signature.<sup>6</sup>

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<sup>6</sup> The Committee refers to the online form LG.300, entitled 'Postal vote application – NSW Local Government elections', which is available on the website [elections.nsw.gov.au](https://elections.nsw.gov.au).

**1.38** Subject to the above comments, the Committee is of the view that the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii) have been appropriately addressed. On this basis, the Committee concludes its scrutiny of the regulation.

## Museum of Applied Arts and Sciences Regulation 2024

SI number / GG reference	2024 No 328
Published on 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

- 1.39** 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.
- 1.40** 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.
- 1.41** The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) regarding this instrument in Delegated Legislation Monitor No. 10 of 2024. In a letter dated 19 September 2024, the Committee wrote to the Minister for the Arts regarding two minor matters raised under this scrutiny ground. The Minister responded on 30 September 2024. This correspondence can be found in Appendix 2.

### Scrutiny concerns

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

- 1.42** Under this ground, the Committee is generally concerned with clarity and certainty in delegated legislation and may seek clarification where a provision is ambiguous.
- I.**
- 1.43** The regulation, section 3 provides that **Chief Executive** means 'the person employed in the Public Service as the Chief Executive of the Museum of Applied Arts and Sciences.' Under the regulation, section 10(1), the Chief Executive is responsible to the trustees for the administration and management of the Museum and the services provided in connection with the Museum.
- 1.44** Under the repealed *Museum of Applied Arts and Sciences Regulation 2017*, the person responsible to the trustees of the Museum was the Director of the Museum.
- 1.45** 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'.



- 1.46 The Committee sought clarification as to whether 'Chief Executive' is the current and appropriate title for the head of the Museum, noting that there appears to be two different titles for the head of the Museum, one under the regulation (being the 'Chief Executive') and another under the *Government Sector Employment Act 2013* (being the 'Director').
- 1.47 The Committee considered that if Chief Executive is the correct title, there should be an Administrative Arrangements Order to update the reference in the *Government Sector Employment Act 2013*, Schedule 1, Part 2.
- 1.48 In response to the Committee's query, the Minister clarified that the 'The appropriate title for the head of the Museum is the Chief Executive and this will be updated in the next Administrative Arrangements Order.'

## II.

- 1.49 The regulation, sections 4 and 5 list those persons who may call an ordinary meeting or a special meeting of the trustees:
- 4 Ordinary meetings**
- An ordinary meeting may be called by—
- (a) the President, or
- (b) if the President agrees—a trustee.
- 5 Special meetings**
- A special meeting may be called—
- (a) by the President, or
- (b) at the request of at least 3 trustees, or
- (c) by the Chief Executive.
- 1.50 It appeared to the Committee that other than who may call an ordinary meeting or a special meeting, there is no procedural difference between the two types of meetings, for example in terms of when and how often each meeting may be called, or how business is conducted.
- 1.51 In his response, the Minister confirmed this to be the case.

## Committee conclusion

- 1.52 The Committee appreciates the Minister's considered engagement and cooperation with the scrutiny concerns raised by the Committee.
- 1.53 The Committee notes the Minister's undertaking to address the Committee's concerns relating to the reference to the Director, rather than Chief Executive, in the *Government Sector Employment Act 2013*, Schedule 1, Part 2. This undertaking will be published on the Committee's webpage and will be updated when the relevant undertaking has been implemented.
- 1.54 The Committee is of the view that the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii) have been appropriately addressed. On this basis, the Committee concludes its scrutiny of the regulation.

## Pipelines Amendment Regulation 2024

SI number / GG reference	2024 No 327
Published on Legislation Website (LW)	02/08/2024
Tabled in Legislative Council (L.C)	06/08/2024
Last date of notice for disallowance motion	22/10/2024

### Overview

- 1.55** As set out in Monitor No. 10 of 2024, the [Pipelines Amendment Regulation 2024](#) (the amending regulation) makes various amendments to the *Pipelines Regulation 2023*, including to set out requirements for the protection of pipelines and land used in the construction or operation of pipelines, to provide for the making of directions in response to cyber security incidents, and to prescribe offences in relation to these matters.
- 1.56** The amending regulation is made under the *Pipelines Act 1967* (the Act), including section 31A(4) and Schedule 2, clauses 1, 6, 10, 11 and 13. The amending regulation commenced on 2 August 2024.
- 1.57** The amending regulation is largely consequent on the commencement of certain amendments to the Act made by the *Energy Legislation Amendment (Clean Energy Future) Act 2024*, Schedule 3, on both 24 June 2024 and 2 August 2024, to essentially relocate certain matters in the Act to the regulation.
- 1.58** When explaining the reasoning for this relocation during his second reading speech on the *Energy Legislation Amendment (Clean Energy Future) Bill 2024*, the Hon. Jihad Dib, Minister for Customer Service and Digital Government, Minister for Emergency Services, and Minister for Youth Justice, stated that:

The amendments to the Pipelines Act proposed in the bill will make it easier to modernise the safety and technical regulation framework for pipelines in New South Wales, ensuring that the legislation remains fit for purpose for the future energy transition.

... The changes will omit some offences and penalties from the Act at a date determined by proclamation so they can be relocated to the regulation to make it easier to regularly review and update penalty units to ensure consistency with other jurisdictions and to reflect risks and potential impacts on the public from any breach of provisions. These amendments do not change the current regulatory framework or penalty unit amounts. Any changes to this will be done through revising the Pipelines Regulation in consultation with industry and other stakeholders. The amendments to Pipelines Act will occur in two stages: the strengthening of regulatory-making powers will commence on bill assent, and the removal of offences and penalties from the Act to be relocated in the regulation will commence by proclamation when the new regulation for offences and penalties comes into force.

- 1.59 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(iii), (iv) and (vii) in relation to the amending regulation by letter sent to the Minister for Energy on 19 September 2024. The Hon. Paul Scully, Minister for Planning and Public Spaces, acting for the Minister for Energy, responded to this correspondence on 10 October 2024.
- 1.60 The Committee subsequently wrote back to the Minister for Energy on 14 October 2024, who in turn provided a response on 16 October 2024
- 1.61 This correspondence is included in Appendix 2.

### Scrutiny concerns

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

- 1.62 Under these grounds, the Committee is required to consider the consistency of a regulation with the objects and intended effects of the parent Act, including whether a provision appears to be beyond the scope of the delegated legislation-making powers in the parent Act.
- 1.63 The Act, section 69(2) and Schedule 2, clause 13(a) enable the regulations to provide that the Minister may direct a licensee or former licensee to *remove* property brought onto land in connection with a pipeline.
- 1.64 The amending regulation, Schedule 1[2], proposed section 26C(1)(b) provides, in reliance on this regulation-making power, 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. Section 26C(4) makes clear that a licensee includes a former licensee of a licence that is wholly cancelled, partly cancelled or expired.
- 1.65 In its 19 September 2024 letter, the Committee put forward the view that section 26C(1)(b), insofar as it enables a direction to be given to *dispose* of property, may not accord with the spirit of the Act or may be beyond the scope of the regulation-making powers in the Act.
- 1.66 In the Committee's view, a direction to make arrangements to dispose of property appears to be distinct from, and potentially more onerous than, a direction to make arrangements to remove property, whether 'dispose' is used in the ordinary sense of 'to get rid of', or has the legal connotation of extending to the sale, transfer, lease, licence or other 'disposition' of property.
- 1.67 While section 26C appears to provide for the same matters as the Act, former section 35(1)(a) and (2)(a), as in force immediately before its repeal by the *Energy Legislation Amendment (Clean Energy Future) Act 2024*, Schedule 3[23], it is unclear to the Committee whether the words 'or dispose of' were not included in the Act, Schedule 2, clause 13, as inserted by the *Energy Legislation Amendment (Clean Energy Future) Act 2024*, Schedule 3[37], for good reason.
- 1.68 In his letter of 10 October 2024, the Minister for Planning and Public Spaces, acting for the Minister for Energy, advised that:

I acknowledge and agree with all three of the Regulation Committee's findings.

The Government intends to shortly submit a Bill to amend various pieces of energy-related legislation, which will clarify the regulatory making powers under sections 26C1(b) (Item 1). In the meantime, I note that section 69(1) could be relied upon as this is a matter that is necessary to be prescribed for carrying out or giving effect to this Act.

- 1.69** The Committee has reservations about relying on the general 'necessary or convenient' regulation-making power in the Act, section 69(1) where there is a specific regulation-making power dealing with the matter prescribed, particularly as it is unclear to the Committee why a direction to remove property from the area would not be sufficient 'for the protection of pipelines and land used in the construction or operation of pipelines'. That is, provided the property is no longer in the area, does it matter what the licensee does with it?
- 1.70** In light of these reservations, and the Minister's concurrence with the Committee's findings, the Committee wrote back to the Minister for Energy on 14 October 2024 requesting an express undertaking to, by 14 April 2025, amend the relevant regulation-making power, or the *Pipelines Regulation 2023*, to address this scrutiny concern.
- 1.71** Such an undertaking was considered an appropriate alternative to the Committee resolving to give notice of motion to disallow the relevant part of the amending regulation, preserving the Committee's ability to potentially disallow that part, if the intended amendments are not made in the next six months, given the uncertainty over whether and when a remedying Bill would pass both Houses and commence.
- 1.72** On 16 October 2024, the Minister responded to the Committee and provided the following undertaking:

I appreciate the Committee's concerns and will undertake to the Committee that, by 14 April 2025, the Government will amend the relevant regulation-making power, or the Pipelines Regulation 2023, to address the Committee's concerns.

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

- 1.73** 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.

***I.***

- 1.74** The amending regulation, Schedule 1[2], proposed 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, *other than in the manner specified in the direction*.
- 1.75** The Committee 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.
- 1.76** The Minister responded:

I note your request for clarification of Item 2. I would concur that the wording appears to be contradictory. In early 2025, a revision of the Pipelines Regulation 2023 is planned to commence. As part of this process, the wording in section 26C(1)(d) will be amended.

## *II.*

- 1.77 The Committee also brought the Act, section 16B(b) to the attention of the Minister for containing an obsolete reference to a repealed section of the Act.
- 1.78 The Minister advised that the forthcoming Bill to amend energy-related legislation 'will also propose the removal of the redundant section reference in section 16B(b) (Item 3)'.

### **Committee conclusion**

- 1.79 The Committee appreciates the Minister's engagement with the scrutiny concerns identified by the Committee and the willingness to take action to address these issues.
- 1.80 In particular, the Committee acknowledges the Minister's undertaking to, by 14 April 2025, amend the Act, Schedule 2, clause 13(a), or the *Pipelines Regulation 2023*, section 26C(1)(b), to address the Committee's scrutiny concerns outlined above. This undertaking will be published on the Committee's webpage and will be updated when the relevant undertaking has been implemented.
- 1.81 The Committee is of the view that the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(iii), (iv) and (vii) have been appropriately addressed. On this basis, the Committee concludes its scrutiny of the amending regulation.



## Chapter 2 Instruments with no scrutiny concerns

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

<b>Instrument</b>	<b>SI number/ GG reference</b>
Apprenticeship and Traineeship Regulation 2024	2024 No 403
Government Advertising Regulation 2024	2024 No 407
Industrial Relations Commission (Amendment No 1) Rules 2024	2024 No 409
Law Enforcement and National Security (Assumed Identities) Regulation 2024	2024 No 410
Powers of Attorney Regulation 2024	2024 No 412
Scrap Metal Industry Regulation 2024	2024 No 418
Stock Medicines Regulation 2024	2024 No 422
Biosecurity Order (Permitted Activities) Amendment Order 2024	2024 No 435
Evidence (Audio and Audio Visual Links) Regulation 2024	2024 No 438
Industrial Relations Amendment (Administrator) Regulation 2024	2024 No 431
Gaming and Liquor Administration Regulation 2024	2024 No 441
Payroll Tax Regulation 2024	2024 No 443
Photo Card Regulation 2024	2024 No 444
Private Health Facilities Regulation 2024	2024 No 445
Racing Appeals Tribunal Regulation 2024	2024 No 446
Electricity Infrastructure Investment Amendment (Firm Capacity) Regulation 2024	2024 No 472
Supreme Court (Amendment No 435) Rule 2024	2024 No 479
Uniform Civil Procedure (Amendment No 102) Rule 2024	2024 No 480
National Parks and Wildlife Act 1974—Notice of Reservation of a National Park	NSWGG-2024-353-1





## Chapter 3 Instruments raising scrutiny concerns

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

<b>Responsible minister or body</b>	<b>Instrument</b>	<b>SI number / GG reference</b>
Attorney General	Children (Protection and Parental Responsibility) Regulation 2024	2024 No 375
Attorney General	Crimes (Sentencing Procedure) Regulation 2024	2024 No 379
Minister for Education and Early Learning	Teaching Service Regulation 2024	2024 No 386



# Appendix 1 Minutes

## Draft minutes no. 17

Monday 21 October 2024

Regulation Committee

Room 1136, Parliament House, Sydney, 11.01 am

### 1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Boyd, *Deputy Chair (via teleconference)*

Mrs Carter

Mr Donnelly

Mr Murphy

### 2. Apologies

Dr Kaine

Ms Mihailuk

Mr Nanva

### 3. Previous minutes

Resolved, on the motion of Mrs Carter: That draft minutes no. 16 be confirmed.

### 4. Correspondence

The Committee noted the following items of correspondence:

#### *Sent:*

- 14 October 2024 – Letter from Chair to the Minister for Energy, the Hon Penny Sharpe MLC, regarding scrutiny concerns identified in the *Pipelines Amendment Regulation 2024*
- 16 October 2024 – Letter from Chair to Attorney General, the Hon Michael Daley MP regarding scrutiny concerns identified in the *Crimes (Sentencing Procedure) Regulation 2024*
- 17 October 2024 – Letter from Chair to Treasurer, the Hon Daniel Mookhey MLC regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 11 of 2024
- 17 October 2024 – Letter from Chair to Minister for Gaming and Racing, the Hon David Harris MP regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 11 of 2024
- 17 October 2024 – Letter from Chair to Minister for Gaming and Racing, the Hon David Harris MP regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 11 of 2024
- 17 October 2024 – Letter from Chair to Minister for Roads, the Hon John Graham MLC regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 11 of 2024

#### *Received:*

- 16 October 2024 – Letter from Minister for Education and Early Learning, the Hon Prue Car MP regarding scrutiny concerns identified in the *Teaching Service Regulation 2024*
- 16 October 2024 – Letter from Minister for Energy, the Hon Penny Sharpe regarding scrutiny concerns identified in the *Pipelines Regulation 2024*

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

The Chair submitted her draft report entitled *Delegated Legislation Monitor No. 12 of 2024*, which having been previously circulated, was taken as being read.

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 Tuesday 22 October 2024.

**6. Correspondence arising from Monitor No. 12 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. 12 of 2024.

**7. Correspondence to the Hon Penny Sharpe MLC, Leader of the Government, regarding the scrutiny function of the Committee**

Resolved, on the motion of Mr Donnelly: That the Chair write to the Hon Penny Sharpe MLC, Leader of the Government in the Legislative Council, raising the following items:

- that the Committee appreciates and values the meaningful and responsive engagement of the Leader of the Government and other ministers with the Committee and its scrutiny function,
- that the Committee notes that some responses from a small number of ministers to correspondence from the Committee have been delayed or have not engaged substantively with the Committee's concerns,
- reiterating that the Committee is required to scrutinise and report on all disallowable instruments during the period in which they are disallowable, and the subsequent internal timeframes this requirement creates, and
- that the Committee may, in future, request ministers and bodies to respond to its correspondence identifying scrutiny concerns within seven days, rather than the current 14 days, in order to avoid the issue of the last date for disallowance approaching and a meaningful response not having been received.

Resolved, on the motion of Mr Donnelly: That the Chair write to the Hon Penny Sharpe MLC, Leader of the Government in the Legislative Council, before the end of 2024, seeking any feedback on the operation of the Committee's scrutiny function, its engagement with ministers and bodies and if it would be appropriate for the Committee to do any further educational outreach regarding the Committee's work practices in 2025.

**8. Adjournment**

The Committee adjourned at 11.17 am.

**9. Next Meeting**

Monday 11 November 2024, 1.00 pm, Room 814 (consideration of the Committee report entitled 'Scrutiny of Delegated Legislation Monitor No. 13 of 2024').

## Appendix 2 Correspondence

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

- Sent 19 September 2024 – Letter from 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*.
- Sent 19 September 2024 – Letter from Chair to Minister for Energy, the Hon Penny Sharpe MLC regarding scrutiny concerns identified in the *Pipelines Regulation 2024*.
- 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*.
- Received 30 September 2024 – Letter from Minister for the Arts, the Hon. John Graham MLC regarding scrutiny concerns identified in the *Museum of Applied Arts and Sciences Regulation 2024*.
- Received 2 October 2024 – Letter from Minister for Local Government, the Hon Ron Hoenig MP regarding scrutiny concerns identified in the *Local Government (General) Amendment (Elections) Regulation 2024*.
- Received 10 October 2024 – Letter from Minister for Planning and Public Spaces, the Hon Paul Scully MP on behalf of Minister for Energy, the Hon Penny Sharpe MLC regarding scrutiny concerns identified in the *Pipelines Regulation 2024*.
- Sent 14 October 2024 – Letter from Chair to Minister for Energy, the Hon Penny Sharpe MLC regarding scrutiny concerns identified in the *Pipelines Regulation 2024*.
- Received 16 October 2024 – Letter from Minister for Energy, the Hon Penny Sharpe MLC regarding scrutiny concerns identified in the *Pipelines Regulation 2024*.



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**



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. 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 <b>election manager</b> 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**

## The Hon John Graham MLC

Special Minister of State, Minister for Roads, Minister for the Arts,  
Minister for Music and the Night-time Economy, Minister for Jobs and Tourism,  
Deputy Leader of the Government in the Legislative Council



Ref: A1299516

Chair, Regulation Committee  
Parliament House, Macquarie Street,  
Sydney NSW 2000  
Via email: Regulation.Committee@parliament.nsw.gov.au

Re: Museum of Applied Arts and Sciences Regulation 2024

Dear Chair,

Thank you for your correspondence relating to the Regulation Committee's consideration of the following regulations:

- Museum of Applied Arts and Sciences Regulation 2024

I note the Committee's considerations and provide a response below.

Item	Provision	Response
1	Section 3, definition of <b>Chief Executive</b>	<p>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> <p>The appropriate title for the head of the Museum is the Chief Executive and this will be updated in the next Administrative Arrangements Order.</p>
2	Sections 4 and 5	<p>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.</p> <p>This is correct. There is no procedural difference, other than who may call an ordinary or special meeting.</p>

Thank you for raising these issues and I trust this response addresses your queries.

Sincerely,

**John Graham MLC**

Special Minister of State, Minister for Roads, Minister for the Arts,  
Minister for Music and the Night-time Economy, Minister for Jobs and Tourism,  
Deputy Leader of the Government in the Legislative Council

27/1/24

## The Hon. Ron Hoenig MP

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



Your Ref: D24/046933  
Our Ref: A927263 / M024-0570

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

Via email: [Regulation.Committee@parliament.nsw.gov.au](mailto:Regulation.Committee@parliament.nsw.gov.au)

Dear Ms Maclaren-Jones,

Thank you for your letter regarding the NSW Legislative Council Regulation Committee's review of the Local Government (General) Amendment (Elections) Regulation 2024.

Please find attached a table outlining my response to each of the issues identified by the Committee for its consideration.

Thank you for bringing this important matter to my attention.

If you have any questions, you are welcome to contact Mr John Davies, Manager, Council Governance at the Office of Local Government on \_\_\_\_\_ or by email at \_\_\_\_\_

Yours sincerely,

0 0 2 OCT 2024

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

Encl: Table - Minister for Local Government's response to NSW Legislative Council Regulation Committee



Table - Minister for Local Government's response to NSW Legislative Council Regulation Committee  
Local Government (General) Amendment (Elections) Regulation 2024 (the amendment regulation)

	Provision	Issue raised by the Committee	Comment in response
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 Local Government (General) Regulation 2021 (the regulation), 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 election manager 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>	<p>As with most of the measures contained in the Local Government (General) Amendment (Elections) Regulation 2024 (the Amendment Regulation), sections 333M(1A) and (1B) were inserted into the Local Government (General) Regulation 2021 (the Regulation) at the request of the NSW Electoral Commission (the Commission) to give effect to its planning for the 2024 ordinary local government elections.</p> <p>An earlier amendment was made to the Regulation (inserting section 333M) following the 2021 ordinary local government elections in response to issues with the availability of iVote at those elections, restricting the availability of technology assisted voting (TAV) at council elections to telephone voting for electors who are blind or have low vision until 1 September 2024. At the request of the Commission, this timeframe was extended to 1 September 2028 by the Amendment Regulation.</p> <p>Sections 333M(1A) and (1B) were also inserted at the request of the Commission to clarify that the NSW Electoral Commissioner has a discretion to determine that telephone voting is not permitted at a specified election, or during a specified period during an election.</p> <p>Because Division 7A of Part 11 of the Regulation in which those provisions appear apply only to elections administered by the NSW Electoral Commissioner, the "election manager" referred to in those sections is the NSW Electoral Commissioner.</p> <p>Sections 333M(1A) and (1B) were modelled on special provisions legislated under the <i>Electoral Act 2017</i> restricting the availability of TAV at the 2023 State election (see clause 14 of Schedule 7). Like section 330M(1A) and (1B), these provisions complement an existing</p>



	Provision	Issue raised by the Committee	Comment in response
			<p>provision of the <i>Electoral Act 2017</i> that confers on the NSW Electoral Commissioner a discretion to determine that TAV is not to be used at a specified election (section 162).</p> <p>Section 333M contemplates that telephone voting for electors who are blind or have low vision is a species of TAV, and it could be argued that its open to the Commissioner to exercise a discretion under section 333L to determine that telephone voting is not to be used at a specified election. However, unlike section 333M(1A), section 333L would not permit the Commissioner to determine that telephone voting is not permitted "during a specified period during an election", for example because technical difficulties mean that telephone voting is temporarily unavailable during an election.</p> <p>It is imperative to public confidence in our democratic system of government that electors can have confidence in how elections are conducted and in their outcomes. For this reason and to minimise the risk of legal challenges to election outcomes (for example because telephone voting was unavailable for any period during a council election due to technical difficulties), it is critical that the prescription of the rules governing the conduct of council elections conveys absolute clarity and certainty. Relying on a possible argument that section 333L may apply to telephone voting under section 333M falls well short of the clarity and certainty required.</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, without opening the envelope, 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</p>	<p>The preliminary scrutiny rules for postal votes prescribed under section 347 reflects the Commission's actual practice.</p> <p>Section 347(3) needs to be read in the context of the subsections that precede it. Section 347(1) addresses how the preliminary scrutiny is to be undertaken in a range of scenarios including where the postal vote certificate is printed on the envelope, where it is visible through a window on the envelope, or where it is otherwise enclosed within the envelope. Section 347(1) permits the returning officer to open the envelope to ascertain whether the postal vote</p>

	Provision	Issue raised by the Committee	Comment in response
		<p>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>	<p>certificate is enclosed and to re-seal the envelope in certain circumstances prescribed under that subsection.</p> <p>A decision by the returning officer under section 347(3) to accept the ballot paper for further scrutiny or to reject the ballot without opening the envelope will necessarily be informed by the steps previously taken by the returning officer under section 347(1). The reference in section 347(3)(b) to disallowing the ballot papers without opening the envelopes, is to be read as meaning without opening or reopening the envelope depending on what steps were taken under section 347(1).</p>
2	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 an application for 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 application under section 314, and whether this is only relevant in the circumstance described in section 389(2).</p>	<p>The offence under section 360(1) predates the Amendment Regulation. The Amendment Regulation made only a minor consequential amendment to section 360(1) by omitting the phrase "postal ballot-paper and a postal voting envelope" and inserting instead, "postal vote".</p> <p>Under section 314 of the Regulation an application for a postal vote is to be made in the form and manner approved by the election manager. The Commission requires postal vote applications for local government elections to be witnessed.</p>

**The Hon Paul Scully MP**  
Minister for Planning and Public Spaces



Ref: MD24/6457

**The Hon Natasha Maclaren-Jones MLC**  
Chair, Regulation Committee  
Email: [Regulation.Committee@parliament.nsw.gov.au](mailto:Regulation.Committee@parliament.nsw.gov.au)

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Re: Pipelines Amendment Regulation 2024

Dear Ms Maclaren-Jones, *Natasha*

Thank you for your correspondence regarding scrutiny concerns identified under the Legislation Review Act 1987, section 9(1)(b) relating to the Pipelines Amendment Regulation 2024. I am responding in my capacity acting for the Minister for Climate Change, Minister for Energy, Minister for the Environment and Minister for Heritage, the Hon. Penny Sharpe MLC. I appreciate you bringing this matter to the Government's attention and apologise for the delay in responding, which was due to an administrative error.

I note that you have raised three items and requested my response on the first two items.

I acknowledge and agree with all three of the Regulation Committee's findings.

The Government intends to shortly submit a Bill to amend various pieces of energy-related legislation, which will clarify the regulatory making powers under sections 26C(1)(b) (Item 1). In the meantime, I note that section 69(1) could be relied upon as this is a matter that is necessary to be prescribed for carrying out or giving effect to this Act. This Bill will also propose the removal of the redundant section reference in section 16B(b) (Item 3).

I note your request for clarification of Item 2. I would concur that the wording appears to be contradictory. In early 2025, a revision of the Pipelines Regulation 2023 is planned to commence. As part of this process, the wording in section 26C(1)(d) will be amended.

If you have any further questions about this response, please contact Mr Theo Polizogopoulos, Acting Senior Manager, Pipelines and Gas Networks, Department of Climate Change, Energy, the Environment and Water, on \_\_\_\_\_ or at \_\_\_\_\_

Thank you for taking the time to bring this matter to the Government's attention.

Sincerely,

**Paul Scully MP**  
Minister for Planning and Public Spaces

*9/10/24*



14 October 2024

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

D24/051526

By email

Dear Minister

### **Pipelines Amendment Regulation 2024**

I write to you regarding your letter received by the Regulation Committee on 10 October 2024.

The Committee appreciates your engagement with the scrutiny concerns outlined in relation to the *Pipelines Amendment Regulation 2024*.

We note your agreement with the Committee's findings, in particular regarding the inclusion of the words 'or dispose of' in section 26C(1)(b), as inserted by Schedule 1[2]. While the Committee appreciates that the Government intends to introduce a Bill to amend the *Pipelines Act 1967*, Schedule 2, clause 13, being the regulation-making power relied on for section 26C(1)(b), it is uncertain whether and when such a Bill would pass both Houses and commence.

The Committee may, if it has outstanding concerns about a disallowable instrument, draw the instrument to the attention of the House or recommend to the House that the instrument, or part of the instrument, be disallowed.

Rather than invoking this procedure, the Committee requests the Minister provide an express undertaking to, by 14 April 2025 (being six months from the date of this letter) amend the relevant regulation-making power, or the *Pipelines Regulation 2023*, to address the Committee's concerns.

As the last day notice of motion to disallow the regulation, or part of the regulation, can be given is Tuesday, 22 October 2024, the Committee requests that this undertaking be provided by **9am Wednesday, 16 October 2024**.

Undertakings are published on the Committee's webpage and updated once implemented.

If not provided, the Committee may resolve to give notice of motion to disallow the relevant part of the amending regulation, to preserve the Committee's power to disallow that part in case the intended amendments are not made within the next six months.

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**



**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: D24/051526  
Our ref: MD24/6887

**The Hon Natasha Maclaren-Jones MLC**  
Committee Chair  
Regulation Committee  
Legislative Council

Email

Dear Ms Maclaren-Jones

Thank you for your letter regarding the letter sent to the Regulation Committee on 10 October 2024 about the Pipelines Amendment Regulation 2024.

I note the Committee's concern regarding the inclusion of the words 'or dispose of' in section 26C(1)(b) in the Pipelines Regulation 2023, as inserted by Schedule 1[2] of the Pipelines Amendment Regulation 2024.

The Government intends to introduce a Bill to amend the *Pipelines Act 1967*, including Schedule 2, clause 13, which is the regulation-making power relied on for section 26C(1)(b). I appreciate the Committee's concerns and will undertake to the Committee that, by 14 April 2025, the Government will amend the relevant regulation-making power, or the Pipelines Regulation 2023, to address the Committee's concerns.

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

16/10/24



