LEGISLATIVE COUNCIL

REGULATION COMMITTEE

Delegated Legislation Monitor No. 11 of 2024

15 October 2024

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Regulation Committee

Delegated Legislation Monitor No. 11 of 2024

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Delegated Legislation Monitor No. 11 of 2024

'October 2024'

Chair: Hon Natasha Maclaren-Jones MLC

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Recommendations

Recommendation 1 **26**

That:

(a) the Chair of the Regulation Committee give notice of motion in the House, on or before 22 October 2024, that under the *Interpretation Act 1987*, section 41 the Legislative Council disallows the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12] as published on the NSW legislation website on 28 June 2024,

(b) if by the first sitting day of November 2024, legislation to omit clause 44C from the *Liquor Regulation 2018* has not been introduced to either House, the Chair of the Regulation Committee move the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12], and

(c) if by the first sitting day of November 2024, legislation has been introduced to omit clause 44C from the *Liquor Regulation 2018*, the Chair of the Regulation Committee withdraw the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12].

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 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

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.

(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. 11 of 2024

1.10 For this monitor, the Committee has reviewed 30 instruments published on the NSW legislation website or in the NSW Government Gazette between 24 June 2024 and 6 September 2024. The Committee has:

- concluded its scrutiny of four instruments, as set out in Chapter 1,
- concluded that 21 instruments raise no scrutiny concerns, as set out in Chapter 2, and
- raised scrutiny concerns in relation to five instruments, for consideration in a future monitor, as set out in Chapter 3.

1.11 A further 35 instruments notified between 12 August 2024 and 27 September 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).

Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024

SI number / GG reference	2024 No 250
Published on Legislation Website (LW)	28/06/2024
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 Monitor No. 7 of 2024, the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024* (the amending regulation) makes various amendments to the *Gaming Machines Regulation 2019* and the *Liquor Regulation 2018* to, among other matters:

- require the adoption of additional responsible practices for harm minimisation measures in relation to approved gaming machines, including appointing responsible gambling officers and keeping gambling incident registers and gaming plans of management, and
- provide transitional arrangements for hotel and club licences in relation to these additional responsible practices for harm minimisation measures.

1.2 The amending regulation is made under various provisions of the *Gaming Machines Act 2001* and the *Liquor Act 2007* and commences on different dates between 28 June 2024 and 30 June 2025. The particular amendments of concern to the Committee both commenced on 1 July 2024.

1.3 The Committee wrote to the Minister for Gaming and Racing in relation to the amending regulation on 16 July 2024. An initial response was received on 12 August 2024. The Committee wrote back to the Minister seeking further information on 5 September 2024. A further response was received on 23 September 2024. This correspondence is included in Appendix 2.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

1.4 Under this ground, the Committee is generally concerned with ambiguity and uncertainty, including the appropriate use of definitions to define key terms, the imposition of uncertain obligations and the inclusion of inert provisions.

I.

1.5 The amending regulation, Schedule 2[2] inserted clause 135 into the *Liquor Regulation 2018* on 1 July 2024. The clause is a transitional exemption provision consequent on the commencement of the amending regulation. The relevant regulation-making power is conferred by the *Liquor Act 2007*, section 159(4).

1.6 The Committee wrote to the Minister on 16 July 2024 to seek clarification regarding the intended operation of the clause insofar as it relates to a 'gaming plan of management condition'.

1.7 The clause applies in relation to a hotelier or registered club whose hotel licence or club licence is, *at the commencement of the clause*, subject to a gaming plan of management condition or two other conditions.

1.8 A gaming plan of management condition is defined as a condition requiring a licensee to have a gaming plan of management of a kind referred to in the *Gaming Machines Regulation 2019*, clause 50P and includes a condition imposing duties and responsibilities in relation to the gaming plan of management.

1.9 If clause 50P applies to the hotelier or registered club, a gaming plan of management condition, which would otherwise apply under the *Liquor Act 2007*, is taken not to apply for the purposes of that Act. Further, if an inconsistency exists between a condition of a licence in force at the commencement of the clause and clause 50P, clause 50P prevails.

1.10 While the clause commenced on 1 July 2024, the provisions of the *Gaming Machines Regulation 2019* relating to gaming plans of management, including clause 50P, did not commence until 1 September 2024. Clause 50P requires hoteliers and registered clubs who hold a gaming machine entitlement or permit and have approved gaming machines operating at the hotel or club premises to have a plan relating to the management of gaming for the premises (a ***gaming plan of management***) that satisfies the following requirements:

> (3) The gaming plan of management must—
>
> (a) be in the form approved by the Secretary, and
>
> (b) address how the hotelier or registered club will comply with the Act and this regulation in relation to the following—
>
> (i) the provision of signage and information about help for gambling harm and player information,
>
> (ii) the provision of assistance to players in relation to harm minimisation measures under the Act and this regulation, including information about self-exclusion schemes and counselling services for gambling harm,
>
> (iii) the prevention of minors from using gaming machines,
>
> (iv) the payment of prizes and cashing of cheques,
>
> (v) the management of player reward schemes and player accounts, including the provision of player activity statements,
>
> (vi) RCG and advanced RCG certification and refresher training for venue staff,
>
> (vii) the appointment, implementation and management of responsible gambling officers,

(viii) the duties of responsible gambling managers in relation to the responsible gambling officers for the hotel or club, particularly by including procedures to ensure compliance with clause 50H,

(ix) the implementation and management of gambling incident registers, particularly by including procedures to ensure compliance with Subdivision 1, and

(b) [sic] include a plan of the venue that identifies the location of gaming machine areas, approved gaming machines and cash dispensing facilities, and

(c) include the procedures, and individuals responsible, for maintaining and updating the plan.

1.11 To the Committee, clause 135(1)(c), 2(c), 3(c) and (4), definition of ***gaming plan of management condition*** (the relevant provisions) appeared to rely on the existence of clause 50P, potentially rendering those provisions inoperative. Further, the Committee was concerned that, once clause 50P *was* inserted on 1 September 2024, the relevant provisions may still have no application as it would not be possible for a hotel or club licence to have been subject to a gaming plan of management condition as at 1 July 2024.

1.12 On 12 August 2024, the Minister responded as follows:

> Prior to the introduction of these measures in the [*Gaming Machines Regulation 2019*], the Independent Liquor & Gaming Authority (ILGA) has been placing conditions on liquor licences that impose requirements relating to responsible gambling officers, gambling incident registers and gaming plans of management. These conditions in some cases duplicate or conflict with the requirements in the Regulation. These conditions remain in effect until such time as ILGA removes them from a licence.
>
> The purpose of the provision… is to ensure that those conditions are rendered inoperative when the requirements in the Regulation come into effect so that venues do not need to navigate overlapping or conflicting requirements. The intention is for the requirements in the Regulation to apply equally.
>
> The transitional timeframe will give ILGA time to remove these conditions from liquor licences.
>
> The purpose of the delayed commencement of the gaming plan of management provision was to allow venues time to compile their gaming plan of management and train staff in it before the provision commenced.

1.13 On 5 September 2024, the Committee wrote back to the Minister to seek further information on the operation of the clause:

> The Committee… seeks confirmation that clause 135 will operate as intended as, at 1 July 2024, there were hoteliers and registered clubs whose hotel licence or club licence was subject to a condition requiring the licensee to have a gaming plan of management of a kind referred to in the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*, Schedule 1[19], proposed clause 50P.
>
> The Committee's concerns relate to the narrow definition of a *gaming plan of management condition*. The Committee considers that 'a gaming plan of management of a kind referred to in the *Gaming Machines Regulation 2019*, clause 50P' is synonymous with 'a gaming plan of management that *complies with* clause 50P'. On this basis, the Committee seeks

> confirmation that, on 1 July 2024, there were hoteliers and registered clubs who held licences subject to a condition requiring the licensee to have a gaming plan of management that, among other things, includes procedures to ensure compliance with the *Gaming Machines Regulation 2019*, Part 3, Division 4B, Subdivision 1 and addresses the provision of signage and information about help for gambling harm (both matters provided for by way of amendments to the *Gaming Machines Regulation 2019* that came into force on the same day i.e. on 1 July 2024)[4]. Relatedly, the Committee queries whether there are licence conditions in force that cover similar ground to clause 50P without satisfying the 'of a kind' description, as this could potentially lead to inconsistent obligations from 1 September 2024.
>
> The Committee would also appreciate confirmation that, from 1 July 2024, the Authority has not imposed any new gaming plan of management conditions as these conditions would not appear to be captured by clause 135, which applies to conditions in force *at the commencement of* the clause.

1.14 On 23 September 2024, the Minister replied that:

> The Department is of the view that the '*of a kind*' description adequately captures gaming plans of management that are currently in place under licence conditions.
>
> … The gaming plan of management requirements under clause 50P are informed by requirements previously stipulated by the Authority under licence conditions.
>
> Given how licence conditions are recorded, however, the Department cannot be definitively certain whether there are licence conditions for a gaming plan of management currently in force that address similar ground to clause 50P without necessarily satisfying the 'of a kind' description.
>
> On 1 July 2024, there were 290 hoteliers and registered clubs who held licences subject to a condition requiring a gaming plan of management. The Authority has not imposed any gaming plan of management conditions on licences since 1 July 2024.

II.

1.15 The amending regulation, Schedule 1[8] replaces the phrase 'problem gambling' with 'gambling harm' wherever occurring in the *Gaming Machines Regulation 2019*, clauses 22, 24 and 41. Schedule 1[6] inserts clause 18A, which defines gambling harm as 'harm caused by, or associated with, gambling'.

1.16 Noting this shift to certain notices and advertisements dealing with the seemingly broader concept of 'gambling harm' instead of 'problem gambling', and the fact the phrase 'problem gambling' predominantly appears in the *Gaming Machines Act 2001* in connection with 'problem gambling counselling services' specifically, the Committee queried the retention of the phrase 'problem gambling' in the *Gaming Machines Regulation 2019*, clause 46(2), definition of ***gambling contact card*** and clause 104(2)(b), as substituted by the amending regulation, Schedule 1[31].

1.17 Those provisions deal with information to be recorded on gambling contact cards and gaming machine tickets, including, respectively, 'contact details for problem gambling help options' and 'advice for getting help with problem gambling', where the *Gaming Machines Regulation 2019* has

[4] See the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*, Schedule 1[19], proposed clause 50P(3)(b)(i) and (ix).

been amended to revise this language, and thus change what is required, for notices and advertisements referred to in clauses 22, 24 and 41.

1.18 The Minister clarified that:

> Some material that must have information relating to gambling help requires long transition timeframes before changes can be made.
>
> Typically, vendors hold significant quantities of gaming machine tickets (often 2+ years' worth) which means that any changes to tickets must be planned in advance.
>
> Liquor & Gaming NSW is considering changes to the terminology for gaming machine tickets as part of broader policy reform that will require significant transitional arrangements. Therefore, it was not considered appropriate to change the terminology in clause 104 at this time.

Committee conclusion

1.19 The Committee appreciates the Minister's considered engagement with the scrutiny concerns raised by the Committee, particularly the explanation provided in relation to retaining the phrase 'problem gambling' in certain provisions of the *Gaming Machines Regulation 2019*.

1.20 While acknowledging the potential risk that ILGA had, on or before 1 July 2024, imposed licence conditions under the *Liquor Act 2007* requiring hoteliers and registered clubs to have gaming plans of management addressing some, but not all, of the matters listed in clause 50P(3), the Committee expects ILGA, the department and the Minister will be alert to any issues that arise in relation to the operation of clause 135, including potential inconsistency in licence conditions, and will address these issues should they arise, including by way of an amendment to the clause.

1.21 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 and concludes its scrutiny of the amending regulation.

Government Sector Finance Regulation 2024

SI number / GG reference	2024 No 251
Published on Legislation Website (LW)	28/06/2024
Tabled in Legislative Council (LC)	06/08/2024
Last date of notice for disallowance motion	22/10/2024

Overview

1.22 The *Government Sector Finance Regulation 2024* (the regulation) repeals and remakes, with minor changes, the *Government Sector Finance Regulation 2018*, which would have otherwise been repealed on 1 September 2024 by the *Subordinate Legislation Act 1989*, section 10(2).

1.23 The regulation is made under various provisions of the *Government Sector Finance Act 2018* (the Act) signposted in the heading or body of each section of the regulation. The regulation commenced on 30 June 2024.

1.24 The objects of the regulation of relevance to the Committee include:

- prescribing certain entities to be GSF agencies or separate GSF agencies for the purposes of the Act,
- providing for the Secretary of the Treasury to be treated as the accountable authority for certain GSF agencies for the purposes of the Act,
- prescribing certain persons to be government officers for the purposes of the Act,
- prescribing certain kinds of GSF agencies not to be reporting GSF agencies for the purposes of the Act, section 7.3(2),
- prescribing particular reporting GSF agencies to which the Act, Division 7.3 does not apply, and
- prescribing certain entities to be entities to whom certain delegations and subdelegations can be made under the Act.

1.25 The Committee identified scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(iii), (iv) and (vii) regarding this instrument in Monitor No. 9 of 2024. These scrutiny concerns were conveyed to the Treasurer in a letter dated 23 August 2024. A response was received by the Treasurer on 3 October 2024. This correspondence is included in Appendix 2.

Scrutiny concerns

The regulation may not have been within the general objects of the legislation under which it was made

1.26 Under this ground, the Committee is required to consider the consistency of the regulation with the objects and intended effects of the Act, including whether the effect of the regulation appears to detract from the operation of the Act, as envisioned by Parliament, or whether a provision appears to be beyond the scope of the delegated legislation-making powers in the Act.

1.27 The regulation, section 4(6) provides that the Teaching Service and a university or the council or senate for a university are *not* GSF agencies. The Act, section 2.4(1)(l) is cited as the relevant regulation-making power for section 4(6) and provides that a GSF agency includes 'any other entity (or entity of a kind) prescribed by the regulations as a GSF agency'.

1.28 In its letter to the Treasurer, the Committee put forward the view that, as the Act, section 2.4 does not appear to provide a regulation-making power to prescribe entities that are *not* GSF agencies, and itself specifies certain entities that are not GSF agencies, the regulation, section 4(6) may not be within the general objects of the legislation under which it was made.

1.29 The Committee sought clarification from the Minister as to the relevant regulation-making power for section 4(6) and queried whether the Act provides that the entities listed in the subsection would be GSF agencies, were it not for the subsection.

1.30 In response to the Committee's queries, the Treasurer stated that:

> I agree with the finding that there is no regulation-making power for GSF Regulation, clause 4(6), and note that this provision is now redundant. The original purpose of clause 4(6) to the *Government Sector Finance Regulation 2018* was to clarify that the Teaching Service and universities and related entities were not GSF agencies. This provision was intended to assist with the transition from the *Public Finance and Audit Act 1983* to the *Government Sector Finance Act 2018*.

1.31 In an attachment to the letter, the Treasurer further explained that:

> The 'Teaching Service' is not a GSF agency since it does not meet the criteria in section 2.4 of the GSF Act. The Service's members are employed by other GSF agencies (including, the Department of Education). The 'Teaching Service' was previously the equivalent of a GSF Agency under the repealed PFA Act which was replaced by the GSF Act.
>
> Universities or the council or senate for these universities were not intended to be within the scope of the definition of GSF agency (section 2.4(1) of the GSF Act). These entities however are treated as both GSF agencies and reporting GSF agencies for the purposes of Division 7 of the GSF Act only. The purpose of listing them in the GSF Regulation as 'not GSF Agencies' is for clarity only.

1.32 Lastly, the Treasurer emphasised that:

> It is recognised that clause 4(6) of the regulation is redundant, and the function of clarity and emphasis is no longer relevant. The *GSF Regulation 2024* will be amended accordingly.

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

1.33 The Act, section 9.9(2)(d) enables the Minister to delegate certain delegable functions, within the meaning of section 9.7, to 'the Secretary of a Department'. The Act, section 9.9(5), table, item 2 enables the secretary to subdelegate a delegated function to:

> (a) the accountable authority for a GSF agency for which the Minister giving the delegation is the responsible Minister,
>
> (b) a government officer (or a government officer of a kind) of a GSF agency for which the Minister giving the delegation is the responsible Minister,
>
> (c) any other entity (or an entity of a kind) **prescribed by the regulations** as an entity to which the delegate can subdelegate [Emphasis added.]

1.34 The regulation, section 32(1)(b) provides that, for the Act, section 9.9(5), table, item 2, paragraph (c), the Planning Secretary and Planning government officers are prescribed as entities to which the secretary may subdelegate an expenditure function of the Planning Minister.

1.35 Provided that the general delegation power in the Act, section 9.9(2) enables the Planning Minister to delegate the relevant delegable functions to the secretary of *any* department, the Committee queried whether section 32(1)(b) is already covered by the Act, section 9.9(5), table, item 2, paragraphs (a) and (b).

1.36 Further, in the Committee's view, section 32(1)(b) appeared to create a situation whereby the Planning Minister may delegate an expenditure function to the secretary of a department *other than* the Department of Planning, Housing and Infrastructure who may, in turn, subdelegate that function to the Planning Secretary or a Planning government officer.

1.37 Where the Planning Minister has reasons for delegating an expenditure function to a secretary other than the Planning Secretary, the Committee considered the ability for that secretary to then subdelegate that function to the Planning Secretary under section 32(1)(b) could appear to make unusual or unexpected use of the subdelegation power in the Act, section 9.9(5).

1.38 In response, the Minister clarified that:

> The Department of Planning, Housing and Infrastructure (DPHI) agrees with the Committee's interpretation that the subdelegates prescribed by clause 32 are captured by the description of permissible delegates prescribed in item 2 of the table in section 9.9(5) of the GSF Act.
>
> Clause 12 to the *GSF Regulation 2018* (now Clause 32 to the *GSF Regulation 2024*) evolved as a result of differing views at that point in time regarding the interaction between the highly prescriptive delegations framework that incorporates a tabulated list of permissible delegates and subdelegates in section 9.9 of the GSF Act and the definition of Responsible Minister in section 2.8 of that Act. The original intent was to seek to enable a Secretary of any Department to subdelegate a Minister's expenditure function to a government officer of any GSF agency, to facilitate cooperative administration across the public sector…
>
> …DPHI have not in the last six years needed to rely on the provision that was clause 12 of the *GSF Regulation 2018* and now clause 32 of the *GSF Regulation 2024* to facilitate any expenditure decision-making by the DPHI Secretary or departmental

> officers. DPHI have been relying on the sufficiently broad definition of government officer in section 2.9 of GSF Act and the execution of shared services agreements to facilitate the provision of shared payments processing services across GSF agencies.
>
> The GSF Act 2018 enables the Treasurer, Ministers and Accountable Authorities to delegate a broad range of responsibilities and powers as well as permitting their delegates to subdelegate. …
>
> Delegations and sub delegations are operational matters that have been prescribed at request of the Minister to manage the operational arrangements of the portfolio.

1.39 The Act, section 9.9(2)(b) also enables the Minister to delegate certain delegable functions, to 'the accountable authority for a GSF agency for which the Minister is the responsible Minister'. The Act, section 9.9(5), table, item 4 enables the accountable authority to subdelegate a delegated function to a government officer of the agency or another entity prescribed by the regulations.

1.40 Similarly to the regulation, section 32(1)(b), paragraph (c) prescribes the Planning Secretary and Planning government officers as entities to which an accountable authority may subdelegate an expenditure function of the Planning Minister.

1.41 The Committee sought confirmation that the intent of the regulation, section 32(1)(c) is to enable, for example, the board of the Luna Park Reserve Trust, if delegated the Planning Minister's expenditure functions as the minister administering the *Luna Park Site Act 1990*, to subdelegate those functions to the Planning Secretary or a Planning government officer.

1.42 The Treasurer affirmed that 'The scenario involving the board of the Luna Park Reserve Trust that has been suggested by the Committee was not contemplated as a policy objective'.

The form or intention of the regulation calls for elucidation

1.43 Under this ground, the Committee is generally concerned with ambiguity and uncertainty, including potential errors in drafting that affect the meaning or interpretation of the regulation, the inclusion of inert provisions and other matters requiring clarification. The Committee raised several, mostly minor, matters under this ground.

I.

1.44 The Committee noted that the term ***guarantee***, referenced in section 3 (Definitions), does not appear in the regulation, section 9 as signposted.

1.45 The Treasurer advised that the term would be removed from the regulation, section 3 when the regulation is next amended.

II.

1.46 The regulation, section 6(b)(v) provides that the Secretary of the Treasury is the accountable authority for a Ministerial Holding Corporation constituted under the *Electricity Network Assets (Authorised Transactions) Act 2015*, Schedule 7, clause 5.

1.47 The Committee queried whether the subparagraph should instead refer to clause 6 as while clause 5 deals with the dissolution of certain electricity network State owned corporations, clause 6 deals with their conversion into corporations constituted as a Ministerial Holding Corporation for the purposes of that Act.

1.48 The Treasurer agreed, stating that the regulation would be amended accordingly.

III.

1.49 The regulation, section 7(1) provides that:

> For the Act, section 2.9(1)(e), a person who is a member of a GSF agency or is appointed to or employed within the GSF agency, is prescribed as a government officer unless the person is referred to in the Act, section 2.9(2).

1.50 Given the entities prescribed as GSF agencies are primarily statutory bodies and government departments and agencies, the Committee sought clarification as to the reference to 'a member of a GSF agency'.

1.51 In his response, the Treasurer stated that:

> A person who is a "member" of a GSF agency (e.g. a member of the IPART) is not a government officer under the *GSF Act*. The current reference to 'member of a GSF agency' in the GSF Regulation is used to capture those persons not caught by section 2.9(1) of the *GSF Act*. Section 59 of the *Government Sector Employment Act 2013* (GSE Act) outlines how references to a 'member of staff' for statutory bodies or officer in other Acts should be interpreted.

1.52 In addition, the Committee queried the reference to 'employed within the GSF agency' as it appears to replicate the Act, section 2.9(1)(b) which defines a ***government officer*** as 'a person employed *in or by* a GSF agency'.

1.53 The Treasurer agreed that this reference appears to be redundant and proposed to remove the words 'employed within' from the regulation.

IV.

1.54 The regulation, section 14 defines ***relevant transaction***, for Part 5, Division 2, as a 'transaction, approved or directed by the Premier or Treasurer or other Minister, for the sale, lease, assignment, transfer or other disposal of assets or liabilities of the State to a non-government sector entity'.

1.55 The Committee sought clarification as to the intended meaning of 'non-government sector entity', noting the term is not defined in the Act or regulation.

1.56 In response, the Treasurer advised that:

> 'Non-government sector entity' in this context is interpreted as having its plain and ordinary meaning, which is generally a private sector entity. 'Non-government sector entity' is not defined in the GSF Act nor the GSF Regulation.

> Treasury, with the advice of the Parliamentary Counsel's Office, will review, and consider whether any amendment to the GSF Regulation 2024 is necessary.

V.

1.57 The regulation, section 28 provides that 'For the Act, section 9.9(5), table, item 3, paragraph (b), the Electoral Commissioner is prescribed as an entity to which the accountable authority for the New South Wales Electoral Commission may subdelegate an expenditure function of the Minister in relation to the Electoral Commission.'

1.58 Given the Act, section 2.7(2)(h1) provides that the accountable authority for the New South Wales Electoral Commission *is* the Electoral Commissioner, this provision appears to allow the Electoral Commissioner to subdelegate an expenditure function of the Minister to themselves.

1.59 The Committee sought clarification on the rationale behind section 28, as it appears the relevant expenditure function has already been delegated to the Electoral Commissioner, rendering the provision inert.

1.60 The Treasurer provided some context to the provision, stating that previously 'the accountable authority for the Electoral Commission was the three-member NSW Electoral Commission, of which the NSW Electoral Commissioner is only one member'.

1.61 However, the Treasurer advised that, following the commencement of the *Electoral Legislation Amendment Act 2022,* section 28 no longer has any legal effect, as confirmed by the NSW Electoral Commission.' The Treasurer advised that the provision will be repealed.

VI.

1.62 The regulation, schedule 3 lists the reporting GSF agencies (statutory bodies and departments and other agencies) that are transitional reporting GSF agencies for the purposes of the regulation, section 21(2).

1.63 The Act, section 7.3(1) provides that a reporting GSF agency is any GSF agency. The Act, section 2.4(1) and (2) lists those entities that are GSF agencies.

1.64 The Committee queried the basis on which the Jenolan Caves Reserve Trust (the Trust) is a reporting GSF agency. Presuming the Trust is still continued under the *National Parks and Wildlife Act 1974*, Schedule 3, Part 6, the Committee sought clarification on the categorisation of the Trust as a GSF agency, including whether it is a 'controlled entity of a Minister' for the purposes of the Act, section 2.4(2)(b), given the Trust is subject to the control and direction of the Minister under the *National Parks and Wildlife Act 1974,* repealed section 58W.

1.65 In his response, the Treasurer confirmed that:

> The Jenolan Caves Reserve Trust (Trust) would be a 'controlled entity of a Minister' for the purposes of section 2.2(1)(a)(i) of the GSF Act, and consequently a GSF Agency pursuant to section 2.4(2)(b). The Trust exists through the operation of clause 58(1) of Schedule 3 of the *National Parks and Wildlife Act 1974* (NPW Act). Clause 58(3)(b) of Schedule 3 to the NPW Act provides that provisions amended or repealed by Schedule 1 of the *National Parks and Wildlife Amendment (Jenolan Caves Reserves) Act 2005* (Amending Act) that were relevant to the responsibilities, powers, authorities, duties and functions

> of the Trust continue to operate as if they had not been amended or repealed. The now repealed section 58W(2) of the NPW Act provided that the Trust was subject to the control and direction of the Minister administering the NPW Act. This continues to have effect through the operation of clause 58(3)(b) of Schedule 3 to the NPW Act.

1.66 Further, the Committee considered that 'Western Parklands City Authority' in the regulation, Schedule 3, Part 1 should read 'Western Parkland City Authority' as that is the corporate name given to the entity by the *Western Parkland City Authority Act 2018*, section 6.

1.67 The Treasurer agreed, noting, however, that 'this typographical error has not affected the operation of Schedule 3'.

1.68 Finally, the Committee queried the basis on which the Dumaresq-Barwon Border Rivers Commission has been listed in the schedule as a department or agency that is a transitional reporting GSF agency.

1.69 The Treasurer confirmed that:

> The Dumaresq-Barwon Border Rivers Commission should appear under the statutory bodies list instead of the department or agency list in Schedule 3. The relevant establishing legislation is the *New South Wales -Queensland Border Rivers Act 1947 No 10* (NSW). This typographical error has not affected the operation of the Schedule 3.

1.70 With regard to these last two issues, the Treasurer advised that: 'With Schedule 3 to be repealed on 1 July 2025 it is not intended amend the regulation for the two typographical corrections.'

Committee conclusion

1.71 The Committee appreciates the Treasurer's thoughtful engagement with the scrutiny concerns identified and acknowledges the explanation provided in relation to each of these. The quality of the responses provided by the Treasurer has been of great assistance to the Committee in exercising its scrutiny function.

1.72 The Committee notes the undertaking by the Treasurer to address the Committee's concerns relating to the regulation, section 4(6), and issues one, two, three and five as set out above. This undertaking will be published on the Committee's webpage and will be updated when the relevant undertaking has been implemented.

1.73 In making the necessary amendments, the Committee considers that, for completeness, the Treasurer may wish to also amend the regulation to correct the two typographical errors identified in issue six. The Committee further notes, in relation to issue four, the Treasurer's intention to review the term 'non-government sector entity' and consider whether any amendments to the regulation are necessary.

1.74 While the Committee appreciates that the regulation, section 32(1)(b) and (c) are not anticipated to give rise to unusual and unexpected arrangements, the Committee recommends that consideration be given to whether any amendments are required to the Act or the section to clarify the arrangements available, including potentially omitting section 32(1)(b), if redundant.

1.75 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 regulation.

Liquor Amendment (Vibrancy Reforms) Regulation 2024

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Overview

1.76 As set out in Monitor No. 7 of 2024, the *Liquor Amendment (Vibrancy Reforms) Regulation 2024* (the amending regulation) makes various amendments to the *Liquor Regulation 2018* (the regulation) that are mostly consequent to amendments to the same provisions of the regulation made by the *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023* (the amending Act), Schedule 3[9]–[15], [17] and [21], which commenced on 1 July 2024.

1.77 The amending regulation references regulation-making powers under the *Liquor Act 2007* (the Act), sections 40(4)(c), 48(5) and (7), 51(2)(c) and 159(4). The amending regulation commenced immediately after the commencement of the amending Act, Schedule 3[9]–[15], [17] and [21] on 1 July 2024.

1.78 Relevantly, the explanatory note to the amending regulation provides that its objects include making it an offence for a licensee to permit business to be conducted at a licensed premises in a way that unduly disturbs, or unreasonably and seriously disturbs, the quiet and good order of the neighbourhood. The amending regulation, Schedule 1[12] inserts clause 44C to that effect. That amendment is not a modification of an amendment made by the amending Act i.e., it is a new offence provision introduced by the amending regulation.

1.79 The Committee wrote to the Minister for Gaming and Racing in relation to the amending regulation on 16 July 2024. An initial response was received on 12 August 2024. The Committee wrote back to the Minister seeking further information on 5 September 2024. A further response was received on 23 September 2024.

1.80 A third response, this time from the Hon. Jodie Harrison, Minister for Women, Minister for Seniors and Minister for the Prevention of Domestic Violence and Sexual Assault on behalf of the Minister for Gaming and Racing, was received on 11 October 2024.

1.81 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

1.82 Under this ground, the Committee may identify provisions of a regulation that appear to be beyond power or detract from the operation of the parent Act, including provisions that are inconsistent with or repugnant to the parent Act.

Clause 44C

1.83 By letter dated 16 July 2024, the Committee sought the Minister's advice regarding the rationale behind, and justification for, the offence established by the regulation, clause 44C. The clause reads:

> **44C Licensee's duty to preserve the quiet and good order of the neighbourhood**
>
> A licensee must not permit business to be conducted at a licensed premises in a way that unduly disturbs, or unreasonably and seriously disturbs, the quiet and good order of the neighbourhood.
>
> Maximum penalty—50 penalty units.

The relevant provisions of the Act and recent reforms

1.84 The Act, section 10(2) provides that a licence under the Act authorises the holder of the licence (the licensee) to sell or supply liquor in accordance with the Act and the conditions of the licence. Section 11(3) provides that a condition includes a provision of the Act that imposes a requirement or restriction (other than as an offence) on or in relation to the licence, licensee or licensed premises concerned.

1.85 The Act, Part 5, Division 3 (Disturbance of quiet and good order of neighbourhood) was amended by the amending Act on 1 July 2024, including to insert section 79A:

> **79A Licensed premises must not disturb quiet and good order of neighbourhood**
>
> A licence does not authorise business to be conducted on licensed premises in a way that unduly disturbs, or unreasonably and seriously disturbs, the quiet and good order of the neighbourhood in which the licensed premises are located.

1.86 The explanatory note to the amending Act provides that the intent of section 79A is to make clear that a licence does not authorise business to be conducted on licensed premises in the manner described in the section.

1.87 The Act, section 79B, as inserted by the amending Act, Schedule 2[36], deals with the process of making a disturbance complaint, in place of former section 79.

1.88 The former section enabled a complaint that the quiet and good order of the neighbourhood are being unduly disturbed to be made by a resident of the neighbourhood authorised in writing by at least two other residents, a non-resident authorised in writing by at least three residents,

or a person who satisfies the Secretary that the person's interests are adversely affected by the disturbance.

1.89 New section 79B curtails this by allowing a complaint to be made by a person who lives or works in the neighbourhood and is authorised in writing by *at least four* other persons, from separate households, who also live and work in the neighbourhood, a person who satisfies the Secretary that, *because of the nature or gravity* of the complaint, the person should be entitled to make the complaint, or a person the Secretary considers, *in the public interest*, should be able to make a complaint. The Commissioner of Police retains the ability to also make a complaint.

1.90 The Act, section 80 gives the Secretary of the Department of Creative Industries, Tourism, Hospitality and Sport discretion regarding whether to deal with, or take no further action in relation to, a disturbance complaint. If the Secretary decides to deal with a complaint, the Secretary may convene a conference to hear submissions or invite written submissions from appropriate persons. The amending Act, Schedule 2[38] amended section 80 to prevent the Secretary from dealing with a complaint unless the complainant can demonstrate they tried to address the complaint directly with the licensee or an employee or agent of the licensee.

1.91 The Act, section 80A, as inserted by the amending Act, Schedule 2[39], provides the grounds on which the Secretary may uphold a disturbance complaint. Whereas under former section 81(3) the Secretary was required to *take into account* the order of occupancy between the licensed premises and the complainant and a couple of other matters, new section 80A imposes more stringent requirements.

1.92 Section 80A(1) provides that, if the licensed premises have been operating longer than the complainant has resided or worked in the neighbourhood, and there has been no substantial change to the operations carried on at the licensed premises since the complainant began residing or working in the neighbourhood, the Secretary may uphold a disturbance complaint only if satisfied the quiet and good order of the neighbourhood have been *unreasonably and seriously* disturbed by the licensed premises. Otherwise, if the order of occupancy is not in favour of the licensed premises, the Secretary need only be satisfied that the quiet and good order of the neighbourhood have been *unduly disturbed*.

1.93 Section 80A includes a number of qualifications to the exercise undertaken by the Secretary, for example that a disturbance is not an unreasonable and serious disturbance if it was reasonably foreseeable by the complainant when they began residing or working in the neighbourhood, or if the only change to operations is to provide live music indoors between midday and 10pm, or outdoors between midday and 6pm.

1.94 The Act, section 81 sets out the actions the Secretary may decide to take after dealing with a disturbance complaint, including imposing, varying or revoking a condition on the relevant licence, accepting undertakings given by a licensee at a conference for the complaint, issuing a warning, or taking no further action.

1.95 Section 81(3) requires the Secretary to publish guidelines setting out the matters to which the Secretary may have regard in making a decision under section 81.[5]

[5] In his second reading speech, Mr David Harris noted 'These guidelines will be developed in consultation with relevant stakeholders and will allow the regulator to… resolve any issues associated with the new framework.' See *Hansard*, NSW Legislative Assembly, 29 November 2023, p 25. In the

1.96 This balancing of different considerations in deciding whether to uphold a complaint, and what action to take, reflects the objects of the Act, which include, on one hand, regulating the 'supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community', and, on the other, facilitating 'the balanced development, in the public interest, of the liquor industry, through a flexible and practical regulatory system' and contributing 'to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries'.

1.97 In his second reading speech for the *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Bill 2023*, the Hon. John Graham, Special Minister of State, Minister for Roads, Minister for the Arts, Minister for Music and the Night-time Economy, and Minister for Jobs and Tourism, stated that:

> The bill seeks to amend the Gaming and Liquor Administration Act 2007, the Liquor Act 2007 and the Liquor Regulation 2018… to increase the vibrancy of the night-time economy, to reward the live performance sector and to allow the use of outdoor public spaces for recreation. It does that by encouraging venue operators to launch, grow, adapt and expand their businesses by modernising regulation and removing unnecessary and outdated regulation, streamlining approval processes and putting in place a commonsense approach to entertainment sound.
>
> The first of the amendments seeks to streamline sound management and provide further incentives for live entertainment. …
>
> The bill and its associated regulatory change will designate Liquor and Gaming NSW as the primary regulator for formal noise complaints relating to the normal operations of a licensed venue. That streamlines processes and reflects the value of live performance. Notably, **those reforms are aimed at formal complaints and not at those who respond to urgent complaints**. [Emphasis added.] …
>
> The bill adds new section 79B to the Liquor Act 2007, which increases the thresholds for disturbance complaints to be considered, including raising the number of complainants from three to five and requiring complainants to attempt to resolve disputes before lodging complaints. That focus makes a real push for mediation. Everyone will have the right to ask for help and mediation, but the threshold for a formal complaint will rise.
>
> The bill also adds new section 80A to the Liquor Act 2007, which strengthens the test for disturbance complaints where the order of occupancy is in favour of the licensed premises or the venue is within a special entertainment precinct. The order of occupancy will still be in favour of a venue if a longstanding licensed premises modifies its business plan to incorporate live music during certain hours of the day. That recognises the fact that live music should be considered an integral part of the offerings of licensed venues.
>
> **Section 75 of the Liquor Act 2007 will be amended to ensure that the police can continue to do their important work and issue directions to cease noise in urgent situations where they believe a venue is breaching the Act and where it cannot be addressed more appropriately through the formal disturbance complaint process under the Liquor Act 2007**. [Emphasis added.] The Government believes

Committee's view, this further supports the position that the Act contemplates a 'give and take' approach to noise management and tailored remedial action.

> that Liquor and Gaming NSW is the most appropriate agency to take that work on as it already has the expertise and is uniquely positioned to balance the interests of venues and the concerns of local communities, as well as having a strong compliance and enforcement division. The bill makes ongoing measures for live music and performance venues to receive reduced annual liquor licensing fees and extra trading hours if they meet certain eligibility requirements. Those incentives aim to encourage more live music, performance and other arts and cultural events, as well as provide employment opportunities in venues across the State.

The exercise of section 75 powers and the Committee's concerns

1.98 In querying clause 44C, the Committee noted the Act, section 75, which was amended by the amending Act, Schedule 2[28]–[34] on 12 December 2023. The section formerly enabled the Secretary to give a licensee, or an employee or agent of a licensee, a written direction concerning any matter relating to the licensed premises, including a direction to adopt, vary, cease or refrain from any practice in respect of the premises, provided the direction was not inconsistent with the Act and the authorisation conferred by the licence.

1.99 The section now also enables police officers and marine authorities to issue these 'improvement notices' if they reasonably believe noise is being emitted from licensed premises in contravention of the Act or the regulations or a noise or noise-related condition applying to the relevant licence. Section 75(7) provides that a police officer or marine authority who issues an improvement notice under the section *may* make a complaint to the Secretary under section 79B about the emission of noise from the licensed premises.

1.100 In light of the above, the Committee expressed concerns to the Minister for Gaming and Racing that the offence introduced by clause 44C is inconsistent with the Act, Part 5, Division 3 and detracts from the operation of the complaints process provided for, which anticipates a complainant first attempting to resolve their complaint directly with the licensee (section 80(1A)), an opportunity to make submissions (section 80(2) and (6)), a differential standard for upholding a complaint (section 80A), and discretion regarding the action to be taken (section 81).

1.101 The Committee put forward the view that clause 44C covers the same ground as the Act, section 79A and cuts across the Act, Part 5, Division 3, as amended by the amending Act, by making it an offence at the outset, apparently in reliance on the general regulation-making powers in the Act, section 159(2)(g) and (3), to conduct business at a licensed premises in a way that unduly disturbs, or unreasonably and seriously disturbs, the quiet and good order of the neighbourhood. This arguably goes against the intent of Parliament, as reflected in the changes made to the Act, Part 5, Division 3, and the tenor of the second reading speech and debate. If appropriate to establish such an offence, it seems an unusual oversight for section 79A not to have done so, and a significant change for the regulation to provide as much.

1.102 The Committee also noted that clause 44C appears to further conflict with the Act, Part 5, Division 3 by conflating the two-part test of 'unreasonably and seriously disturbs', which the Secretary must be satisfied is met to uphold a disturbance complaint where the order of occupancy is in favour of the licensed premises, with the lower threshold of 'unduly disturbs' that otherwise applies.

1.103 While the Act contemplates that, in certain circumstances, some residents and workers will have to accept a certain level of disturbance from nearby licensed premises, clause 44C makes it an offence for *either* standard to be breached.

1.104 Ultimately, the Committee sought clarification regarding how clause 44C is intended to operate alongside the improvement notice and complaint mechanisms provided for in the Act, Part 5.

The initial response from the Minister and the Committee's request for further information

1.105 On 12 August 2024, the Minister responded as follows:

> … As set out in section 75(1)(b) and (c) of the Act, a police officer or marine authority may issue an improvement notice where there is a reasonable belief noise being emitted from a licensed premises is in contravention of the Act or Liquor Regulation 2018, or any noise-related licence condition applying to licensed premises. As no offence provision existed in the Act or the Regulations concerning the emission of noise from licensed premises, the scope and utility of improvement notices for NSW Police and marine authorities was limited only to circumstances where there was a contravention of a noise-related licence condition. This was not the intent of the reforms.
>
> To bridge this regulatory gap, clause 44C was created as an offence provision to allow for the activation of an improvement notice where there is a contravention of the Act or Regulations.
>
> The intent of clause 44C is not to replace the disturbance complaints process as outlined in Part 5, Division 3… The intended use of an improvement notice by NSW Police or marine authority [sic] is to ensure that noise emissions from licensed premises can be addressed in exceptional circumstances requiring an immediate operational response or intervention. …
>
> The inclusion of clause 44C as an offence provision clarifies section 79A of the Liquor Act, which provides that licensed premises must not disturb the quiet and good order of the neighbourhood. The impact of this change on industry is minimal, noting section 79A already provides a clear intent that licensed premises must not disturb the quiet and good order of the neighbourhood.

1.106 On 5 September 2024, the Committee wrote back to the Minister. The Committee noted:

> [T]he replication of section 79A, though reframed as an offence, for the particular purpose of enabling police officers and marine authorities to issue improvement notices under section 75, still raises issues of potential inconsistency with the Act.
>
> The Committee takes issue with the comment that the offence provision 'clarifies section 79A… [which] already provides a clear intent that licensed premises must not disturb the quiet and good order of the neighbourhood'. Rather than a prohibition against disturbing the peace, the Committee considers the section is better characterised as affirming that a licence is not an authorisation to make noise. Further, if there is a perceived deficiency with section 79A, or the interaction between section 75 and Part 5, Division 3, the Committee considers the appropriate remedy would be to amend section 79A, or Part 5 more broadly, including to clarify the interaction between improvement notices and complaints. The Committee is of the view that, in circumstances where a specific regulation-making power is not being relied on and the

Act comprehensively covers the matter, the regulation may not be appropriately 'subordinate' to the Act and, rather than supplementing the Act in a way specifically accounted for, attempts to impliedly amend the Act.

More specifically, the Committee queries how an offence of unduly disturbing, or, in the alternative, unreasonably and seriously disturbing, the quiet and good order of the neighbourhood can be reconciled with section 80A. Under that section, the Secretary may uphold a disturbance complaint, if the order of occupancy is in favour of the licensed premises, only if satisfied the quiet and good order of the neighbourhood has been unreasonably and seriously disturbed. Otherwise, the lower threshold applies. As mentioned in the Committee's letter dated 16 July 2024, this suggests that the Act contemplates residents and workers having to accept a certain level of disturbance in certain circumstances, which clause 44C does not account for.

The Committee notes that clause 44C will not have the singular effect of being the requisite trigger for section 75(1)(b) and (c). Proceedings may be commenced against a licensee who contravenes clause 44C. It seems manifestly unfair for a prosecution to be able to be commenced for conduct that would not rise to the necessary standard for a complaint to be upheld under section 80A, or that could meet that standard but result in no more than the variation of a licence condition or the issue of a warning (section 81(1)). A finding of guilt or conviction can have far-reaching adverse consequences e.g. as a disqualifying matter for certain applications.

Relatedly, noting an improvement notice may include directions to adopt, vary, cease or refrain from a particular practice at licensed premises (section 75(4)), but must not be inconsistent with the Act and the authorisation conferred by the licence (section 75(6)), the Committee is concerned that an improvement notice could include directions to refrain from making noise that, if a complaint were made, would not rise to the necessary standard. In this way, police officers and marine authorities could impose more exacting requirements to minimise noise than the Secretary. However, the Committee's concerns on this point are mitigated by the comment that improvement notices are intended to be used to ensure noise emissions 'can be addressed in exceptional circumstances requiring an immediate operational response or intervention'.

The Committee is of the view that 'in contravention of this Act or the regulations' is not confined to a person having committed an offence under the Act or the regulations. Further, in light of the fact section 75(1)(b)(ii) and (c)(ii) enable police officers and marine authorities to issue improvement notices for contravention of a noise-related condition applying to a licence, the Committee notes that section 11(3) provides that a condition to which a licence is subject includes a provision of the Act 'that imposes a requirement or restriction (other than as an offence) on or in relation to the licence, licensee or licensed premises concerned'. The Committee reiterates that, if section 79A is not operating as intended (i.e. to impose a requirement or restriction), the section should be amended.

The second response from the Minister

1.107 On 23 September 2024, the Minister provided a further response that includes the following:

… 2. Inconsistency with the Act and regulation-making power used

Clause 44C does not replicate s.79A of the Liquor Act. Section 79A of the Act operates as an authorisation, and cl 44C in the Regulation is an offence provision.

An offence provision was required to be created as the Act did not provide sufficient provisions to enliven section 75 in the Act. Therefore, the offence was created to ensure there was a legislative threshold that could be used for police officers, and Liquor & Gaming NSW inspectors, to issue a direction under section 75 of the Act. … It is further noted that the regulation was made pursuant to the regulation making powers under sections 159(f5)[6] and (g) and the power under section 159(3)…

3. Relationship between cl44C and section 80A

Cl44C of the Regulation is an offence provision established primarily to enliven the direction power under s75 of the Act, whereas section 80A of the Act, which relates to the disturbance complaint framework, are two interrelated but separate mechanisms.

In practice, a section 75 direction may be issued, using cl44C as the legislative threshold contravened. The issuing officer would determine which aspect of cl44C was contravened (either 'unduly' or 'unreasonably and seriously' disturbs). This direction may then form the basis of a complaint made to the Secretary, via s75(7), under section 79B. The specific threshold contravened would then be advised to Liquor & Gaming NSW when determining, and upholding, a complaint under s80A.

… 5. Improvement Notices imposing more exacting requirements than the Secretary

As noted, improvement notices are intended to be used in exceptional circumstances requiring an immediate operational response or intervention.

6. Defect in section 79A

The drafting intent was for section 79A to operate as a condition that can be contravened via section 11(3), so as to enliven section 75(1)(b) and (c). We agree that what constitutes a contravention of the Act or Regulations is to be interpreted broadly and includes conduct which doesn't necessarily amount to an offence. Contravention could include conduct such as a breach of a licence condition.

… We note the Committee's view that section 79A as presently worded does not impose a restriction or requirement, which would amount to a condition under section 11(3) that is capable of being contravened. Whilst consideration could be given to strengthening the language adopted in section 79A to make it clear that it is to act as an restriction or requirement, we maintain the position that section 79A is open to being interpreted as imposing a requirement or restriction as contemplated by section 11(3), namely that licensed premises must not conduct business in a way that disturbs the quiet and good order of the neighbourhood. It follows that conduct that breaches section 79A could amount to a contravention of the Act. This would in turn trigger the improvement notice provisions of section 75(1)(b) and (c).

The third response from the Minister

[6] The Act, section 159(2)(f5) enables regulations to be made for or with respect to *conditions of licences* in relation to the entertainment that may be provided, or the way in which entertainment may be provided, on licensed premises or areas adjacent to licensed premises. To the Committee, it is questionable whether this power can be adequately relied on where clause 44C makes it *an offence* for a licensee to permit business to be conducted in the manner described, rather than expressing this to be a condition of the licensee's licence.

1.108 The Committee received correspondence from the Hon. Jodie Harrison, Minister for Women, Minister for Seniors and Minister for the Prevention of Domestic Violence and Sexual Assault on behalf of the Minister for Gaming and Racing on 11 October 2024 specifically in relation to the concerns identified in the Committee's previous correspondence regarding the amending regulation, clause 44C.

1.109 The Minister stated that 'Clause 44C was intended to be temporary in nature and only to be used until a legislative amendment could be made to section 79A of the Liquor Act 2007'.

1.110 The Minister further stated that:

> To address the issues raised by the Committee, the Government is preparing legislative amendments to the Act to clarify the intent of section 79A. The Government intends to introduce a Bill to Parliament in October 2024 as part of the second tranche of the Government's Vibrancy Reforms.
>
> As part of these reforms, it is intended that this Bill omit clause 44C from the Liquor Regulation 2018 and make amendments to the Act to clarify the intent of section 79A.

The form or intention of the regulation calls for elucidation

1.111 Under this ground, the Committee may raise potential errors in drafting that affect the meaning or interpretation of the regulation, and other matters requiring clarification.

Clause 130B

1.112 The regulation, clause 130B, in reliance on the general exemption power in the Act, section 159(4), seeks to extend the application of the Act, section 94A to certain land. That section provides that certain consultation and fee requirements under section 94 do not apply to an application for a temporary boundary change for licensed premises to incorporate certain outdoor space.

1.113 Clause 130B(1) reads:

> (1) The Act, section 94A extends to land as if it were relevant land if—
>
> (a) the land is adjacent to food and drink premises, and
>
> (b) the use of the land as an outdoor dining area associated with the food and drink premises is exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 2, Division 1, Subdivision 20B or 20C, and
>
> (c) the proposed change to the boundary of the licensed premises under this clause continues while the temporary boundary approval remains in force if the land use is exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, Part 2, Division 1, Subdivision 20B or 20C.

1.114 The Committee sought clarification from the Minister regarding the intended effect of clause 130B(1)(c), as amended by the amending regulation, Schedule 1[16]. While paragraphs (a) and (b) prescribe clear criteria by which land either will or will not satisfy in order to be treated in the same way as ***relevant land*** within the meaning of the Act, section 94A, paragraph (c) appears to instead deal with the duration of the temporary boundary change the subject of the

application. That is a different matter to what is provided for in paragraphs (a) and (b), and potentially falls outside the ambit of section 94A and the regulation-making power relied on.

1.115 To the Committee, paragraph (c) does not appear to align with the chapeau of clause 130B(1) and would thus seem to operate more effectively as a standalone subclause. Further, if the intention is to provide for the duration of certain temporary boundary changes, this raises the question of whether clause 130B, expressed as extending an exemption from certain application requirements to applications relating to other land, does more than necessary or permitted under the relevant provisions of the Act.

1.116 In his second response, the Minister noted:

> Clause 130B is a clarification provision. Although the temporary nature of the outdoor dining approval is set out in section 94A of the Act, and cl130B(1)(b) sets out the relevant land to which cl130B operates, cl130B restates both elements.
>
> It is noted that it is likely the relevant elements of cl130B(1)(c) are already provided for by s94A in the Act and cl130B(1)(b). In simple terms, the intention of cl130B(1)(c) is to clarify that the temporary boundary extension is only in force while the 'approval' is in force. The 'approval' in question relates to an approval under s94 of the Act.

Clause 28A

1.117 Regarding the amendment made by the amending regulation, Schedule 1[9], the Committee queried whether the word 'licence' is missing after 'an application for a small bar' in the regulation, clause 28A(3), definition of ***excluded application***, paragraph (a). To the Committee, it was not clear whether the intention was for the definition to capture any application for an approval or authorisation that relates to a small bar, or applications for small bar licences specifically.

1.118 In his second response, the Minister agreed that:

> The clause could be further clarified by including the word "licence" after the words "application for a small bar" noting that the word "licence" was included in previous section 48(3C).[7] This item will be raised for consideration at the time of the next amendment to the Regulation.

Committee conclusion

1.119 The Committee appreciates the Minister's engagement with the scrutiny concerns outlined by the Committee and the detailed responses provided.

1.120 Though understanding of the intent behind clause 130B(1)(c), the Committee suggests that consideration be given to the omission of the paragraph, or amendment of the clause more broadly, to address the syntax and scope issues identified. The Committee appreciates that a minor amendment to clause 28A will be considered when the regulation is next amended. The Committee makes no further comment on these matters.

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[7] See the *Liquor Act 2007*, section 48(3C) as in force immediately before the commencement of the *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023*, Schedule 2[20].

1.121 The Committee does, however, remain concerned about the retention of clause 44C in the regulation.

1.122 The clause makes it an offence, in and of itself, for a licensee to permit business to be conducted at a licensed premises in a way that unduly disturbs, or unreasonably and seriously disturbs, the quiet and good order of the neighbourhood.

1.123 The rationale and assurances provided by the Minister i.e., that an offence provision was required to enliven the powers in the Act, section 75(1)(b) and (c) and will *primarily* be utilised for that purpose only, in *exceptional circumstances* requiring an immediate response, is not sufficient to overcome the Committee's concerns that conduct has been criminalised that, under the Act, would otherwise invoke a recently reformed complaints process that requires the balancing of different factors and the consideration of the appropriate action to be taken, such as issuing a warning or varying licence conditions.

1.124 In noting the Minister's explanation of why this offence has been introduced, the Committee does appreciate the merit in facilitating more urgent responses to egregious noise where it would be impractical to wait for a complaint to be determined. However, the offence is not framed as requiring some higher threshold to be breached, a threshold that a reasonable person would expect would, if a complaint were pursued, result in the Secretary taking remedial action.

1.125 The offence instead conflates the 'unduly disturbs' and 'unreasonably and seriously disturbs' tests, making it a real possibility that a licensee may commit an offence despite the fact a complaint for the same conduct may be dismissed outright or not upheld.

1.126 Given the likelihood that anticipated noise impacts would be taken into account in deciding whether to grant a licence in the first place, including subject to conditions addressing these, the Committee finds further difficulty in reconciling the blanket prohibition in clause 44C with a scheme that contemplates case-by-case conditions for licensed premises.

1.127 Regarding the assurance that clause 44C will be relied on, for the purposes of the Act, section 75, in exceptional circumstances only, the Committee considers this is not plain to licensees or the public and that it is possible that, in future, penalty notices could be issued, or proceedings commenced, for breach of the clause.

1.128 In the view of the Committee, clause 44C is a potentially problematic solution to a broader issue regarding the issue of improvement notices and the making of disturbance complaints in a way that is consistent with the objects of the Act and recent reforms. The Committee considers that it would be appropriate for the Act, Part 5 to be amended to address this, including to make clear that the powers in section 75 are to be used in exceptional circumstances only where the matter 'cannot be addressed more appropriately through the formal disturbance complaint process'.[8]

1.129 While putting forward the view that clause 44C is necessary to provide the requisite trigger for police officers and marine authorities to exercise the powers in the Act, section 75(1)(b) and (c), the Minister also asserts that section 79A is intended to 'operate as a condition', enlivening the Act, section 75(1)(b) and (c) on the basis that the section imposes a 'requirement or restriction'

[8] *Hansard*, NSW Legislative Council, 19 October 2023, p 5 (John Graham). See also the other concerns the Committee noted in relation to the Act, section 75 at paragraph 1.27.

that constitutes a condition under the Act, section 11(3). For the Committee, this also points to the broader issue that clause 44C complicates further.

1.130 The Committee maintains its view that section 79A, as described in the explanatory note for the amending Act, simply makes clear that a licence is not an authorisation to make noise. It does not appear the intention was to make section 79A a licence condition, breach of which would carry a higher maximum penalty under the Act, section 11(2), particularly given the Act contemplates that *specific* noise or noise-related conditions may be imposed on a licence. Establishing an offence by way of clause 44C, or interpreting section 79A as imposing a licence condition, would both appear to conflict with other provisions, and the spirit, of the Act. Construing these provisions as necessary precursors for the exercise of powers under section 75 is, to the Committee, one step removed.

1.131 Regardless of the intended operation, clause 44C, and section 79A if interpreted this way, make it an offence for a licensee to do something the Act, Part 5, Division 3 deals with quite differently, in that the Act recognises the need 'to balance the interests of venues and the concerns of local communities.'[9]

1.132 On the basis of the reasoning set out above and the correspondence provided by Minister Harris on 12 August 2024 and 23 September 2024, the Committee formed the view that clause 44C either does not accord with the general objects and intention of the Act and significantly detracts from the operation of the scheme set out in the Act, or is inconsistent with or repugnant to the Act. The clause, inserted for the particular purpose of enabling police officers and marine authorities to issue improvement notices under the Act, section 75, raises questions of potential inconsistency with the Act that have not been resolved to the Committee's satisfaction.

1.133 The Committee further formed the view that the provision inserted by the amending regulation, Schedule 1[12] is not within the general objects of, or does not accord with the spirit of, the legislation under which it was made and that the item inserting the provision should, on this basis, be disallowed.

1.134 However, upon receiving the third item of correspondence relating to the amending regulation, this time from Minister Harrison on behalf of Minister Harris on 11 October 2024, stating that the Government's intention is to omit clause 44C from the regulation as part of the second tranche of the Government's Vibrancy Reforms, which will be introduced via a Bill to Parliament in October 2024, the Committee has come to a slightly different conclusion.

1.135 On the basis of the commitment set out in the third item of correspondence, the Committee is now of the view that if clause 44C is not omitted by way of legislation introduced to Parliament in October 2024, the provision of the amending regulation inserting clause 44C should then be disallowed[10]

1.136 Therefore, the Committee recommends that on or before 22 October 2024, being the last date notice of a disallowance motion regarding this instrument can be given, the Chair give notice of motion in the House that the Legislative Council disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12] under the *Interpretation Act 1987,* section 41.

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9 *Hansard*, NSW Legislative Council, 19 October 2023, p 5 (John Graham).

10 See the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (iv) and the resolution establishing the Committee.

1.137 Upon the introduction of legislation into either House that would omit clause 44C, the Committee recommends that the Chair withdraw the relevant disallowance notice of motion.

1.138 The Committee further recommends that if by the first sitting day of November 2024, legislation has not been introduced into either House that would omit clause 44C, the Chair move the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12].

Recommendation 1

That:

(a) the Chair of the Regulation Committee give notice of motion in the House, on or before 22 October 2024, that under the *Interpretation Act 1987*, section 41 the Legislative Council disallows the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12] as published on the NSW legislation website on 28 June 2024,

(b) if by the first sitting day of November 2024, legislation to omit clause 44C from the *Liquor Regulation 2018* has not been introduced to either House, the Chair of the Regulation Committee move the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12], and

(c) if by the first sitting day of November 2024, legislation has been introduced to omit clause 44C from the *Liquor Regulation 2018*, the Chair of the Regulation Committee withdraw the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12].

1.139 It is the Committee's intention that disallowing this portion of the amending regulation will mitigate the risk of any unintended consequences while the Government gives consideration to the most appropriate means for achieving the policy intent behind clause 44C, consistently with the Act, whether via the forthcoming Bill or an alternative legislative solution.

Transport Legislation Amendment (Penalties, Fees and Charges) Regulation 2024

SI number / GG reference	2024 No 263
Published on Legislation Website (LW)	28/06/2024
Tabled in Legislative Council (LC)	06/08/2024
Last date of notice for disallowance motion	22/10/2024

Overview

1.140 The *Transport Legislation Amendment (Penalties, Fees and Charges) Regulation 2024* (the amending regulation), as stated in the explanatory note and as relevant to the Committee, amends various instruments relating to transport to increase certain fees, charges and penalty amounts for penalty notice offences in a way that is generally consistent with the Consumer Price Index, and introduces additional fee categories for vessel registration under the *Marine Safety Regulation 2016* (the regulation).

1.141 The amending regulation commenced on 1 July 2024. As provided by the explanatory note, the amending regulation is made under the following Acts:

- the *Driving Instructors Act 1992*, including sections 11(2), 30(2)(b) and 59, the general regulation-making power,
- the *Marine Safety Act 1998*, including sections 19K(1), 37 and 137, the general regulation-making power,
- the *Photo Card Act 2005*, including sections 5(3), 34(4) and 36, the general regulation-making power,
- the *Ports and Maritime Administration Act 1995*, including sections 85G and 110, the general regulation-making power,
- the *Road Transport Act 2013*, including sections 23, the general regulation-making power, and 24 and Schedule 1,
- the *Roads Act 1993*, including sections 243 and 264, the general regulation-making power.

1.142 The Committee identified concerns under the *Legislation Review Act 1987,* section 9(1)(b)(iii), (iv) and (vii) regarding this instrument in Monitor No. 9 of 2024. These scrutiny concerns were conveyed in a letter to the Minister for Roads on 23 August 2024. A response was received from the Minister on 18 September 2024. 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

1.143 Under these grounds, the Committee is required to consider the consistency of the amending regulation with the objects and intended effects of the relevant Acts under which it was made, including the imposition of fess without or beyond power and the unexpected use of a regulation-making power.

I.

1.144 The amending regulation, Schedule 3[4] amends the *Photo Card Regulation 2014*, Schedule 1 to specify offences under that regulation and the *Photo Card Act 2005* that are penalty notice offences. Of the eight penalty notice offences inserted for the *Photo Card Act 2005*, the penalty notice amount for the following six offences represents an amount that is approximately 44 per cent of the maximum penalty applicable to a criminal prosecution under that Act: sections 20(1)(a), 20(1)(b), 21(a), 23(a), 23(b) and 28(2).

1.145 The Committee generally considers that penalty notice amounts in excess of 20-25 per cent of the maximum penalty for the offence raise potential concern and, for this reason, the Committee sought information on the rationale behind, and the justification for, the chosen penalty notice amounts.

1.146 In his response, the Minister explained that these offences were 'adjusted in line with Consumer Price Indexation (CPI).' In addition, the Minister advised that:

> …of the eight penalty notices identified by the Committee, seven were removed when the Photo Card Regulation 2014 was replaced by the Photo Card Regulation 2024 on 1 September 2024 under the staged repeal program.
>
> The remaining penalty offence is for failure to produce a photo card when directed to do so under section 28(2) of the *Photo Card Act 2005*. The offence also requires the authorised officer to advise that failure to produce is an offence. The offence relates to fraudulent identification which can be a serious offence. Due to the serious nature of the offence, a high penalty is appropriate. However, I note that this offence has not been recorded in recent Revenue NSW offence data suggesting the deterrent effect is working.

1.147 The amending regulation, Schedule 8 amends the *Roads Regulation 2018*, Schedule 3, which specifies offences under that regulation that are penalty notice offences. The penalty notice amount specified for each offence listed in the schedule represents an amount that is greater than 25 per cent of the maximum penalty applicable to a criminal prosecution for the offence.

1.148 Specifically, a penalty notice amount of $224 is 40.7 per cent of the maximum penalty for the relevant offence, $447 is 40.6 per cent of the maximum penalty, $672 is 30.5 per cent of the maximum penalty and $930 is 28.2 per cent of the maximum penalty. Given how high the amounts are relative to the maximum penalties, the Committee also sought information on the rationale behind, and the justification for, these penalty notice amounts.

1.149 In response to the Committee's query, the Minister commented that:

> …the amending Regulation made changes to penalty notice amounts in line with annual CPI. The maximum fines that a court may impose are expressed in NSW legislation in terms of penalty units which have a fixed amount of $110 and are not subject to annual CPI amendment. The last increase to the value of a penalty unit (from $100 to $110) occurred in 1997. Notwithstanding this, Transport for NSW proposes to conduct a review of the *Roads Act 1993* to determine if its objectives remain fit for purpose. The review is expected to include consideration of the maximum court penalties for offences under the Act and, accordingly, the penalty notice fine amounts for offences under the Regulation under the Act.

II.

1.150 The amending regulation, Schedule 4[3] inserts Schedule 3, items 3 and 4 into the *Ports and Maritime Administrative Regulation 2021*. The items prescribe fees for the inspection of a mooring or vessel by Transport for NSW during and outside business hours.

1.151 In its letter, the Committee noted that the *Ports and Maritime Administration Act 1995*, section 85G(2)(b) provides that the regulations may make provision for or with respect to 'the establishment, administration, operation and enforcement of a wharf booking system and mooring licensing system'. While section 85G(2)(g) empowers the regulations to prescribe' fees payable in relation to permits, licences and bookings under a wharf booking system', the Committee considered that there does not appear to be a specific provision providing for fees for a mooring licensing system.

1.152 The Committee sought clarification as to the relevant provision of the *Ports and Maritime Administration Act 1995* relied on for the mooring inspection fees and the circumstances in which a mooring may be inspected, given the *Ports and Maritime Administration Act 1995* and the *Ports and Maritime Administration Regulation 2021* appear to be silent on this.

1.153 In his response, the Minister clarified the circumstances in which a mooring may be inspected by Transport for NSW:

> The granting of a mooring licence requires the installation and maintenance of a mooring apparatus and associated vessel which - as an essential condition of the licence - are required to be installed and maintained. Inspections are routinely required as a part of the administrative process and are conducted when a mooring is established or a licence is varied. Circumstances include inspections during initial mooring allocations to ensure that the vessel can be moored safely in the space available, where changes are made to the vessel or apparatus and to respond to concerns related to risks to safety, property or the environment.

The form or intention of the regulation calls for elucidation

1.154 Under this ground, the Committee is required to consider whether the form or intention of the amending regulation calls for elucidation and may seek clarification where a provision is ambiguous or uncertain.

III.

1.155 The Committee requested clarification regarding the circumstances in which fees for the below matters, as inserted by the amending regulation, Schedule 2, are charged, including the relevant provision of the *Marine Safety Act 1998* (the Act) or the regulation that provides the basis for the

fee. The Committee acknowledges the broad power in the Act, section 137(1) for the regulations to make provision for or with respect to fees and charges for services provided under the Act.

- **Personal watercraft (PWC) driving licence upgrade examination**—the Committee requested more information on the term 'upgrade', and when this examination is required. In his response, the Minister detailed that:

> To get a PWC driving licence, applicants must first get their general boat driving licence. In order to upgrade a general boat driving licence to a PWC driving licence, the customer must undertake the PWC driving licence knowledge test (i.e. upgrade examination). In these circumstances, a PWC driving licence upgrade examination fee is required to be paid.

- **Transfer of a boatcode agent authorisation**—the Committee queried the process giving rise to the fee given the regulation, clause 88 (which relates to boatcode agents) is silent on whether and how an authorisation may be transferred. In his response, the Minister explained the 'transfer' process, stating that:

> When a customer is requesting to transfer an existing Boatcode Agency into their name, they are required to complete an Application to Transfer Boatcode Agency Accreditation. Upon approval of transfer of a boatcode agent authorisation from one entity to another, the transfer of a boatcode agent authorisation fee (currently $401) is payable.

- **Affixing of hull identification number**—the Committee sought confirmation that the regulation, clauses 87 and 88 do not require a hull identification number to be affixed by a boatcode agent only, and that this fee is charged only if the number is affixed by an agent. In response to the Committee's query, the Minister explained that:

> The hull identification number (HIN) is the vessel equivalent of the Vehicle Identification Number for vehicles. The HIN system (also called Boatcode) gives all powered vessels a unique number. For new vessels, the HIN is recorded on a certificate and a plate by the manufacturer. The HIN plate must be permanently attached and clearly displayed on the hull of the vessel. In older boats, a Boatcode Agent can help a customer to get a HIN. The agent can also get the customer a HIN Boatcode Certificate. In these circumstances, the fee for affixing of hull identification number to the vessel (currently $107), is payable.

- **Inspection to validate hull identification number**—the Committee queried when this inspection occurs given the regulation appears to be silent on inspecting and validating hull identification numbers. In response, the Minister stated that:

> In some circumstances (such as an attempt to re-birth a vessel), an inspection may be required to validate the vessel HIN. The fee for inspection to validate a HIN (currently $107) is payable in these instances. The HIN is also listed on the Personal Properties Security Register (PPSR), so a customer can check who owns the vessel. In cases in which it can be confirmed via the PPSR that a HIN is valid and authorised by Transport for NSW, an inspection to validate may not be required and therefore no fee payable.

- **Hull identification number certificates—pad of 50**—the Committee queried when and why a hull identification number certificate may be issued to a person. In response to the Committee's query, the Minister explained that:

> A Boatcode Agent can provide customers with a HIN Boatcode Certificate following investigation and/or inspection of a vessel and vessel details. To assist administration, a boatcode agent can request a pad of 50 HIN certificates from Transport for NSW at a current cost of $39.

- **Retrieval of domestic commercial vessel records**—the Committee queried whether this fee relates to the exercise of a particular function by the National Regulator under the Commonwealth domestic commercial vessel national law. The Minister explained that:

> Commercial vessels must be licensed to use NSW waterways and the payable fee is broadly within s.137 being a 'service provided under this Act'. This fee is a vestige of when commercial vessels were licensed entirely by the NSW Government and this fee sat in the now repealed Schedule 12. Jurisdiction for licensing commercial vessels passed to the Commonwealth in 2018, however, Transport for NSW Maritime retains the archive of commercial vessel plans, which vessel owners may need access to secure Commonwealth licences and for NSW Ship Construction Certificates granted under s.153 of the *Marine Pollution Act 2012*. As a result, the fee is still required for a vessel to be fully compliant with the regulations on NSW waters.

IV.

1.156 The Committee also raised a potential typographical error in relation to a reference to a 'trailer tow truck' in the *Road Transport (Vehicle Registration) Regulation 2017*, Schedule 3, Part 1, item 6, as inserted by the amending regulation, Schedule 7[1]. It appeared, to the Committee, that the phrase should instead read 'tow truck trailer', as used in Part 5, items 7–9 and the corresponding item of the previous fees schedule.

1.157 In his response, the Minister advised that 'this was an oversight…and Transport for NSW will arrange for an amendment to correct the matter at the earliest available opportunity'.

Committee conclusion

1.158 The Committee appreciates the Minister's prompt and detailed response to the scrutiny concerns raised by the Committee.

1.159 With regard to the concerns relating to penalty notice amounts, the Committee acknowledges the Minister's explanation as to the rationale for the prescribed amounts and welcomes the reconsideration of the prescribed amounts for offences under the *Roads Regulation 2018* as part of the review of the *Roads Act 1993*. The Committee does, however, reiterate its view that it is generally advisable that a penalty notice amount not exceed 20-25 per cent of the maximum penalty for the relevant offence.

1.160 The Committee accepts the Minister's comment that charging a mooring inspection fee in the circumstances described may be considered to fall within the 'administration' of a mooring licensing system. The Committee considers this could be put beyond doubt if the *Ports and Maritime Administration Act 1995*, section 85G(2)(g) were amended to explicitly refer to a mooring licensing system, as in paragraph (b).

1.161 While the Committee appreciates the information provided by the Minister to clarify when these fees, and the marine safety fees queried, are charged, the Committee suggests consideration be

given to whether the relevant regulations or parent Acts should be amended to link some of these fees to an enabling provision that clearly sets out when the fee may be charged, including to make explicit some of the matters explained by the Minister. The Committee generally considers that a fees schedule should not be in and of itself the mechanism for establishing a fee, as it may not be clear on its face when a person may be obliged to pay it.

1.162 The Committee notes the Minister's undertaking to amend the *Road Transport (Vehicle Registration) Regulation 2017*, Schedule 3 to replace the reference to 'trailer tow truck' with 'tow truck trailer'. This undertaking will be published on the Committee's webpage and will be updated when the relevant undertaking has been implemented.

1.163 On the basis of the above conclusions, 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 and 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:

Instrument	SI number/ GG reference
Children (Education and Care Services) Supplementary Provisions Regulation 2024	2024 No 339
Home Building Amendment (Supervision Practice Standard) Regulation 2024	2024 No 363
Assisted Reproductive Technology Regulation 2024	2024 No 373
Casino Control Amendment Regulation 2024	2024 No 374
Oaths Regulation 2024	2024 No 385
Terrorism (High Risk Offenders) Regulation 2024	2024 No 387
Work Health and Safety Amendment (Crystalline Silica Substances) Regulation 2024	2024 No 390
Agricultural and Veterinary Chemicals (New South Wales) Regulation 2024	2024 No 402
Children's Court Regulation 2024	2024 No 404
Electricity Infrastructure Investment Amendment (Revenue Determinations) Regulation 2024	2024 No 405
Professional Standards Regulation 2024	2024 No 413
State Debt Recovery Act 2018—Referable Debt Order	2024 No 414
Residential (Land Lease) Communities Amendment Regulation 2024	2024 No 415
Rural Assistance Regulation 2024	2024 No 416
Scrap Metal Industry (Transitional) Amendment Regulation 2024	2024 No 417
State Records Regulation 2024	2024 No 419
Statutory and Other Offices Remuneration (Executive Office Holders and Senior Executives) Amendment Regulation 2024	2024 No 420
Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2024	2024 No 421
Film and Television Industry (Advisory Committee) Regulation 2024	2024 No 440
Heavy Vehicle (Mass, Dimension and Loading) National Amendment Regulation 2024	2024 No 470

Instrument	SI number/ GG reference
State Debt Recovery Act 2018—Referable Debt Order	2024 No 457

Chapter 3 Instruments raising scrutiny concerns

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

Responsible minister or body	**Instrument**	**SI number / GG reference**
Minister for Local Government	Local Government (General) Amendment (Elections) Regulation 2024	2024 No 327
Minister for the Arts	Museum of Applied Arts and Sciences Regulation 2024	2024 No 328
Minister for Energy	Pipelines Amendment Regulation 2024	2024 No 329
Attorney General	Children (Protection and Parental Responsibility) Regulation 2024	2024 No 375
Minister for Education and Early Learning	Teaching Service Regulation 2024	2024 No 386

Appendix 1 Minutes

Draft minutes no. 16
Monday 14 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 D'Adam (substituting for Mr Donnelly *via teleconference*)
Dr Kaine
Ms Mihailuk (*via teleconference)*
Mr Murphy
Mr Nanva (*via teleconference)*

2. Previous minutes
Resolved, on the motion of Mr Murphy: That draft minutes no. 15 be confirmed.

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

Sent:

- 26 September 2024 – Letter from Chair to Minister for Education and Early Learning, the Hon Prue Car MP regarding scrutiny concerns identified in the *Teaching Service Regulation 2024*.
- 26 September 2024 – Letter from Chair to Attorney General regarding scrutiny concerns identified in the *Children (Protection and Parental Responsibility) Regulation 2024*.
- 26 September 2024 – Letter from Chair to Presiding Member, Legal Profession Admission Board, the Hon Justice Anthony Payne regarding scrutiny concerns concluded in Monitor No. 10 of 2024.
- 26 September 2024 – Letter from Chair to Statutory and Other Offices Remuneration Tribunal regarding scrutiny concerns concluded in Monitor No. 10 of 2024.

Received:

- 6 September 2024 – Letter from Scottish Parliament's Delegated Powers and Law Reform Committee seeking views of equivalent international committees on the use of framework legislation.
- 18 September 2024 – Letter from Minister for Roads, the Hon John Graham MLC regarding scrutiny concerns identified in the *Transport, Legislation Amendment (Penalties, Fees and Charges) Regulation 2024*.
- 23 September 2024 – Letter from Minister for Gaming and Racing, the Hon David Harris MP regarding scrutiny concerns identified in the *Liquor Amendment (Vibrancy Reforms) Regulation 2024* and the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*.

- 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*.
- 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*.
- 3 October 2024 – Letter from Treasurer, the Hon Daniel Mookhey MLC regarding scrutiny concerns identified in the *Government Sector Finance Regulation 2024*.
- 10 October 2024 – Letter from the Minister for Energy, the Hon Penny Sharpe MLC regarding scrutiny concerns in the *Pipelines Amendment Regulation 2024*.
- 11 October 2024 – Letter from the Hon Jodie Harrison MP on behalf of the Hon David Harris MP, Minister for Gaming and Racing, regarding the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*.

4. Scottish Parliament's Delegated Powers and Law Reform Committee – Call for views

Resolved, on the motion of Mrs Carter: That the Chair, on behalf of the Committee make a short submission to the Scottish Parliament's Delegated Powers and Law Reform Committee's inquiry into framework legislation referring the Scottish Committee to the following two reports tabled by the Regulation Committee in the 57th Parliament:

- Report No. 7 – Making of delegated legislation in NSW
- Report No. 9 – Options for reform of the management of delegated legislation in New South Wales.

5. Consideration of Chair's draft report

The Chair submitted her draft report entitled *Delegated Legislation Monitor No. 11 of 2024*, which having been previously circulated, was taken as being read.

Mr Murphy moved: That:

(1) Paragraph 1.137 be omitted: 'The Committee further recommends that if by the first sitting day of November 2024, clause 44C has not been omitted by way of legislation, the Chair move the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12].', and the following new paragraph be inserted instead:

> 'Upon the introduction of legislation into either House that would omit clause 44C, the Committee recommends that the Chair withdraw the relevant disallowance notice of motion.'.

(2) Paragraph 1.138 be omitted: 'In the event that clause 44C is omitted by way of legislation by the first sitting day of November 2024, the Committee recommends that the Chair withdraw the relevant disallowance notice of motion.', and the following new paragraph be inserted instead:

> 'The Committee further recommends that if by the first sitting day of November 2024, legislation has not been introduced into either House that would omit clause 44C, the Chair move the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12].'.

(3) Recommendation 1(b) be omitted: 'if by the first sitting day of November 2024, clause 44C has not been omitted from the *Liquor Regulation 2018*, the Chair of the Regulation Committee move the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12], and', and the following new recommendation be inserted instead:

> 'if by the first sitting day of November 2024, legislation to omit clause 44C from the *Liquor Regulation 2018*, has not been introduced to either House, the Chair of the Regulation Committee move the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12], and'.

(4) Recommendation 1(c) be omitted: 'if by the first sitting day of November 2024, clause 44C has been omitted from the *Liquor Regulation 2018*, the Chair of the Regulation Committee withdraw the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12].', and the following new paragraph be inserted instead:

'if by the first sitting day of November 2024, legislation has been introduced to omit clause 44C from the *Liquor Regulation 2018*, the Chair of the Regulation Committee withdraw the notice of motion to disallow the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*, Schedule 1[12].'.

Question put.

The Committee divided.

Ayes: Mr D'Adam, Dr Kaine, Ms Mihailuk, Mr Murphy, Mr Nanva.

Noes: Ms Boyd, Mrs Carter, Mrs Maclaren-Jones.

Question resolved in the affirmative.

Resolved, on the motion of Mrs Carter: 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 15 October 2024.

6. Correspondence arising from Monitor No. 11 of 2024

Resolved, on the motion of Mrs Carter: That the Chair write to relevant ministers or bodies reflecting the conclusions of the Committee set out in Monitor No. 11 of 2024.

7. Structure of weekly correspondence update

Committee noted that, as resolved at the meeting on 23 September 2024, the secretariat will provide a weekly email update to the Committee identifying any outgoing, incoming or outstanding correspondence.

Committee further noted the proposed format for the correspondence email update.

8. Adjournment

The Committee adjourned at 11.50 am.

9. Next Meeting

Monday 21 October 2024, 11.00 am, Room 1136 (consideration of the Committee report entitled 'Scrutiny of Delegated Legislation Monitor No. 12 of 2024').

Madeleine Dowd
Committee Clerk

Appendix 2 Correspondence

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

- Sent 16 July 2024 – Letter from Chair to Minister for Gaming and Racing, the Hon. David Harris MP regarding scrutiny concerns identified in the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*.
- Sent 16 July 2024 – Letter from Chair to Minister for Gaming and Racing, the Hon. David Harris MP regarding scrutiny concerns identified in the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*.
- Received 12 August 2024 – Letter from Minister for Gaming and Racing, the Hon. David Harris MP regarding scrutiny concerns identified in the *Liquor Amendment (Vibrancy Reforms) Regulation 2024* and the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*.
- Sent 23 August 2024 – Letter from Chair to Minister for Roads, the Hon. John Graham MLC regarding scrutiny concerns identified in the *Transport Legislation Amendment (Penalties, Fees and Charges) Regulation 2024*.
- Sent 23 August 2024 – Letter from Chair to Treasurer, the Hon. Daniel Mookhey MLC regarding scrutiny concerns identified in the *Government Sector Finance Regulation 2024*.
- Sent 5 September 2024 -Letter from Chair to Minister for Gaming and Racing, the Hon. David Harris MP regarding *Liquor Amendment (Vibrancy Reforms) Regulation 2024* and *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*.
- Received 18 September 2024 – Letter from Minister for Roads, the Hon John Graham MLC regarding scrutiny concerns identified in the *Transport, Legislation Amendment (Penalties, Fees and Charges) Regulation 2024*.
- Received 23 September 2024 – Letter from Minister for Gaming and Racing, the Hon David Harris MP regarding scrutiny concerns identified in the *Liquor Amendment (Vibrancy Reforms) Regulation 2024* and the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*.
- Received 3 October 2024 – Letter from Treasurer, the Hon Daniel Mookhey MLC regarding scrutiny concerns identified in the *Government Sector Finance Regulation 2024*.
- Received 11 October 2024 – Letter from the Hon. Jodie Harrison MP on behalf of the Hon. David Harris MP, Minister for Gaming and Racing, regarding scrutiny concerns identified in the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*.

LEGISLATIVE COUNCIL

REGULATION COMMITTEE

16 July 2024

The Hon. David Harris
Minister for Aboriginal Affairs and Treaty
Minister for Gaming and Racing
Minister for Veterans
Ministers for Medical Research
Minister for the Central Coast

D24/034888

By email

Dear Minister

Gaming Machines and Liquor Amendment (Harm Minimisation Measures) 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 published on the NSW Legislation website on 28 June 2024, and will be tabled in Parliament on 6 August 2024.

- *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*

The Committee has identified issues under the *Legislation Review Act 1987,* section 9(1)(b)(viii) 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 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	Clause 135, as inserted by Schedule 2[2]	Clause 135, as inserted by the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024* (the ***amending regulation***), Schedule 2[2], provides for transitional arrangements consequent to the enactment of the amending regulation. Clause 135(1) specifies that this clause applies in relation to a hotelier or registered club whose hotel licence or club licence is, at the commencement of this clause, subject to one or more of the following three conditions: • a responsible gambling officer condition, • a gambling incident register condition, • a gaming plan of management condition. A gaming plan of management condition is defined in clause 135(4) as a condition requiring a licensee to have a gaming plan of management of a kind referred to in the *Gaming Machines Regulation 2019,* clause 50P. Although Schedule 2[2] comes into effect on 1 July 2024, the provisions relating to gaming plans of management, including clause 50P, do not commence until 1 September 2024. As clause 135(1)(c), (2)(c), (3)(c) and (4), definition of ***gaming plan of management condition,*** (the ***relevant provisions***), rely on clause 50P, it appears to the Committee that the conflicting commencement dates render the relevant provisions inoperative. In addition, even when proposed clause 50P comes into force later this year, the relevant provisions cannot apply in relation to a hotelier or registered club as it would not be possible for a hotel licence or club licence to have been subject to a gaming plan of management condition at the commencement of the clause. The Committee considers that clause 135 calls for elucidation and welcomes clarification on the intended operation of the relevant provisions given that clause 50P does not commence until 1 September 2024.
2	Schedule 1[8]	Schedule 1[8] of the amending regulation seeks to replace the term 'problem gambling' with the term 'gambling harm' wherever occurring in clauses 22, 24 and 41. This amendment appears to align these provisions more closely with the objects of the *Gaming Machines Act 2001* (***the Act***), noting that the term 'problem gambling' is predominantly referenced within the Act in relation to problem gambling counselling services. The Committee notes that Schedule 1[31] of the amending regulation substitutes *Gaming Machines Regulation 2019,* clause 104(2)(b) to require gaming machine tickets to include "a warning about gambling and advice for getting help with problem gambling". This wording reflects the *Gaming Machines Regulation 2019,* clause 22, as in force immediately before the commencement of the amending regulation. Given the change to the term "gambling harm" in clauses 22, 24 and 41, the Committee seeks clarification on the rationale for referring to "problem gambling" in clause 104(2)(b). The Committee also notes the reference to

		problem gambling in clause 46(2), definition of ***gambling contact card***, and queries whether it should also be replaced with a reference to gambling harm.
3	Explanatory note	The explanatory note to the amending regulation does not identify that the instrument, specifically Schedule 2[2], may have been made under Henry VIII provisions. Given the concerns regarding the use of this type of provision, the Committee is of the view that any relevant accompanying explanatory note should clearly state that a regulation may be made under a Henry VIII provision. The Committee also notes that the explanatory note does not reference the provisions of the Act that provide the regulation-making power for each provision of the amending regulation, where some of the provisions being amended do not refer to a regulation-making power.

Please provide a response to the issue identified as nos 1 and 2 by **30 July 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.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

REGULATION COMMITTEE

16 July 2024

The Hon. David Harris
Minister for Aboriginal Affairs and Treaty
Minister for Gaming and Racing
Minister for Veterans
Ministers for Medical Research
Minister for the Central Coast

D24/034891

By email

Dear Minister

Liquor Amendment (Vibrancy Reforms) 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 published on the NSW legislation website on 28 June 2024, and will be tabled in Parliament on 6 August 2024:

- *Liquor Amendment (Vibrancy Reforms) 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 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[12], proposed clause 44C	The Committee is of the view that clause 44C may not be within the general objects of, or accord with the spirit of, the legislation under which it was made. The *Liquor Act 2007* (***the Act***), Part 5, Division 3 deals with neighbourhood disturbances relating to licensed premises under the Act. Section 79A provides that "A licence does not authorise business to be conducted on licensed premises in a way that unduly disturbs, or unreasonably and seriously disturbs, the quiet and good order of the neighbourhood in which the licensed premises are located." The division continues by setting out a process for making and dealing with disturbance complaints. If satisfied the complainant has tried to address the complaint directly with the licensee of the relevant licensed premises, or an agent or employee of the licensee, the Secretary may proceed to deal with the complaint by convening a conference to hear submissions in relation to the complaint, or inviting written submissions from the licensee and other persons the Secretary considers appropriate (section 80). Section 80A sets out the grounds on which the Secretary may uphold a complaint. Relevantly, if the licensed premises has been operating longer than the complainant has resided or worked at the complainant's address or place of business, and there has been no substantial change to those operations since the complainant began residing or working at the complainant's address or place of business, the Secretary must not uphold the complaint unless satisfied the quiet or good order of the neighbourhood has been unreasonably and seriously disturbed. Otherwise, the lower threshold applies, and the Secretary need only be satisfied that the quiet and good order of the neighbourhood has been unduly disturbed. Section 81 provides for the decisions the Secretary may make in relation to a complaint, including imposing a condition on the relevant licence, varying or revoking a condition, issuing a warning or accepting undertakings. It is an offence for a licensee to fail to comply with the conditions of a licence (section 11(2)). The Committee also notes the Act, section 75, which provides for the issue of improvement notices by police officers or marine authorities, in relation to noise being emitted from licensed premises, or by the Secretary in relation to conduct on, or any other matter relating to, licensed premises. An improvement notice may include a direction to adopt, vary, cease or refrain from a practice in respect of the licensed premises. It is an offence for a licensee, or an agent or employee of the licensee, to fail, without reasonable excuse, to comply with an improvement notice. In this context, it appears to the Committee that the offence inserted by Schedule 1[12] is inconsistent with the Act, Part 5, Division 3 and detracts from the operation of the complaints process provided for, which anticipates prior notice (the complainant must first raise the complaint with the licensee), the opportunity to make submissions, and the exercise of discretion in relation to the action taken by the Secretary (which may result in the imposition of a "penalty" in the form of more restrictive licence conditions). Clause 44C covers the same ground as the Act, section 79A. Though the

		introductory words of the provisions differ slightly, the heading to section 79A makes clear that the same duty is contemplated as that apparently introduced by clause 44C. Clause 44C cuts across the Act, Part 5, Division 3, as amended by the *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023* (the ***2023 amending Act***), Schedule 2[36]–[41], by making it an offence at the outset, apparently in reliance on the general regulation-making powers set out in the Act, section 159(2)(g) and (3), to conduct business at a licensed premises in a way that unduly disturbs, or unreasonably and seriously disturbs, the quiet and good order of the neighbourhood. In the Committee's view, it is open to suggest this offence goes against the intent of Parliament as reflected in the changes made to the Act, Part 5, Division 3 by the 2023 amending Act. Section 79A does not make it an offence to disturb the quiet and good order of the neighbourhood and, if appropriate to do so, it seems it should be the Act, Part 5, Division 3 that is amended, and not the *Liquor Regulation 2018* by inserting a provision that essentially duplicates section 79A but elevates it to an offence. Clause 44C appears to further conflict with the Act, Part 5, Division 3 by conflating the two-part test of "unreasonably and seriously disturbs", which the Secretary must be satisfied is met to uphold a disturbance complaint where the "order of occupancy" is in favour of the licensed premises (the Act, section 80A), with the lower threshold of "unduly disturbs" that applies where the order of occupancy is not in favour of the licensed premises. While the Act contemplates that in certain circumstances some residents and workers will have to accept a certain level of disturbance from nearby licensed premises, clause 44C makes it an offence for *either* standard to be breached. It is unclear to the Committee how clause 44C is intended to operate alongside the improvement notice and complaint mechanisms provided for in the Act, Part 5. The Committee requests clarification regarding the rationale behind, and justification for, clause 44C.
2	Schedule 1[16]	The Committee seeks clarification regarding the intended effect of clause 130B(1)(c). The Act, section 94A provides that certain consultation and fee requirements do not apply to an application for a temporary change to the boundaries of licensed premises that meets the requirements of the section. Clause 130B(1)(a) and (b) prescribe criteria land must satisfy for that exemption to extend to the land, in reliance on the regulation-making power in the Act, section 159(4). However, paragraph (c), rather than listing another criterion for the land to be treated in the same way as ***relevant land*** under the Act, section 94A, seems to provide for how *long* the temporary boundary change the subject of the application is to have effect, which is a different matter to what is provided for in paragraphs (a) and (b), and arguably doesn't fall within the ambit of section 94A, but purports to supplement it in circumstances where it is unclear there is power for the regulations to do so.
3	Schedule 1[9]	The Committee seeks confirmation that "an application for a small bar" in clause 28A(3), definition of ***excluded application***, paragraph (a), is intended to capture applications for small bar licences and also applications for other approvals or authorisations relating to small bars.

4	Explanatory note	The explanatory note to the amending regulation does not identify that the regulation, specifically Schedule 1[16] and [17], may have been made under Henry VIII provisions. Given the concerns regarding the use of this type of provision, the Committee is of the view that any relevant accompanying explanatory note should clearly state that a regulation may be made under a Henry VIII provision. The Committee also notes that the explanatory note does not reference all of the provisions of the Act that provide the regulation-making power for each provision of the amending regulation, where some provisions do not refer to a regulation-making power in the heading or body (see, for example, proposed clause 55A inserted by Schedule 1[13]).

Please provide a response to the issue identified as nos 1–3 by **30 July 2024**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

The issue identified as no 4 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.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

The Hon. David Harris MP
Minister for Aboriginal Affairs and Treaty
Minister for Gaming and Racing
Minister for Veterans
Minister for Medical Research
Minister for the Central Coast

NSW GOVERNMENT

Our reference: A8971141
Your references: D24/034888 & D24/034891

The Hon Natasha Maclaren-Jones MLC
Chair, Regulation Committee
Parliament House, Macquarie Street,
Sydney NSW 2000

Via email: Regulation.Committee@parliament.nsw.gov.au

Dear Chair, Natasha

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

- Liquor Amendment (Vibrancy Reforms) Regulation 2024
- Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024.

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

Liquor Amendment (Vibrancy Reforms) Regulation 2024

Item	Provision	Response
1	Schedule 1[12], proposed clause 44C	The Committee requests clarification regarding the rationale behind, and justification for, clause 44C. This clause creates a new offence provision for business being conducted on licensed premises in a way that unduly disturbs, or unreasonably and seriously disturbs, the quiet and good order of the neighbourhood. The intent of clause 44C is to support the utility of improvement notices being issued under section 75 of the *Liquor Act 2007* (the Act) by NSW Police or marine authorities in relation to noise being emitted from licensed premises. As set out in section 75(1)(b) and (c) of the Act, a police officer or marine authority may issue an improvement notice where there is a reasonable belief noise being emitted from a licensed premises is in contravention of the Act or Liquor Regulation 2018, or any noise-related licence condition applying to licensed premises. As no offence provision existed in the Act or the Regulations concerning the emission of noise from licensed premises, the scope and utility of improvement notices for NSW Police and marine authorities was limited only to circumstances where there was a contravention of a noise-related licence condition. This was not the intent of the reforms.

		To bridge this regulatory gap, clause 44C was created as an offence provision to allow for the activation of an improvement notice where there is a contravention of the Act or Regulations. The intent of clause 44C is not to replace the disturbance complaints process as outlined in Part 5, Division 3 of the *Liquor Act 2007*, which only relates to formal statutory disturbance complaints. It is noted that the improvement notice provision in the Act is to replace the noise pollution provisions outlined in the Protection of the Environment Operations Act 1997 (POEO). Under the reforms, licensed premises are exempt from the broader noise pollution provisions in POEO, including the use of noise abatement directions in circumstances where noise from licensed premises is deemed to be offensive noise. The intended use of an improvement notice by NSW Police or marine authority is to ensure that noise emissions from licensed premises can be addressed in exceptional circumstances requiring an immediate operational response or intervention. Following the issuing of an improvement notice, it is open for NSW Police or marine authorities to make a complaint to L&GNSW under the disturbance complaints process in Part 5, Division 3 of the Liquor Act. The inclusion of clause 44C as an offence provision clarifies section 79A of the Liquor Act, which provides that licensed premises must not disturb the quiet and good order of the neighbourhood. The impact of this change on industry is minimal, noting section 79A already provides a clear intent that licensed premises must not disturb the quiet and good order of the neighbourhood.
2	Schedule 1[16]	The Committee seeks clarification regarding the intended effect of clause 130B(1)(c). The Vibrancy Act intended to make the temporary outdoor dining approval power under clause 130B(1)(c) ongoing. To achieve this, the amending Act removed the sunset provision contained in the clause, and added in the word 'indefinitely' into clause 130B(1)(c). The intention of the reform was not to make the temporary approval power a permanent power, instead, it was to only remove the sunset provision in the clause. However, in practice, adding in 'indefinitely' created ambiguity as to whether the temporary approval can have an end date. Removing the word 'indefinitely' and replacing it with "while the temporary boundary approval remains in force" clarifies that the temporary approval has meaning so long as the approval is in force (which is temporary in nature and authorised under s.94A of the Act).
3	Schedule 1[9]	The Committee seeks confirmation that "an application for a small bar" in clause 28A(3), definition of excluded application, paragraph (a), is intended to capture applications for small bar licences and also applications for other approvals or authorisations relating to small bars. The intent of this change is to clarify that the application must be for a 'small bar' for it to be excluded from the requirement to be accompanied by a Statement of Risks and Potential Effects (SoRPE). Section 48(3C) in the old Liquor Act prescribed that an application for a small bar licence relating to the same premises to which a general bar relates, does not require a Community Impact Statement (CIS). This intent was replicated under clause 28A(3)(a)(i). However, the new

		clause inadvertently omitted the words 'small bar'. Without 'small bar' being referenced, this would allow an application for any licence (i.e. a hotel) that is converted from a general bar to be exempt from the requirements to accompany their application with a SoRPE. Note that this provision only applies to a small subset of small bars (i.e. those converting from general bars to small bars) and is not intended to capture applications for small bar licences or applications for other approvals or authorisations relating to small bars more broadly.

Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024

Item	Provision	Response
1	Clause 135, as inserted by Schedule 2[2]	The Committee considers that clause 135 calls for elucidation and welcomes clarification on the intended operation of the relevant provisions given that clause 50P does not commence until 1 September 2024. Prior to the introduction of these measures in the regulation, the Independent Liquor & Gaming Authority (ILGA) has been placing conditions on liquor licences that impose requirements relating to responsible gambling officers, gambling incident registers and gaming plans of management. These conditions in some cases duplicate or conflict with the requirements in the Regulation. These conditions remain in effect until such time as ILGA removes them from a licence. The purpose of the provision (clause 135) is to ensure that those conditions are rendered inoperative when the requirements in the Regulation come into effect so that venues do not need to navigate overlapping or conflicting requirements. The intention is for the requirements in the Regulation to apply equally. The transitional timeframe will give ILGA time to remove these conditions from liquor licences. The purpose of the delayed commencement of the gaming plan of management provision was to allow venues time to compile their gaming plan of management and train staff in it before the provision commenced.
2		The Committee, given the change to the term "gambling harm" in clauses 22, 24 and 41, sought clarification on the rationale for referring to "problem gambling" in clause 104(2)(b) and further queried the reference to problem gambling in clause 46(2). Some material that must have information relating to gambling help requires long transition timeframes before changes can be made. Typically, vendors hold significant quantities of gaming machine tickets (often 2+ years' worth) which means that any changes to tickets must be planned in advance. Liquor & Gaming NSW is considering changes to the terminology for gaming machine tickets as part of broader policy reform that will require significant transitional arrangements. Therefore, it was not considered appropriate to change the terminology in clause 104 at this time.

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

Sincerely,

09/08/2024

The Hon. David Harris MP

Minister for Aboriginal Affairs and Treaty
Minister for Gaming and Racing
Minister for Veterans
Minister for Medical Research
Minister for the Central Coast

LEGISLATIVE COUNCIL

REGULATION COMMITTEE

23 August 2024

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

D24/042035

By email

Dear Minister

Transport Legislation Amendment (Penalties, Fees and Charges) 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:

- *Transport Legislation Amendment (Penalties, Fees and Charges) 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.

Parliament House, Macquarie Street, Sydney NSW 2000 AUSTRALIA

Regulation.Committee@parliament.nsw.gov.au

Scrutiny concerns

	Provision	Issue
1	Schedule 11, as inserted by Schedule 2	While the Committee acknowledges the broad power in the *Marine Safety Act 1998* (***the Act***), section 137(1A) for the regulations to make provision for or with respect to fees and charges for services provided under the Act, the Committee requests clarification regarding the circumstances in which fees for the following matters, as inserted by the *Transport Legislation Amendment (Penalties, Fees and Charges) Regulation 2024* (***the amending regulation***), Schedule 2, are charged, including the relevant provision of the Act or the *Marine Safety Regulation 2016* (***the regulation***) that provides the basis for the fee: • Personal watercraft driving licence upgrade examination—it isn't clear to the Committee what an upgrade is and when this examination is required • Transfer of a boatcode agent authorisation—as the regulation, clause 88 is silent on whether and how an authorisation may be transferred, the Committee queries the relevant process giving rise to the fee • Affixing of hull identification number—the Committee seeks confirmation that the regulation, clauses 87 and 88 do not require a hull identification number to be affixed by a boatcode agent only, and that this fee is charged only if the number is affixed by an agent • Inspection to validate hull identification number—as the body of the regulation appears to be silent on inspecting and validating hull identification numbers, the Committee queries when this occurs • Hull identification number certificates—pad of 50—the Committee can find no reference to a hull identification number certificate in the regulation and queries when and why this may be issued to a person • Retrieval of domestic commercial vessel records—the Committee is unsure what this is referring to and queries whether this relates to the exercise of a particular function by the National Regulator under the Commonwealth domestic commercial vessel national law.
2	Schedule 1, as inserted by Schedule 3[4]	The amending regulation, Schedule 3, item 4 inserts Schedule 1 to specify penalty notice offences and the associated penalty notice amounts for certain offences under the *Photo Card Regulation 2014* and the *Photo Card Act 2005*. Of the eight penalty notice offences inserted for the *Photo Card Act 2005,* the penalty notice amount for the following six offences represents an amount that is approximately 44 per cent of the maximum penalty applicable to a criminal prosecution under that Act: • Sections 20(1)(a), 20(1)(b), 21(a), 23(a), 23(b) and 28(2). Though within power, the Committee considers these penalty notice amounts may make unusual use of the regulation-making powers under the *Photo Card Act 2005* and may detract from the operation of the Act given how high the amounts are relative to the maximum penalties. The Committee seeks information on the rationale behind, and the justification for, the chosen penalty notice amounts.

3	Schedule 3, item 3 as inserted by Schedule 4[3]	Schedule 3, items 3 and 4, as inserted by Schedule 4[3], prescribe a fee for the inspection of a mooring or vessel by Transport for NSW (TfNSW). The Committee notes that the *Ports and Maritime Administration Act 1995*, section 85G(2)(b) provides that the regulations may make provision for or with respect to 'the establishment, administration, operation and enforcement of a wharf booking system and mooring licensing system'. While section 85G(g) empowers the regulations to prescribe fees payable in relation to permits, licences and bookings under a wharf booking system, there is no specific provision providing for fees for a mooring licensing system. On this basis, the Committee seeks clarification as to the relevant provision of the *Ports and Maritime Administration Act 1995* relied on for this fee, and the circumstances in which a mooring may be inspected by TfNSW.
4	Schedule 3, Part 1, item 6, as inserted by Schedule 7[1]	The Committee could not locate another reference to a 'trailer tow truck' in the *Road Transport (Vehicle Registration) Regulation 2017* or the *Road Transport Act 2013* and queries whether this should instead be a reference to a 'tow truck trailer', as used in Part 5, items 7–9 and the corresponding item of the previous fees schedule.
5	Schedule 3, as inserted by Schedule 8	The amending regulation, Schedule 8 inserts Schedule 1, which specifies penalty notice offences and the associated penalty notice amounts for offences under the *Roads Regulation 2018*. The penalty notice amount for all offences represents an amount that is greater than 25 per cent of the maximum penalty applicable to a criminal prosecution for the offence. Specifically, a penalty notice amount of $224 is 40.7 per cent of the maximum penalty for the relevant offence, $477 is 40.6 per cent of the maximum penalty, $672 is 30.5 per cent of the maximum penalty and $930 is 28.2 per cent of the maximum penalty. Similar to issue no 2 above, the Committee seeks information on the rationale behind, and the justification for, the chosen penalty notice amounts listed in Schedule 3.

Please provide a response to the issue identified as nos 1–5 by **6 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.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

REGULATION COMMITTEE

23 August 2024

The Hon. Daniel Mookhey MLC
Treasurer

D24/042039

By email

Dear Minister

Government Sector Finance 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:

- *Government Sector Finance 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.

Parliament House, Macquarie Street, Sydney NSW 2000 AUSTRALIA

Regulation.Committee@parliament.nsw.gov.au

Scrutiny concerns

	Provision	Issue
1	Section 3	The Committee notes that the term ***guarantee***, although referenced in the definitions section, does not appear in *Government Sector Finance Regulation 2024 (**the regulation**),* section 9 as signposted.
2	Section 4(6)	Section 4(6) provides that the Teaching Service and a university or the council or senate for a university are not GSF agencies. The *Government Sector Finance Act 2018 (**the Act**)*, section 2.4(1)(l) is cited as the relevant regulation-making power for section 4(6) and provides that a GSF agency includes 'any other entity (or entity of a kind) prescribed by the regulations as a GSF agency'. The Committee considers that this provision does not appear to provide the regulation-making power to prescribe an entity which is *not* a GSF agency, and therefore is of the view that section 4(6) may not be within the general objects of the legislation under which it was made. The Committee notes that the Act, section 2.4(4) specifies entities that are not GSF agencies. The Committee seeks clarification from the Minister as to the relevant regulation-making power for section 4(6). Further, the Committee queries whether the Act provides that the entities listed in section 4(6) would otherwise be GSF agencies, were it not for section 4(6). If the Act or the regulation do not have the effect of designating the entities as GSF agencies, the Committee queries the reason these particular entities have been called out.
3	Section 6(b)(v)	The Committee queries whether the paragraph should refer to the *Electricity Network Assets (Authorised Transactions) Act 2015*, Schedule 7, clause 6, rather than clause 5. While clause 5 deals with the dissolution of certain electricity network State owned corporations, clause 6 deals with their conversion into corporations constituted as a Ministerial Holding Corporation for the purposes of that Act.
4	Section 7(1)	Section 7(1) provides that 'For the Act, section 2.9(1)(e), a person who is a member of a GSF agency or is appointed to or employed within the GSF agency, is prescribed as a government officer unless the person is referred to in the Act, section 2.9(2).' Given that those entities prescribed as GSF agencies are primarily statutory bodies and government departments and agencies, the Committee queries the reference to 'a member of a GSF agency'. The Committee considers this term calls for elucidation and requests clarification on its intended meaning. In addition, the Committee notes that 'employed within the GSF agency' appears to replicate the Act, section 2.9(1)(b) which prescribes that a ***government officer*** means 'a person employed *in or by* a GSF agency'. The Committee would appreciate confirmation as to whether a different meaning is intended by specifying persons 'employed within the GSF agency'.
5	Section 14	Section 14 provides for definitions specific to the regulation, Part 5, Division 2. The definition of ***relevant transaction*** references a 'non-government sector entity'. The Committee notes that the Act, section 3 defines the term ***General Government Sector,*** however, neither the Act nor regulation define 'non-government sector entity'. The Committee considers this term calls for elucidation and seeks clarification on its intended meaning.

6	Section 28	The regulation, section 28 provides that 'For the Act, section 9.9(5), table, item 3, paragraph (b), the Electoral Commissioner is prescribed as an entity to which the accountable authority for the New South Wales Electoral Commission may subdelegate an expenditure function of the Minister in relation to the Electoral Commission.' Given the Act, section 2.7(2)(h1) provides that the accountable authority for the New South Wales Electoral Commission *is* the Electoral Commissioner, this provision appears to allow the Electoral Commissioner to subdelegate an expenditure function of the Minister to themselves. As the expenditure function has already been delegated to the Electoral Commissioner, in the Committee's view, section 28 appears to produce no legal effect. On this basis, the Committee seeks clarification on the rationale behind section 28.
7	Section 32	Section 32(1)(b) provides that for the Act, section 9.9(5), table, item 2, paragraph (c), the Planning Secretary and Planning government officers are prescribed as entities to which a delegate of the Planning Minister may subdelegate an expenditure function of the Planning Minister. For item 2, the 'kind of delegate' is the Secretary of a Department. Provided that the general delegation power in the Act, section 9.9(2) enables the Planning Minister to delegate their delegable functions to the secretary of *any* department, the Committee queries whether section 32(1)(b) is already covered by the Act, section 9.9(5), table, item 2, paragraphs (a) and (b). Further, section 32(1)(b) appears to create a situation whereby the Planning Minister may delegate an expenditure function to the secretary of a department other than the Department of Planning, Housing and Infrastructure who may, in turn, subdelegate that function to the Planning Secretary or a Planning government officer. Where the Planning Minister has reasons for delegating an expenditure function to a secretary other than the Planning Secretary, the Committee considers the fact that that secretary may then subdelegate the function to the Planning Secretary under section 32(1)(b) could appear to make unusual or unexpected use of the subdelegation power in the Act, section 9.9(5). The Committee would appreciate clarification regarding the rationale behind this, noting the Act, section 9.9(7)(a) contemplates an instrument of appointment as a delegate excluding particular subdelegations. Similarly, the Committee seeks confirmation that the intention behind section 32(1)(c) is to enable, for example, the board of the Luna Park Reserve Trust, if delegated the Planning Minister's expenditure functions as the minister administering the *Luna Park Site Act 1990*, to subdelegate those functions to the Planning Secretary or a Planning government officer.
8	Schedule 3	Schedule 3 lists the reporting GSF agencies (statutory bodies and departments and other agencies) that are transitional reporting GSF agencies for the purposes of section 21(2). The Committee queries the basis on which the Jenolan Caves Reserve Trust (***the Trust***) is a reporting GSF agency. The Act, section 7.3(1) provides that a reporting GSF agency is any GSF agency. The Act, section 2.4(1) and (2) lists those entities that are GSF agencies, of which, in the Committee's view, the Trust does not appear to qualify. Presuming the Trust is still continued under the *National Parks and Wildlife Act 1974*, Schedule 3, Part 6, the Committee seeks clarification on the categorisation of the Trust as a GSF

		agency. For example, as the Trust is subject to the control and direction of the Minister under the *National Parks and Wildlife Act 1974,* repealed section 58W, does this mean it is a 'controlled entity of a Minister' for the purpose of section 2.4(2)(b)? Further, the Committee considers that 'Western Parklands City Authority' in Schedule 3, Part 1 should read 'Western Parkland City Authority' as that is the corporate name given to the entity by the Western Parkland City Authority Act 2018, section 6. Finally, the Committee queries the basis on which the Dumaresq-Barwon Border Rivers Commission has been listed as a department or agency that is a transitional reporting GSF agency. The Committee seeks clarification on the relevant legislation which establishes the Commission as a department or agency that is a GSF agency.

Please provide a response to the issues identified as nos 2-8 by **6 September 2024**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

The issue identified as no 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 or Regulation.Committee@parliament.nsw.gov.au.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

5 September 2024

The Hon. David Harris
Minister for Aboriginal Affairs and Treaty
Minister for Gaming and Racing
Minister for Veterans
Ministers for Medical Research
Minister for the Central Coast

D24/044403

By email

Dear Minister

Liquor Amendment (Vibrancy Reforms) Regulation 2024 and Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024

Thank you for your letter dated 12 August 2024 responding to the scrutiny concerns the Regulation Committee raised with respect to the *Liquor Amendment (Vibrancy Reforms) Regulation 2024* and the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*.

While the Committee appreciates this response, it does, however, consider that additional information is required in order to report on the identified scrutiny concerns in the regulations. This includes reaching a conclusion on the regulations and, if necessary, making a recommendation that a portion of either of the regulations ought to be disallowed if the Committee has outstanding concerns.

The issues on which the Committee is seeking further clarification are set out below.

Liquor Amendment (Vibrancy Reforms) Regulation 2024

1	**Schedule 1[12], proposed clause 44C**
	Your response
	The intent of clause 44C is to support the utility of improvement notices being issued under section 75 of the *Liquor Act 2007* (the Act) by NSW Police or marine authorities in relation to noise being emitted from licensed premises. As set out in section 75(1)(b) and (c) of the Act, a police officer or marine authority may issue an improvement notice where there is a reasonable belief noise being emitted from a licensed premises is in contravention of the Act or Liquor Regulation 2018, or any noise-related licence condition applying to licensed premises. As no offence provision existed in the Act or the Regulations concerning the emission of noise from licensed premises, the scope and utility of improvement notices for NSW Police and marine authorities was

limited only to circumstances where there was a contravention of a noise-related licence condition. This was not the intent of the reforms.

To bridge this regulatory gap, clause 44C was created as an offence provision to allow for the activation of an improvement notice where there is a contravention of the Act or Regulations.

The intent of clause 44C is not to replace the disturbance complaints process as outlined in Part 5, Division 3 of the *Liquor Act 2007*, which only relates to formal statutory disturbance complaints.

… The intended use of an improvement notice by NSW Police or marine authority is to ensure that noise emissions from licensed premises can be addressed in exceptional circumstances requiring an immediate operational response or intervention. Following the issuing of an improvement notice, it is open for NSW Police or marine authorities to make a complaint to L&GNSW under the disturbance complaints process in Part 5, Division 3 of the Liquor Act.

The inclusion of clause 44C as an offence provision clarifies section 79A of the Liquor Act, which provides that licensed premises must not disturb the quiet and good order of the neighbourhood. The impact of this change on industry is minimal, noting section 79A already provides a clear intent that licensed premises must not disturb the quiet and good order of the neighbourhood.

Committee response

The Committee remains concerned that clause 44C may not be within the general objects of, or accord with the spirit of, the legislation under which it was made.

The Committee appreciates the explanation provided but is of the view that the replication of section 79A, though reframed as an offence, for the particular purpose of enabling police officers and marine authorities to issue improvement notices under section 75, still raises issues of potential inconsistency with the Act.

The Committee takes issue with the comment that the offence provision 'clarifies section 79A… [which] already provides a clear intent that licensed premises must not disturb the quiet and good order of the neighbourhood'. Rather than a prohibition against disturbing the peace, the Committee considers the section is better characterised as affirming that a licence is not an authorisation to make noise. Further, if there is a perceived deficiency with section 79A, or the interaction between section 75 and Part 5, Division 3, the Committee considers the appropriate remedy would be to amend section 79A, or Part 5 more broadly, including to clarify the interaction between improvement notices and complaints. The Committee is of the view that, in circumstances where a specific regulation-making power is not being relied on and the Act comprehensively covers the matter, the regulation may not be appropriately 'subordinate' to the Act and, rather than supplementing the Act in a way specifically accounted for, attempts to impliedly amend the Act.

More specifically, the Committee queries how an offence of unduly disturbing, or, in the alternative, unreasonably and seriously disturbing, the quiet and good order of the neighbourhood can be reconciled with section 80A. Under that section, the Secretary may uphold a disturbance complaint, if the order of occupancy is in favour of the licensed premises, only if satisfied the quiet and good order of the neighbourhood has been unreasonably and seriously disturbed. Otherwise, the lower threshold applies. As mentioned in the Committee's letter dated 16 July 2024, this suggests that the Act

	contemplates residents and workers having to accept a certain level of disturbance in certain circumstances, which clause 44C does not account for. The Committee notes that clause 44C will not have the singular effect of being the requisite trigger for section 75(1)(b) and (c). Proceedings may be commenced against a licensee who contravenes clause 44C. It seems manifestly unfair for a prosecution to be able to be commenced for conduct that would not rise to the necessary standard for a complaint to be upheld under section 80A, or that could meet that standard but result in no more than the variation of a licence condition or the issue of a warning (section 81(1)). A finding of guilt or conviction can have far-reaching adverse consequences e.g. as a disqualifying matter for certain applications. Relatedly, noting an improvement notice may include directions to adopt, vary, cease or refrain from a particular practice at licensed premises (section 75(4)), but must not be inconsistent with the Act and the authorisation conferred by the licence (section 75(6)), the Committee is concerned that an improvement notice could include directions to refrain from making noise that, if a complaint were made, would not rise to the necessary standard. In this way, police officers and marine authorities could impose more exacting requirements to minimise noise than the Secretary. However, the Committee's concerns on this point are mitigated by the comment that improvement notices are intended to be used to ensure noise emissions 'can be addressed in exceptional circumstances requiring an immediate operational response or intervention'. The Committee is of the view that 'in contravention of this Act or the regulations' is not confined to a person having committed *an offence* under the Act or the regulations. Further, in light of the fact section 75(1)(b)(ii) and (c)(ii) enable police officers and marine authorities to issue improvement notices for contravention of a noise-related condition applying to a licence, the Committee notes that section 11(3) provides that a condition to which a licence is subject includes a provision of the Act 'that imposes a requirement or restriction (other than as an offence) on or in relation to the licence, licensee or licensed premises concerned'. The Committee reiterates that, if section 79A is not operating as intended (i.e. to impose a requirement or restriction), the section should be amended.
2	**Schedule 1[16]**
	Your response
	The Vibrancy Act intended to make the temporary outdoor dining approval power under clause 130B(1)(c) ongoing. To achieve this, the amending Act removed the sunset provision contained in the clause, and added in the word 'indefinitely' into clause 130B(1)(c). The intention of the reform was not to make the temporary approval power a permanent power, instead, it was to only remove the sunset provision in the clause. However, in practice, adding in 'indefinitely' created ambiguity as to whether the temporary approval can have an end date. Removing the word 'indefinitely' and replacing it with "while the temporary boundary approval remains in force" clarifies that the temporary approval has meaning so long as the approval is in force (which is temporary in nature and authorised under s.94A of the Act).
	Committee response
	The Committee appreciates the context provided but finds paragraph (c) difficult to comprehend. For clause 130B(1)(a) and (b), the chapeau flows through to the criterion i.e. 'The Act, section 94A extends to land as if it were relevant land if [the land/use of the land] is…' However, paragraph (c) results in 'The Act, section 94A extends to land as if it were relevant land if the proposed change to the boundary of the licensed premises under this clause continues while the temporary boundary approval remains in force if the land

	use is exempt development under…' If the intention being paragraph (c) is to provide for the duration of the temporary boundary change, the Committee queries whether paragraph (c) should be a standalone subclause, or the clause otherwise amended to make this clear. If that is the intention, it appears the provision does more than simply extend the exemption in section 94A to certain premises under section 159(4). The Committee queries the need for paragraph (c) given section 94A does not provide for how long a temporary boundary change the subject of an application under that section applies for, but rather the criteria the application must satisfy to be exempt from certain consultation and fee requirements. To that end, the Committee queries whether it is implied that, for example, a temporary boundary change to incorporate a pathway that is subject to a decision by the local council under section 166 no longer applies when and to the extent the council withdraws that decision. If so, is the intention behind paragraph (c) to supplement paragraphs (a) and (b) to make clear the temporary boundary change referred to continues only while the use of the land remains exempt development?
3	**Schedule 1[9]**
	Your response
	The intent of this change is to clarify that the application must be for a 'small bar' for it to be excluded from the requirement to be accompanied by a Statement of Risks and Potential Effects (SoRPE). Section 48(3C) in the old Liquor Act prescribed that an application for a small bar licence relating to the same premises to which a general bar relates, does not require a Community Impact Statement (CIS). This intent was replicated under clause 28A(3)(a)(i). However, the new clause inadvertently omitted the words 'small bar'. Without 'small bar' being referenced, this would allow an application for any licence (i.e. a hotel) that is converted from a general bar to be exempt from the requirements to accompany their application with a SoRPE. Note that this provision only applies to a small subset of small bars (i.e. those converting from general bars to small bars) and is not intended to capture applications for small bar licences or applications for other approvals or authorisations relating to small bars more broadly.
	Committee response
	The Committee appreciates the clarification provided and queries whether the word 'licence' is missing after 'an application for a small bar' in clause 28A(3), definition of ***excluded application***, paragraph (a), particularly as this was included in section 48(3C) as in force immediately before the commencement of the *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023*, Schedule 2[20].

Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024

4	**Schedule 2[2], proposed clause 135**
	Your response
	Prior to the introduction of these measures in the regulation, the Independent Liquor & Gaming Authority (ILGA) has been placing conditions on liquor licences that impose requirements relating to responsible gambling officers, gambling incident registers and gaming plans of management. These conditions in some cases duplicate or conflict with the requirements in the Regulation. These conditions remain in effect until such time as ILGA removes them from a licence.

	The purpose of the provision (clause 135) is to ensure that those conditions are rendered inoperative when the requirements in the Regulation come into effect so that venues do not need to navigate overlapping or conflicting requirements. The intention is for the requirements in the Regulation to apply equally. The transitional timeframe will give ILGA time to remove these conditions from liquor licences. The purpose of the delayed commencement of the gaming plan of management provision was to allow venues time to compile their gaming plan of management and train staff in it before the provision commenced.
	Committee response
	The Committee appreciates the clarification provided and seeks confirmation that clause 135 will operate as intended as, at 1 July 2024, there were hoteliers and registered clubs whose hotel licence or club licence was subject to a condition requiring the licensee to have a gaming plan of management of a kind referred to in the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*, Schedule 1[19], proposed clause 50P. The Committee's concerns relate to the narrow definition of a *gaming plan of management condition*. The Committee considers that 'a gaming plan of management of a kind referred to in the *Gaming Machines Regulation 2019*, clause 50P' is synonymous with 'a gaming plan of management that *complies with* clause 50P'. On this basis, the Committee seeks confirmation that, on 1 July 2024, there were hoteliers and registered clubs who held licences subject to a condition requiring the licensee to have a gaming plan of management that, among other things, includes procedures to ensure compliance with the *Gaming Machines Regulation 2019*, Part 3, Division 4B, Subdivision 1 and addresses the provision of signage and information about help for gambling harm (both matters provided for by way of amendments to the *Gaming Machines Regulation 2019* that came into force on the same day i.e. on 1 July 2024). Relatedly, the Committee queries whether there are licence conditions in force that cover similar ground to clause 50P without satisfying the 'of a kind' description, as this could potentially lead to inconsistent obligations from 1 September 2024. The Committee would also appreciate confirmation that, from 1 July 2024, the Authority has not imposed any new gaming plan of management conditions as these conditions would not appear to be captured by clause 135, which applies to conditions in force *at the commencement of* the clause.

Please provide a response to the issues identified as nos 1–4 by **19 September 2024**

If you have any questions about this correspondence, please contact Madeleine Dowd, Director – Regulation Committee, on or 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

The Hon Jo Haylen MP
Minister for Transport

Ref: 02191029

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

Re: Transport Legislation Amendment (Penalties, Fees and Charges) Regulation 2024

Dear Chair,

Thank you for your letter regarding the Legislation Committee's comments following its review of the Transport Legislation Amendment (Penalties, Fees and Charges) Regulation 2024 (the amending Regulation). I respond to each of the concerns raised in turn.

The first concern raised by the Committee relates to the following issues under the marine safety legislation:

i. Personal watercraft (PWC) driving licence upgrade examination

To get a PWC driving licence, applicants must first get their general boat driving licence. In order to upgrade a general boat driving licence to a PWC driving licence, the customer must undertake the PWC driving licence knowledge test (i.e. upgrade examination). In these circumstances, a PWC driving licence upgrade examination fee is required to be paid.

ii. Transfer of a Boatcode agent authorisation

When a customer is requesting to transfer an existing Boatcode Agency into their name, they are required to complete an Application to Transfer Boatcode Agency Accreditation. Upon approval of transfer of a boatcode agent authorisation from one entity to another, the transfer of a boatcode agent authorisation fee (currently $401) is payable.

iii. Affixing a hull identification number

The hull identification number (HIN) is the vessel equivalent of the Vehicle Identification Number for vehicles. The HIN system (also called Boatcode) gives all powered vessels a

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unique number. For new vessels, the HIN is recorded on a certificate and a plate by the manufacturer. The HIN plate must be permanently attached and clearly displayed on the hull of the vessel. In older boats, a Boatcode Agent can help a customer to get a HIN. The agent can also get the customer a HIN Boatcode Certificate. In these circumstances, the fee for affixing of hull identification number to the vessel (currently $107), is payable.

iv. Inspection to validate a HIN

In some circumstances (such as an attempt to re-birth a vessel), an inspection may be required to validate the vessel HIN. The fee for inspection to validate a HIN (currently $107) is payable in these instances.

The HIN is also listed on the Personal Properties Security Register (PPSR), so a customer can check who owns the vessel. In cases in which it can be confirmed via the PPSR that a HIN is valid and authorised by Transport for NSW, an inspection to validate may not be required and therefore no fee payable.

v. HIN certificates

A Boatcode Agent can provide customers with a HIN Boatcode Certificate following investigation and/or inspection of a vessel and vessel details. To assist administration, a boatcode agent can request a pad of 50 HIN certificates from Transport for NSW at a current cost of $39.

vi. Retrieval of domestic commercial vessel records

Commercial vessels must be licensed to use NSW waterways and the payable fee is broadly within s.137 being a 'service provided under this Act'. This fee is a vestige of when commercial vessels were licensed entirely by the NSW Government and this fee sat in the now repealed Schedule 12. Jurisdiction for licensing commercial vessels passed to the Commonwealth in 2018, however, Transport for NSW Maritime retains the archive of commercial vessel plans, which vessel owners may need access to secure Commonwealth licences and for NSW Ship Construction Certificates granted under s.153 of the *Marine Pollution Act 2012*. As a result, the fee is still required for a vessel to be fully compliant with the regulations on NSW waters.

The second concern raised relates to the penalty notice amounts for certain offences under the *Photo Card Act 2005* that were adjusted in line with Consumer Price Indexation (CPI) by the amending Regulation. I can advise that of the eight penalty notices identified by the Committee, seven were removed when the Photo Card Regulation 2014 was replaced by the Photo Card Regulation 2024 on 1 September 2024 under the staged repeal program.

The remaining penalty offence is for failure to produce a photo card when directed to do so under section 28(2) of the *Photo Card Act 2005*. The offence also requires the authorised officer to advise that failure to produce is an offence. The offence relates to fraudulent identification which can be a serious offence. Due to the serious nature of the offence, a high penalty is appropriate. However, I note that this offence has not been recorded in recent Revenue NSW offence data suggesting the deterrent effect is working.

The third concern relates to a fee charged for inspections of licensed moorings under s.85(2)(g) of the *Ports and Maritime Administration Act 1995*. The granting of a mooring licence requires the installation and maintenance of a mooring apparatus and associated vessel which – as an essential condition of the licence – are required to be installed and maintained. Inspections are routinely required as a part of the administrative process and are conducted when a mooring is established or a licence is varied. Circumstances include inspections during initial mooring allocations to ensure that the vessel can be moored safely in the space available, where changes are made to the vessel or apparatus and to respond to concerns related to risks to safety, property or the environment.

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The fourth item raised by the Committee relates to the reference to a 'trailer tow truck' that appears at item 6 in Part 1 of Schedule 3 of the Road Transport (Vehicle Registration) Regulation 2017. I am advised that this was an oversight that was not identified during drafting of the amending Regulation and Transport for NSW will arrange for an amendment to correct the matter at the earliest available opportunity.

Lastly, item 5 raised by the Committee relates to the penalty notice amounts for all offences under the Roads Regulation 2018. As noted previously, the amending Regulation made changes to penalty notice amounts in line with annual CPI. The maximum fines that a court may impose are expressed in NSW legislation in terms of penalty units which have a fixed amount of $110 and are not subject to annual CPI amendment. The last increase to the value of a penalty unit (from $100 to $110) occurred in 1997. Notwithstanding this, Transport for NSW proposes to conduct a review of the *Roads Act 1993* to determine if its objectives remain fit for purpose. The review is expected to include consideration of the maximum court penalties for offences under the Act and, accordingly, the penalty notice fine amounts for offences under the Regulation under the Act.

We thank the Committee for providing the opportunity to clarify these points.

Sincerely,

11/9/24.

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

Jo Haylen MP
Minister for Transport

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The Hon. David Harris MP
Minister for Aboriginal Affairs and Treaty
Minister for Gaming and Racing
Minister for Veterans
Minister for Medical Research
Minister for the Central Coast

Our Ref: A9058814 | DF24/019451
Your Ref: D24/044403

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

Via email: Regulation.Committeee@parliament.nsw.gov.au

Dear Chair

Thank you for your further correspondence dated 5 September 2024 relating to the Regulation Committee's consideration of the responses provided on 9 August 2024 regarding the following regulations:

- Liquor Amendment (Vibrancy Reforms) Regulation 2024
- Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024.

I note the Committee's comments on the responses provided on 9 August, and provide additional responses in the enclosed table.

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

Sincerely,

23/09/2024

The Hon. David Harris MP

Minister for Aboriginal Affairs and Treaty
Minister for Gaming and Racing
Minister for Veterans
Minister for Medical Research
Minister for the Central Coast

Enclosure: Table of responses to Regulation Committee's concerns

Attachment C

TABLE OF RESPONSES TO REGULATION COMMITTEE'S CONCERNS

Liquor Amendment (Vibrancy Reforms) Regulation 2024

	Provision	The Regulation Committee's Concerns	Response
1	Schedule 1[12], proposed clause 44C	1. The Committee states that it remains concerned that clause 44C may not be within the general objects of, or accord with the spirit of, the legislation under which it was made. 2. The Committee appreciates the explanation provided but is of the view that the replication of section 79A, though reframed as an offence, for the particular purpose of enabling police officers and marine authorities to issue improvement notices under section 75, still raises issues of potential inconsistency with the Act. The Committee takes issue with the comment that the offence provision 'clarifies section 79A… [which] already provides a clear intent that licensed premises must not disturb the quiet and good order of the neighbourhood'. Rather than a prohibition against disturbing the peace, the Committee considers the section is better characterised as affirming that a licence is not an authorisation to make noise. Further, if there is a perceived deficiency with section 79A, or the interaction between section 75 and Part 5, Division 3, the Committee considers the appropriate remedy would be to amend section 79A, or Part 5 more broadly, including to clarify the interaction between improvement notices and complaints. The Committee is of the view that, in circumstances where a specific regulation-making power is not being relied on and the Act comprehensively covers the matter, the regulation may not be appropriately 'subordinate' to the Act and, rather than supplementing the Act in a way specifically accounted for, attempts to impliedly amend the Act. 3. More specifically, the Committee queries how an offence of unduly disturbing, or, in the alternative, unreasonably and seriously disturbing, the quiet and good order of the neighbourhood can be reconciled with section 80A. Under that section, the Secretary may uphold a disturbance complaint, if the order of occupancy is in favour of the licensed premises, only if satisfied the quiet and good order of the neighbourhood has been unreasonably and seriously disturbed. Otherwise, the lower threshold applies. As mentioned in the Committee's letter dated 16 July 2024, this suggests that the Act contemplates residents and workers having to accept a certain level of disturbance in certain circumstances, which clause 44C does not account for. 4. The Committee notes that clause 44C will not have the singular effect of being the requisite trigger for section 75(1)(b) and (c). Proceedings may be commenced against a licensee who contravenes clause 44C. It seems manifestly unfair for a prosecution to be able to be commenced for conduct that would not rise to the necessary standard for a complaint to be upheld under section 80A, or that could meet that standard but result in no more than the variation of a licence condition or the issue of a warning (section 81(1)). A finding of guilt or conviction can have far-reaching adverse consequences e.g. as a disqualifying matter for certain applications. 5. Relatedly, noting an improvement notice may include directions to adopt, vary, cease or refrain from a particular practice at licensed premises (section 75(4)), but must not be inconsistent with the Act and the authorisation conferred by the licence (section 75(6)), the Committee is concerned that an improvement notice could include directions to refrain from making noise that, if a complaint were made, would not rise to the necessary standard. In this way, police officers and marine authorities could impose more exacting requirements to minimise noise than the Secretary. However, the Committee's concerns on this point are mitigated by the comment that improvement notices are intended to be used to ensure	1. <u>Cl44C not being within the objects or spirit of the Act</u> Clause 44C of the Liquor Regulation was created under the regulation making power in the Liquor Act. The objects of the Liquor Act that most aptly apply to the creation of the offence is "*to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community," and "the need to ensure that the sale, supply and consumption of liquor, and the operation of licensed premises, contributes to, and does not detract from, the amenity of community life*" 2. <u>Inconsistency with the Act and regulation-making power used</u> Clause 44C does not replicate s.79A of the Liquor Act. Section 79A of the Act operates as an authorisation, and cl 44C in the Regulation is an offence provision. An offence provision was required to be created as the Act did not provide sufficient provisions to enliven section 75 in the Act. Therefore, the offence was created to ensure there was a legislative threshold that could be used for police officers, and Liquor & Gaming NSW inspectors, to issue a direction under section 75 of the Act. As no offence provision existed in the Act or the Regulation concerning noise from licensed premises, one was required to be created. It is further noted that the regulation was made pursuant to the regulation making powers under sections 159(f5) and (g) and the power under section 159(3) which permits regulations to make an offence punishable by a penalty not exceeding 50 penalty units. 3. <u>Relationship between cl44C and section 80A</u> Cl44C of the Regulation is an offence provision established primarily to enliven the direction power under s75 of the Act, whereas section 80A of the Act, which relates to the disturbance complaint framework, are two interrelated but separate mechanisms. In practice, a section 75 direction may be issued, using cl44C as the legislative threshold contravened. The issuing officer would determine which aspect of cl44C was contravened (either 'unduly' or 'unreasonably and seriously' disturbs). This direction may then form the basis of a complaint made to the Secretary, via s75(7), under section 79B. The specific threshold contravened would then be advised to Liquor & Gaming NSW when determining, and upholding, a complaint under s80A. 4. <u>Cl44C being manifestly unfair</u> Although it is noted that although it does not have the singular effect of being the trigger for s75, and that its application may have a broader reach, its inclusion in the Regulation is based on the regulation making power in the Act as stated in response 2. 5. <u>Improvement Notices imposing more exacting requirements than the Secretary</u> As noted, improvement notices are intended to be used in exceptional circumstances requiring an immediate operational response or intervention. 6. <u>Defect in section 79A</u> The drafting intent was for section 79A to operate as a condition that can be contravened via section 11(3), so as to enliven section 75(1)(b) and (c). We agree that what constitutes a contravention of the Act or Regulations is to be interpreted broadly and includes conduct

	Provision	The Regulation Committee's Concerns	Response
		noise emissions 'can be addressed in exceptional circumstances requiring an immediate operational response or intervention'. 6. The Committee is of the view that 'in contravention of this Act or the regulations' is not confined to a person having committed an offence under the Act or the regulations. Further, in light of the fact section 75(1)(b)(ii) and (c)(ii) enable police officers and marine authorities to issue improvement notices for contravention of a noise-related condition applying to a licence, the Committee notes that section 11(3) provides that a condition to which a licence is subject includes a provision of the Act 'that imposes a requirement or restriction (other than as an offence) on or in relation to the licence, licensee or licensed premises concerned'. The Committee reiterates that, if section 79A is not operating as intended (i.e. to impose a requirement or restriction), the section should be amended.	which doesn't necessarily amount to an offence. Contravention could include conduct such as a breach of a licence condition. Section 11(3) provides that a condition to which a licence is subject includes any provision of this Act that imposes a requirement or restriction (other than an offence). We note the Committee's view that section 79A as presently worded does not impose a restriction or requirement, which would amount to a condition under section 11(3) that is capable of being contravened. Whilst consideration could be given to strengthening the language adopted in section 79A to make it clear that it is to act as an restriction or requirement, we maintain the position that section 79A is open to being interpreted as imposing a requirement or restriction as contemplated by section 11(3), namely that licensed premises must not conduct business in a way that disturbs the quiet and good order of the neighbourhood. It follows that conduct that breaches section 79A could amount to a contravention of the Act. This would in turn trigger the improvement notice provisions of section 75(1)(b) and (c).
2	Schedule 1[16], amendment to clause 130B(c)	The Committee states that it finds paragraph (c) difficult to comprehend. For clause 130B(1)(a) and (b), the chapeau flows through to the criterion i.e. 'The Act, section 94A extends to land as if it were relevant land if [the land/use of the land] is…' However, paragraph (c) results in 'The Act, section 94A extends to land as if it were relevant land if the proposed change to the boundary of the licensed premises under this clause continues while the temporary boundary approval remains in force if the land use is exempt development under…' If the intention being paragraph (c) is to provide for the duration of the temporary boundary change, the Committee queries whether paragraph (c) should be a standalone subclause, or the clause otherwise amended to make this clear. If that is the intention, it appears the provision does more than simply extend the exemption in section 94A to certain premises under section 159(4). The Committee queries the need for paragraph (c) given section 94A does not provide for how long a temporary boundary change the subject of an application under that section applies for, but rather the criteria the application must satisfy to be exempt from certain consultation and fee requirements. To that end, the Committee queries whether it is implied that, for example, a temporary boundary change to incorporate a pathway that is subject to a decision by the local council under section 166 no longer applies when and to the extent the council withdraws that decision. If so, is the intention behind paragraph (c) to supplement paragraphs (a) and (b) to make clear the temporary boundary change referred to continues only while the use of the land remains exempt development?	Clause 130B is a clarification provision. Although the temporary nature of the outdoor dining approval is set out in section 94A of the Act, and cl130B(1)(b) sets out the relevant land to which cl130B operates, cl130B restates both elements. It is noted that it is likely the relevant elements of cl130B(1)(c) are already provided for by s94A in the Act and cl130B(1)(b). In simple terms, the intention of cl130B(1)(c) is to clarify that the temporary boundary extension is only in force while the 'approval' is in force. The 'approval' in question relates to an approval under s94 of the Act. The origin of 130B(1)(c) highlights the nature of the drafting construct: - Prior to 12/12/2023, cl130B(1)(c) stated "*the proposed temporary change to the boundary of the licensed premises under the section will not continue past 31 December 2023.*". - On 12/12/2023, an amendment was made to cl130B(1)(c) to read "*the proposed change to the boundary of the licensed premises under this clause* ***continues indefinitely*** *if the land use is exempt development….*". This amendment included incorrect drafting. The intention was to remove the sunset clause (being cl130B(1)(c)), however, the drafting resulted in all temporary approvals being made **indefinite**. - On 1/7/2024, a further amendment was made to address the drafting error, with the intention to clarify that a boundary extension under 130B is only valid for the length of time that it has been approved by L&GNSW under s94 of the Act.
3	Schedule 1[9], amendment to clause 28A(3)(a)	The Committee queries whether the word 'licence' is missing after the words 'an application for a small bar' in clause 28A(3), definition of **excluded application**, paragraph (a), particularly as this was included in section 48(3C) as in force immediately before the commencement of the *24-Hour Economy Legislation Amendment (Vibrancy Reforms) Act 2023*, Schedule 2[20].	The clause could be further clarified by including the word "licence" after the words "application for a small bar" noting that the word "licence" was included in previous section 48(3C). This item will be raised for consideration at the time of the next amendment to the Regulation.

Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024

	Provision	The Regulation Committee's Concerns	Response
1	Schedule 2[2],	The Committee notes the clarification provided on the purpose of clause 135, however seeks confirmation that the clause will operate as intended. Specifically, the Committee express	The Department is of the view that the *'of a kind'* description adequately captures gaming plans of management that are currently in place under licence conditions.

	Provision	The Regulation Committee's Concerns	Response
	proposed clause 135	concerns regarding the wording under clause 135: "a gaming plan of management *of a kind* referred to in the Gaming Machines Regulation 2019, clause 50P". The Committee: • seeks confirmation that on 1 July 2024, there were venues subject to licence conditions requiring a gaming plan of management, • queries whether there are licence conditions in force that require a gaming plan of management that is not 'of a kind' with that required in clause 50P, and • seeks confirmation that, from 1 July, ILGA has not imposed any new gaming plan of management conditions on licenses.	The intent of clause 135 as clarified with the Committee was provided to the NSW Parliamentary Counsel's Office as part of the drafting instructions process. The gaming plan of management requirements under clause 50P are informed by requirements previously stipulated by the Authority under licence conditions. Given how licence conditions are recorded, however, the Department cannot be definitively certain whether there are license conditions for a gaming plan of management currently in force that address similar ground to clause 50P without necessarily satisfying the 'of a kind' description. On 1 July 2024, there were 290 hoteliers and registered clubs who held licences subject to a condition requiring a gaming plan of management. The Authority has not imposed any gaming plan of management conditions on licences since 1 July 2024.

The Hon Daniel Mookhey MLC
Treasurer

Our ref: MC2400717
Your ref: D24/042039

The Hon Natasha Maclaren-Jones MLC
Legislative Council Committee Chair
Regulation.Committee@parliament.nsw.gov.au

Re: Government Sector Finance Regulation 2024

Dear Ms Maclaren-Jones

I write to respond to the issues identified by the Legislative Council's Regulation Committee in your letter dated 23 August 2024. Thank you to the Committee members for their efforts in reviewing the *Government Sector Finance Regulation 2024* (GSF Regulation). I welcome the opportunity to respond to the findings of this review.

I acknowledge the eight issues raised by the Committee relating to the *Legislation Review Act 1987*, sections 9(1)(b)(iii), (iv) and (vii), and provide NSW Treasury's response in the attached table – which I endorse. I note that most of the issues pertain to seeking clarification of the intended meaning or the rationale of certain provisions in the GSF Regulation.

In relation to issue 2, I agree with the finding that there is no regulation-making power for GSF Regulation, clause 4(6), and note that this provision is now redundant. The original purpose of clause 4(6) to the *Government Sector Finance Regulation 2018* was to clarify that the Teaching Service and universities and related entities were not GSF agencies. This provision was intended to assist with the transition from the *Public Finance and Audit Act 1983* to the *Government Sector Finance Act 2018*.

I also recognise that there are minor amendments required to: Clause 3 (definition of 'guarantee'); Clause 4(6) (Teaching Service and universities); Clause 6(b)(v) (cross-reference to *Electricity Network Assets (Authorised Transactions) Act 2015*; Clause 7(1) (removing 'employed within'); and Clause 28 (Electoral Commissioner).

Treasury is arranging for these amendments to be made to the GSF Regulation by June 2025, alongside other planned amendments. Please contact Jeanne Vandenbroek, Director, Financial Management Legislation, Policy and Assurance for any queries via email at

Sincerely

Daniel Mookhey MLC
Treasurer

Date: 26/6/24

Attachment A: Issues identified as part of Regulation Committee's review of the GSF Regulation 2024

Treasury

Attachment A: Issues identified as part of Regulation Committee's review of the *GSF Regulation 2024*

	GSF Regulation 2024 provision	Issues identified by the Regulation Committee
1	Clause 3	Issue: The Committee notes that the term guarantee, although referenced in the definitions section, does not appear in the *Government Sector Finance Regulation 2024 (**the regulation**)* section 9 as signposted.
		Response: Noted. The regulation includes a definition of 'general guarantee' in clause 9. The intent was to remove signposting to a 'guarantee' definition as it was replaced by a 'general guarantee' definition. The term guarantee will be removed from clause 3 when the regulation is next amended.
2	Clause 4(6)	Issue**:** Section 4(6) provides that the Teaching Service and a university or the council or senate for a university are not GSF agencies. The Government Sector Finance Act 2018 (the Act), section 2.4(1)(l) is cited as the relevant regulation making power for section 4(6) and provides that a GSF agency includes 'any other entity (or entity of a kind) prescribed by the regulations as a GSF agency'. The Committee considers that this provision does not appear to provide the regulation-making power to prescribe an entity which is not a GSF agency, and therefore is of the view that section 4(6) may not be within the general objects of the legislation under which it was made. The Committee notes that the Act, section 2.4(4) specifies entities that are not GSF agencies. The Committee seeks clarification from the Minister as to the relevant regulation-making power for section 4(6). Further, the Committee queries whether the Act provides that the entities listed in section 4(6) would otherwise be GSF agencies, were it not for section 4(6). If the Act or the regulation do not have the effect of designating the entities as GSF agencies, the Committee queries the reason these particular entities have been called out.
		Response: Treasury agrees with the Committee's finding that there is no provision in the GSF Act to exclude an agency or entity that meets the definition of a GSF agency under section 2.4 of the GSF Act from being a GSF

Treasury

	GSF Regulation 2024 provision	Issues identified by the Regulation Committee
		agency. Further, there is no relevant regulation-making power in the GSF Act that makes clause 4(6) to the GSF Regulation operational. This was carried over from the GSF Regulation 2018 (Clause 4(6)), however in remaking the GSF Regulation 2024 the wording has changed. This provision was intended to assist with the transition from the *Public Finance and Audit Act 1983* (PFA Act) to the *Government Sector Finance Act 2018* (GSF Act). The 'Teaching Service' is not a GSF agency since it does not meet the criteria in section 2.4 of the GSF Act. The Service's members are employed by other GSF agencies (including, the Department of Education). The 'Teaching Service' was previously the equivalent of a GSF Agency under the repealed PFA Act which was replaced by the GSF Act. Universities or the council or senate for these universities were not intended to be within the scope of the definition of GSF agency (section 2.4(1) of the GSF Act). These entities however are treated as both GSF agencies and reporting GSF agencies for the purposes of Division 7 of the GSF Act only. The purpose of listing them in the GSF Regulation as 'not GSF Agencies' is for clarity only. It is recognised that clause 4(6) of the regulation is redundant, and the function of clarity and emphasis is no longer relevant. The *GSF Regulation 2024* will be amended accordingly.
3	Clause 6(b)(v)	Issue: The Committee queries whether the paragraph should refer to the *Electricity Network Assets (Authorised Transactions) Act 2015*, Schedule 7, clause 6, rather than clause 5. While clause 5 deals with the dissolution of certain electricity network State owned corporations, clause 6 deals with their conversion into corporations constituted as a Ministerial Holding Corporation for the purposes of that Act.
		Response: Agreed. Schedule 7, clause 6 of the *Electricity Network Assets (Authorised Transactions) Act 2015* is the correct provision. The GSF Regulation 2024 will be amended accordingly.
4	Clause 7(1)	Issue: Section 7(1) provides that 'For the Act, section 2.9(1)(e), a person who is a member of a GSF agency or is appointed to or employed within the GSF agency, is prescribed as a government officer unless the person is referred to in the Act, section 2.9(2).' Given that those entities prescribed as GSF agencies are

Treasury

	GSF Regulation 2024 provision	Issues identified by the Regulation Committee
		primarily statutory bodies and government departments and agencies, the Committee queries the reference to 'a member of a GSF agency'. The Committee considers this term calls for elucidation and requests clarification on its intended meaning. In addition, the Committee notes that 'employed within the GSF agency' appears to replicate the Act, section 2.9(1)(b) which prescribes that a government officer means 'a person employed in or by a GSF agency'. The Committee would appreciate confirmation as to whether a different meaning is intended by specifying persons 'employed within the GSF agency'.
		Response: 'Member of a GSF agency' was not referenced in the original provision in the GSF Regulation 2018 (Clause 6(1), but was included in an amended version of the GSF Regulation (July 2021). It is not defined in the GSF Act nor the GSF Regulation Clause 7(1) (previously clause 6(1) following amendment to the *GSF Regulation* in July 2021) was introduced to replace the reference to *Public Finance and Audit Act 1983* (PFA Act) in the *Government Sector Finance Regulation 2024* (GSF Regulation). The reference related to the meaning of "government officer" under the *GSF Act* and relied on the existing definition of "officer of an authority" in the *PFA Act* (renamed as the *Government Sector Audit Act 1983*). In terms of the definition of "officer of an authority" in the *PFA Act* (see s. 4), these officers are already covered under the GSF Act (section 2.9(1)). A person who is a "member" of a GSF agency (e.g. a member of the IPART) is not a government officer under the *GSF Act*. The current reference to 'member of a GSF agency' in the GSF Regulation is used to capture those persons not caught by section 2.9(1) of the *GSF Act*. Section 59 of the *Government Sector Employment Act 2013* (GSE Act) outlines how references to a 'member of staff' for statutory bodies or officer in other Acts should be interpreted. 'A person employed in or by a GSF agency' (section 2.9(1)(b) of the GSF Act) is intended to cover those GSE Act agencies, where there is no such thing as a person employed "by" an agency. Rather, the employees are all employees of the Crown, employed in a particular part of the government sector.

Treasury

	GSF Regulation 2024 provision	Issues identified by the Regulation Committee
		Treasury agrees with the Regulation Committee's observation that 'employed within the GSF agency' appears to be covered by the Act, and therefore, may be redundant in the regulation. It is proposed that the GSF Regulation be amended by removing the words 'employed within'.
5	Clause14	Issue: Section 14 provides for definitions specific to the regulation, Part 5, Division 2. The definition of relevant transaction references a 'non-government sector entity'. The Committee notes that the Act, section 3 [*sic section 1.4*] defines the term General Government Sector, however, neither the Act nor regulation define 'non-government sector entity'. The Committee considers this term calls for elucidation and seeks clarification on its intended meaning.
		Response: 'Non-government sector entity' in this context is interpreted as having its plain and ordinary meaning, which is generally a private sector entity. 'Non-government sector entity' is not defined in the GSF Act nor the GSF Regulation. Treasury, with the advice of the Parliamentary Counsel's Office, will review, and consider whether any amendment to the GSF Regulation 2024 is necessary.
6	Clause 28	Issue: The regulation, section 28 provides that 'For the Act, section 9.9(5), table, item 3, paragraph (b), the Electoral Commissioner is prescribed as an entity to which the accountable authority for the New South Wales Electoral Commission may subdelegate an expenditure function of the Minister in relation to the Electoral Commission.' Given the Act, section 2.7(2)(h1) provides that the accountable authority for the New South Wales Electoral Commission is the Electoral Commissioner, this provision appears to allow the Electoral Commissioner to subdelegate an expenditure function of the Minister to themselves. As the expenditure function has already been delegated to the Electoral Commissioner, in the Committee's view, section 28 appears to produce no legal effect. On this basis, the Committee seeks clarification on the rationale behind section 28.
		Response:

Treasury

	GSF Regulation 2024 provision	Issues identified by the Regulation Committee
		Clause 28 was introduced prior to the making of the *Electoral Legislation Amendment Act* 2022 (the Amendment), which prescribed the Electoral Commissioner as the accountable authority for the NSW Electoral Commission. Prior to the Amendment, the accountable authority for the Electoral Commission was the three-member NSW Electoral Commission, of which the NSW Electoral Commissioner is only one member. The clause was introduced at that time, in consultation with the Electoral Commission, in order to allow the Electoral Commissioner to be delegated the necessary functions of the accountable authority, in order to provide for the agency's day-tot-day finance and resource management. The introduction of the Amendment means that clause 28 of the Regulation no longer has any legal effect. The NSW Electoral Commission has also confirmed that clause 28 is no longer needed. Clause 28 to the GSF Regulation will be repealed as it is now redundant.
7	Clause 32	Issue: Section 32(1)(b) provides that for the Act, section 9.9(5), table, item 2, paragraph (c), the Planning Secretary and Planning government officers are prescribed as entities to which a delegate of the Planning Minister may subdelegate an expenditure function of the Planning Minister. For item 2, the 'kind of delegate' is the Secretary of a Department. Provided that the general delegation power in the Act, section 9.9(2) enables the Planning Minister to delegate their delegable functions to the secretary of any department, the Committee queries whether section 32(1)(b) is already covered by the Act, section 9.9(5), table, item 2, paragraphs (a) and (b). Further, section 32(1)(b) appears to create a situation whereby the Planning Minister may delegate an expenditure function to the secretary of a department other than the Department of Planning, Housing and Infrastructure who may, in turn, subdelegate that function to the Planning Secretary or a Planning government officer. Where the Planning Minister has reasons for delegating an expenditure function to a secretary other than the Planning Secretary, the Committee considers the fact that that secretary may then subdelegate the function to the Planning Secretary under section 32(1)(b) could appear to make unusual or unexpected use

Treasury

	GSF Regulation 2024 provision	Issues identified by the Regulation Committee
		of the subdelegation power in the Act, section 9.9(5). The Committee would appreciate clarification regarding the rationale behind this, noting the Act, section 9.9(7)(a) contemplates an instrument of appointment as a delegate excluding particular subdelegations. Similarly, the Committee seeks confirmation that the intention behind section 32(1)(c) is to enable, for example, the board of the Luna Park Reserve Trust, if delegated the Planning Minister's expenditure functions as the minister administering the Luna Park Site Act 1990, to subdelegate those functions to the Planning Secretary or a Planning government officer.
		Response: The Department of Planning, Housing and Infrastructure (DPHI) agrees with the Committee's interpretation that the subdelegates prescribed by clause 32 are captured by the description of permissible delegates prescribed in item 2 of the table in section 9.9(5) of the GSF Act. Clause 12 to the *GSF Regulation 2018* (now Clause 32 to the *GSF Regulation 2024*) evolved as a result of differing views at that point in time regarding the interaction between the highly prescriptive delegations framework that incorporates a tabulated list of permissible delegates and subdelegates in section 9.9 of the GSF Act and the definition of Responsible Minister in section 2.8 of that Act. The original intent was to seek to enable a Secretary of any Department to subdelegate a Minister's expenditure function to a government officer of any GSF agency, to facilitate cooperative administration across the public sector. The scenario involving the board of the Luna Park Reserve Trust that has been suggested by the Committee was not contemplated as a policy objective. DPHI have not in the last six years needed to rely on the provision that was clause 12 of the *GSF Regulation 2018* and now clause 32 of the *GSF Regulation 2024* to facilitate any expenditure decision-making by the DPHI Secretary or departmental officers. DPHI have been relying on the sufficiently broad definition of government officer in section 2.9 of GSF Act and the execution of shared services agreements to facilitate the provision of shared payments processing services across GSF agencies.

Treasury

	GSF Regulation 2024 provision	Issues identified by the Regulation Committee
		The GSF Act 2018 enables the Treasurer, Ministers and Accountable Authorities to delegate a broad range of responsibilities and powers as well as permitting their delegates to subdelegate. This includes (but is not limited to) functions regarding: the expenditure of money; making payments out of Consolidated Fund; and making payments out of an account within the Special Deposits Account (SDA) or statutory special purpose fund. Delegations and sub delegations are operational matters that have been prescribed at request of the Minister to manage the operational arrangements of the portfolio.
8	Schedule 3	Issue: Schedule 3 lists the reporting GSF agencies (statutory bodies and departments and other agencies) that are transitional reporting GSF agencies for the purposes of section 21(2). The Committee queries the basis on which the Jenolan Caves Reserve Trust (the Trust) is a reporting GSF agency. The Act, section 7.3(1) provides that a reporting GSF agency is any GSF agency. The Act, section 2.4(1) and (2) lists those entities that are GSF agencies, of which, in the Committee's view, the Trust does not appear to qualify. Presuming the Trust is still continued under the National Parks and Wildlife Act 1974, Schedule 3, Part 6, the Committee seeks clarification on the categorisation of the Trust as a GSF agency. For example, as the Trust is subject to the control and direction of the Minister under the National Parks and Wildlife Act 1974, repealed section 58W, does this mean it is a 'controlled entity of a Minister' for the purpose of section 2.4(2)(b)? Further, the Committee considers that 'Western Parklands City Authority' in Schedule 3, Part 1 should read 'Western Parkland City Authority' as that is the corporate name given to the entity by the *Western Parkland City Authority Act 2018*, section 6. Finally, the Committee queries the basis on which the Dumaresq-Barwon Border Rivers Commission has been listed as a department or agency that is a transitional reporting GSF agency. The Committee seeks clarification on the relevant legislation which establishes the Commission as a department or agency that is a GSF agency.
		Response:

Treasury

	GSF Regulation 2024 provision	Issues identified by the Regulation Committee
		The Jenolan Caves Reserve Trust (Trust) would be a 'controlled entity of a Minister' for the purposes of section 2.2(1)(a)(i) of the GSF Act, and consequently a GSF Agency pursuant to section 2.4(2)(b). The Trust exists through the operation of clause 58(1) of Schedule 3 of the *National Parks and Wildlife Act 1974* (NPW Act). Clause 58(3)(b) of Schedule 3 to the NPW Act provides that provisions amended or repealed by Schedule 1 of the *National Parks and Wildlife Amendment (Jenolan Caves Reserves) Act 2005* (Amending Act) that were relevant to the responsibilities, powers, authorities, duties and functions of the Trust continue to operate as if they had not been amended or repealed. The now repealed section 58W(2) of the NPW Act provided that the Trust was subject to the control and direction of the Minister administering the NPW Act. This continues to have effect through the operation of clause 58(3)(b) of Schedule 3 to the NPW Act. It is noted that it should be Western Sydney Parkland Authority instead of Western Sydney Parklands Authority. This typographical error has not affected the operation of Schedule 3. The Dumaresq-Barwon Border Rivers Commission should appear under the statutory bodies list instead of the department or agency list in Schedule 3. The relevant establishing legislation is the *New South Wales - Queensland Border Rivers Act 1947 No 10 (NSW)*. This typographical error has not affected the operation of the Schedule 3. With Schedule 3 to be repealed on 1 July 2025 it is not intended amend the regulation for the two typographical corrections.

The Hon Jodie Harrison MP
Minister for Women
Minister for Seniors
Minister for the Prevention of Domestic Violence and Sexual Assault

Ref: A9122663-DF24/021549
11 October 2024

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

Via email: Regulation.Committee@parliament.nsw.gov.au

Re: Liquor Amendment (Vibrancy Reforms) Regulation 2024

Dear Chair

Thank you for your feedback in relation to the Liquor Amendment (Vibrancy Reforms) Regulation 2024. I am responding on behalf of the Hon. David Harris MP, Minister for Gaming and Racing who is currently on leave.

I understand the Committee has some ongoing concerns about clause 44C of the Liquor Regulation 2018 following responses provided to you in August and September 2024.

I note and appreciate the concerns raised by the Committee and thank the Committee for its consideration of these issues. I support the role of the Committee in its careful scrutiny of Government regulation.

I am informed that Clause 44C was intended to be temporary in nature and only to be used until a legislative amendment could be made to section 79A of the Liquor Act 2007.

To address the issues raised by the Committee, the Government is preparing legislative amendments to the Act to clarify the intent of section 79A. The Government intends to introduce a Bill to Parliament in October 2024 as part of the second tranche of the Government's Vibrancy Reforms.

As part of these reforms, it is intended that this Bill omit clause 44C from the Liquor Regulation 2018 and make amendments to the Act to clarify the intent of section 79A.

Thank you for raising these issues and I trust this response resolves your concerns relating to this matter.

Sincerely,

The Hon. Jodie Harrison MP