



LEGISLATIVE COUNCIL

REGULATION COMMITTEE

# Delegated Legislation Monitor No. 1 of 2025

12 February 2025



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Regulation Committee

# **Delegated Legislation Monitor No. 1 of 2025**

Ordered to be printed Wednesday 12 February 2025

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

Delegated Legislation Monitor No. 1 of 2025

'February 2025'

Chair: Hon Natasha Maclaren-Jones MLC

ISSN: 2982-0111

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## Committee details

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<b>Ms Abigail Boyd MLC</b>	The Greens	<i>Deputy Chair</i>
<b>Hon Susan Carter MLC</b>	Liberal Party	
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Hon Natasha Maclaren-Jones MLC  
**Committee Chair**

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# Overview of the Delegated Legislation Monitor

## Operation of the Committee's technical scrutiny function

- 1.1** The Regulation Committee was first established on a trial basis on 23 November 2017 in the 56th Parliament.<sup>1</sup> The Committee was reappointed in the 57th Parliament on 8 May 2019 and in the 58th Parliament on 10 May 2023.<sup>2</sup>
- 1.2** On 19 October 2023, the Legislative Council amended the resolution of the House establishing the Regulation Committee to require the Committee to scrutinise delegated legislation that is subject to disallowance.<sup>3</sup>
- 1.3** Paragraph (3) of the amended resolution requires that:
- The committee, from the first sitting day in 2024:
- (a) is to consider all instruments of a legislative nature that are subject to disallowance while they are so subject, against the scrutiny principles set out in section 9(1)(b) of the *Legislation Review Act 1987*,
  - (b) may report on such instruments as it thinks necessary, including setting out its opinion that an instrument or portion of an instrument ought to be disallowed and the grounds on which it has formed that opinion, and
  - (c) may consider and report on an instrument after it has ceased to be subject to disallowance if the committee resolves to do so while the instrument is subject to disallowance.
- 1.4** In accordance with paragraph (3), the Committee will consider any instrument that is disallowable, during the period within which it may be disallowed. That includes 'statutory rules', within the meaning of the *Interpretation Act 1987*, that are disallowable by virtue of section 41 of that Act. It also includes other instruments to which section 41 applies indirectly, i.e., where the Act under which an instrument is made provides it is to be treated as if it were a statutory rule for the purposes of section 41.
- 1.5** A list of instruments that are subject to disallowance is published on the Parliament's website on the first Tuesday of each month and each Tuesday when the Legislative Council is sitting.
- 1.6** With regard to the scrutiny principles the Committee is required to assess instruments against, the *Legislation Review Act 1987*, section 9(1)(b) sets out eight grounds of scrutiny as follows:
- (i) that the regulation trespasses unduly on personal rights and liberties
  - (ii) that the regulation may have an adverse impact on the business community
  - (iii) that the regulation may not have been within the general objects of the legislation under which it was made

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

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

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

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

- 1.7** The Committee has published guidelines on its webpage that provide an overview of its intended approach to its technical scrutiny function and specific guidance in respect of each of these eight grounds.
- 1.8** Each sitting week, the Committee will publish a Delegated Legislation Monitor setting out its progress and conclusions relating to the technical scrutiny of disallowable instruments. The monitor will set out matters where the Committee has sought further information from the responsible minister, department or other body, the Committee's conclusions in relation to instruments where concerns have been raised and a list of those instruments the Committee has reviewed which have not raised scrutiny concerns.
- 1.9** In addition to the regular publication of monitors the Committee may, from time to time and under paragraph (2) of the resolution establishing it, inquire into and report on:
- (a) any instrument of a legislative nature regardless of its form, including the policy or substantive content of the instrument,
  - (b) draft delegated legislation, and
  - (c) trends or issues in relation to delegated legislation.

## **Conclusions and structure of Monitor No. 1 of 2025**

- 1.10** For this monitor, the Committee has reviewed 41 instruments published on the NSW legislation website or in the NSW Government Gazette between 30 September 2024 and 10 January 2025. The Committee has:
- concluded its scrutiny of four instruments, as set out in Chapter 1, and
  - concluded that 37 instruments raise no scrutiny concerns, as set out in Chapter 2,
- 1.11** A further nine instruments notified between 29 November 2024 and 31 January 2025 remain under review, for consideration in a future monitor.



## Chapter 1 Concluded scrutiny matters

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

### Police Amendment (Police Officer Support Scheme) Regulation 2024

SI number / GG reference	2024 No 510
Published on Legislation Website (LW)	30/09/2024
Tabled in Legislative Council (LC)	15/10/2024
Last date of notice for disallowance motion	18/02/2025

#### Overview

- 1.1 The [Police Amendment \(Police Officer Support Scheme\) Regulation 2024](#) (amending regulation) amends the *Police Regulation 2015* (the regulation), as stated in the explanatory note, to provide for an enhanced police officer support scheme regarding—
- (a) payments to or in relation to police officers that constitute death benefits, and
  - (b) payments to or in relation to police officers who become permanently or temporarily incapacitated for work because of an on-duty injury, and
  - (c) payments to or in relation to police officers who become permanently or temporarily incapacitated for work because of an off-duty injury.
- 1.2 The amending regulation was made under the *Police Act 1990* (the Act), including Part 9B and section 219, the general regulation-making power. The amending regulation commenced on 1 October 2024.<sup>4</sup>
- 1.3 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (vii) in relation to the amending regulation by letter sent to the Minister for Police and

<sup>4</sup> The amending regulation, section 2 provides that ‘this regulation commences on the day on which the *Police Amendment (Police Officer Support Scheme) Act 2024* commences’. The *Police Amendment (Police Officer Support Scheme) Act 2024*, section 2 provides that that Act commences, or is taken to have commenced, on the earlier of the following, the date of assent to that Act, or 1 October 2024. Although the Act was assented to on 27 September 2024, the amending regulation was published on 1 October 2024 and under the *Interpretation Act 1987*, section 39(2A), the regulation is not invalid merely because the regulation was published on the NSW legislation website after the day on which one or more of its provisions is or are expressed to commence but provides, in that case, for that or those provisions to commence on the day on which it is published on the NSW legislation website, instead of on the earlier day.

Counter-terrorism on 25 November 2024. The Minister responded on 13 December 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 clarity and certainty in delegated legislation and whether any matters require clarification.
- 1.5 The amending regulation, Schedule 1[2], proposed clause 135M provides that the Minister must establish a panel (the CEEP panel) to consider applications by incapacitated police officers for catastrophic or exceptional extension payments. Proposed clause 135J(4)(a) provides that, if an incapacitated police officer fails to comply with a request to provide further information, or to undergo further assessment, to assist the CEEP panel in deciding whether to approve the officer's application for catastrophic or exceptional extension payments, the application is taken to have been suspended until the officer complies with the request.
- 1.6 Clause 135J(4)(b) provides that, if the incapacitated police officer subsequently complies with the request, any payments under the regulation, Part 6A, Division 3 to which the officer would have been entitled, but for the failure to comply, may be reinstated to the day the payments ceased to be made.
- 1.7 Noting an application may be made within the last 6 months that an incapacitated police officer receives payments under clause 135I, the Committee sought confirmation that, as suggested by clause 135J(4)(b), those payments may cease, from the date the application is taken to be suspended until the end of the 7-year period, for failure to comply with the request of the CEEP panel.
- 1.8 The Committee queried whether this is because of the operation of clause 135ZI, noting that clause enables *the Commissioner* to cease payments for failure to comply with a notice given by the Commissioner requiring an incapacitated police officer to 'give the Commissioner information that relates to the police officer's injury or eligibility or receipt of payments'. This is different to the requirement in clause 135J(3) to provide further information, *or to undergo further assessment* to assist the CEEP panel. If this was not the case, the Committee requested which provisions directly enable payments under the division to be ceased for failure to comply with a request under clause 135J(3).
- 1.9 Further, in relation to the reference to 'under this division' in clause 135J(4)(b), the Committee queried whether payments other than payments under clause 135I are intended to be captured by this, including whether it is intended that catastrophic or exceptional extension payments be backdated to the date an application, which is later approved, was made.
- 1.10 In relation to clause 135J(4)(b) and related payments, the Minister provided the following context:

The intent of 135J(4)(b) is for any officers who subsequently comply with 135J(3) (providing further information or undergoing further assessment as part of the CEEP application) whose payments under 135I have since ended due to the conclusion of the

7-year period of cover, would, upon the CEEP application being approved, receive payments backdated to the date the 7-year period concluded.

...

The intent is that CEEPs may be backdated where there are delays in the Commissioner's information gathering process, through no fault of the officer, which result in the CEEP application is not being decided and approved until after cessation of the 7-year period.

**1.11** The Minister further clarified that:

There is no intention to cease payments under 135I in the event a CEEP application is suspended due to a failure to comply with 135J(3). 135I payments would continue until the end of the 7-year period, regardless of the status of the CEEP application (though those 135I payments may cease for other reasons and under other provisions; for example, 135I(3) and 135ZI).

The question relating to whether the Commissioner's ability to cease 135I payments in the event of a failure to comply with 135J(3) arises under 135ZI is taken to be clarified in light of the above commentary.

...

[I]t was the intent that clause 135J(4)(b) refers to payments under the division 'ceasing' due the exhaustion of the 7-year period set out under clause 135I, and entitlement to payments under the division being 'reinstated' under clause 135J when a CEEP application is approved.

**1.12** On this basis, and to more 'closely align with the intent of the provision' the Minister suggested that clause 135J(4)(b) could be amended to effect of:

(b) if the incapacitated police officer subsequently complies with the request -- any catastrophic or exceptional extension payments to which the incapacitated police officer would have been entitled but for the failure to comply may be backdated to the day the payments would have otherwise commenced.

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

**1.13** Under this ground, the Committee is required to consider the consistency of the amending regulation with the objects and intended effects of the parent Act, including whether fees are imposed without or beyond power, or whether a provision appears to be beyond the scope delegated legislation-making powers in the parent Act.

***I.***

**1.14** The Act, section 219(3) provides that 'A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.'

**1.15** Schedule 1[2], proposed clause 135T(2) makes it an offence, punishable by a maximum penalty of 50 penalty units, for a party to a dispute to fail, without reasonable excuse, to comply with a requirement of clause 135T.

1.16 The Committee queried whether another provision of the Act authorises this penalty, as it appears the penalty may be beyond the regulation-making power in the Act, section 219(3).

1.17 In response, the Minister advised that:

Consideration will be given following consultation with the Parliamentary Council [sic] to set out that the maximum penalty for an offence under clause 135T(2) is 20 penalty units, due to the operation of section 219(3) of the Police Act 1990 (NSW).

1.18 The Minister also drew the Committee's attention to the existence of the Act, section 128 which authorises a regulation to create an offence punishable by a penalty not exceeding 50 penalty units. However, the Minister highlighted that 'such regulation must be made for the purposes of section 128 which relates to the misconduct matters information system, and thus does not capture clause 135T(2).'

## II.

1.19 Schedule 1[2], proposed clause 135ZL deals with information sharing between the Commissioner and relevant persons.

1.20 Clause 135ZL(3), definition of *relevant person*, paragraph (f)(iii) provides that a relevant person includes an entity that holds information relevant to the police officer support scheme or an approved death and disability insurance policy in force under the Act, section 199C before the commencement of the clause.

1.21 The Committee queried whether the subparagraph should instead refer to the Act, section 199B, noting section 199B(2) provides that the police officer support scheme may include one or more insurance policies or other arrangements, while section 199C deals with contributions by police officers.

1.22 In response to the Committee's queries, the Minister noted that:

Clause 135ZL(3) refers to the now repealed clause 199C that was in place prior to 01 October 2024, which read as follows:

***199C Approved death and disability insurance policy to be taken out on definition of behalf of police officers***

An approved death and disability insurance policy is required to be taken out on behalf of police officers by the NSW Police Force or by FSS Trustee Corporation.

1.23 The Minister further noted that 'clause 135ZL(f)(iii) could be more clearly articulated' and suggested the clause be reworded to the following:

other information relevant to the scheme or an approved death and disability insurance policy in force under section 199C under the Act in place immediately prior to the commencement of this clause on 1 October 2024.

**Committee conclusion**

- 1.24** The Committee thanks the Minister for her considered response to the scrutiny concerns raised by the Committee.
- 1.25** The Committee appreciates the Minister clarifying that the intention of clause 135J(4)(b) is that, payments received by the police officer under clause 135I will *not* cease should a CEEP application by an incapacitated police officer be taken to have been suspended due to a failure to comply with a request under clause 135J(3). Rather, payments would continue until the 'cessation' of the 7-year period, regardless of the status of the CEEP application.
- 1.26** The Committee also acknowledges the Minister's comments regarding the operation of clause 135ZI and while it does not apply to catastrophic or exceptional extension payments, the Commissioner may cease payments received under clause 135I if an incapacitated police officers fails to comply with a notice to give the Commissioner information that relates to the police officer's injury or eligibility or receipt of payments.
- 1.27** To clarify clause 135J(4)(b), the Committee suggests that the Minister consider amending the regulation to put beyond doubt that an incapacitated police officer would, on a CEEP application being approved, receive payments backdated to the date the 7-year period concluded, provided that the officer has complied with a request under clause 135J(3) and payments under clause 135I have ceased due to the end of the 7-year period.
- 1.28** With regard to the issue raised by the Committee in relation to penalty units, the Committee considers that the Act, section 219(3) provides a clear limit on the maximum penalty amount that the regulation may prescribe for an offence. Therefore, prescribing a maximum penalty which *exceeds* 20 penalty units for clause 135T(2) appears to be inconsistent with the operation of the Act, as envisioned by Parliament, and may be beyond the scope of regulation-making powers in the Act.
- 1.29** The Committee notes the Minister's commitment to consider, following consultation with the Parliamentary Counsel, an amendment to clause 135T(2) to ensure that the maximum penalty is no more than 20 penalty units, consistent with the regulation-making power in the Act, section 219(3).
- 1.30** On this basis, the Committee strongly suggests prompt action, such as that outlined by the Minister, be taken to address this scrutiny concern.
- 1.31** The Committee appreciates the Minister's clarification of clause 135ZL(f)(iii) by way of a rearticulation of the clause, noting that the drafting of legislation is a matter for the Parliamentary Counsel's Office.
- 1.32** Subject to the above comments, the Committee is satisfied the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (vii) have been appropriately addressed. The Committee concludes its scrutiny of the regulation.

## Music Festivals Amendment (Delegation) Regulation 2024

SI number / GG reference	2024 No 558
Published on Legislation Website (LW)	06/11/2024
Tabled in Legislative Council (L.C)	12/11/2024
Last date of notice for disallowance motion	25/03/2025

### Overview

- 1.33** The [Music Festivals Amendment \(Delegation\) Regulation 2024](#) (the amending regulation) amends the *Music Festivals Regulation 2024*, as stated in the explanatory note, to:

provide for delegations of the Health Secretary's functions under the Music Festivals Act 2019 to members of staff of the Ministry of Health and the NSW Health Service.

- 1.34** The amending regulation is made under the *Music Festivals Act 2019* (the Act), section 20 and commenced on 6 November 2024.
- 1.35** The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) in relation to the amending regulation in correspondence to the Minister for Music and the Night-time Economy on 28 November 2024. The Minister responded on 16 December 2024. This correspondence is included in Appendix 2.

### Scrutiny concerns

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

- 1.36** Under this ground, the Committee is generally concerned with clarity and certainty in delegated legislation and whether any matters require clarification.
- 1.37** The Committee sought elucidation regarding the intended operation of the *Music Festivals Regulation 2024*, section 15, as there appeared to be a discord between the section and the intention expressed in the explanatory note.
- 1.38** The amending regulation, Schedule 1 inserts section 15 into the *Music Festivals Regulation 2024*. Section 15 relies on the regulation-making power in the Act, section 20(1)(b), which allows an office holder to delegate the exercise of their functions under the Act to a person, or a class of persons, authorised by the regulations. Section 20(2) defines **office holder** to mean the Minister for Music and the Night-time Economy, the secretary of the department in which the Act is administered (the Department of Creative Industries, Tourism, Hospitality and Sport)(the Secretary), and the secretary of the Ministry of Health (the Health Secretary).

1.39 The *Music Festivals Regulation 2024*, section 15 specifies members of staff of the Ministry of Health and members of staff of the NSW Health Service as authorised persons for the Act, section 20(1)(b).

1.40 Though the explanatory note to the amending regulation states that the object of the regulation is to provide for delegations of the Health Secretary's functions under the Act to the persons specified, section 15 does not appear to be limited in this way so as to apply only in relation to the Health Secretary's functions under the Act. The Committee was concerned the section, as currently phrased, could operate to enable the Minister and Secretary, as office holders to whom section 20 applies, to delegate their functions under the Act to members of staff of the Ministry of Health and the NSW Health Service. In the Committee's view, section 20 appears inconsistent with the object stated in the explanatory note.

1.41 In response to the Committee's queries, the Minister advised that:

I acknowledge the Committee's consideration of the Regulation and agree that the intent of the Regulation is not to allow for the delegation of functions held by the Minister and/or the Secretary of the Department of Creative Industries, Tourism, Hospitality and Sport (DCITHS) to members of staff of the Ministry of Health or NSW Health Service.

While in practice this delegation would not occur, to avoid any ambiguities I intend to progress further amendments to the Regulation to address these concerns as soon as practicable in the new year.

1.42 The Minister provided additional context to the amendment regulation:

The Music Festivals Amendment (Delegations) Regulation 2024 (**the Amending Regulation**) was developed to address a drafting oversight in the *Music Festivals Amendment Act 2024*, which was that the Act did not specify that the Health Secretary could delegate functions to employees within the Ministry of Health or the NSW Health Service. Without the ability for the Health Secretary to delegate their functions to members within the Ministry of Health or the NSW Health Service, the Health Secretary would be required to personally exercise their functions under the Act.

The Amending Regulation was intended to enable the Secretary of the Ministry of Health (Health Secretary) to delegate their functions under the *Music Festivals Act 2019* (the Act) to relevant members within the Ministry of Health and the NSW Health Service. The Amending Regulation achieved this by inserting clause 15 into the Music Festivals Regulation 2024, which provided that for the Act, section 20(1)(b), the following are 'authorised' persons:

- (a) members of staff of the Ministry of Health,
- (b) members of staff of the NSW Health Service.

While the Amending Regulation inserted section 15 into the Regulation to address this drafting oversight, it is noted that section 20(1) of the Act does not specify or limit the person or class of persons to which the office holder may delegate functions. Therefore, it is noted that the way in which section 20(1) of the Act is constructed could unintentionally operate as to enable any of the office holders to delegate their functions to any of the persons or class of persons authorised under section 20(1) of the Act. This would not be the intended outcome, as the intention is for the Health Secretary to only

be authorised to delegate their functions to members of staff within the Ministry of Health or the NSW Health Service.

It is noted that in practice, the delegation provision as introduced by the Amending Regulation would only be delegated by the Health Secretary to a member of staff of the Ministry of Health or NSW Health Service.

However, to avoid any ambiguities between the drafting of the Regulation and its intended operation, a further amendment will be developed to the Regulation as soon as is practicable to clarify that the class of persons listed in clause 15(a) and (b) is only relevant for the purposes of functions associated with the Health Secretary under the Act.

### **Committee conclusion**

- 1.43** The Committee appreciates the Minister's considered engagement with the scrutiny concerns raised by the Committee. The Committee acknowledges the Minister's commitment to amend, as soon as practicable, the regulation to clarify that of those office holders listed in the Act, section 20(2), only the Health Secretary should be authorised to delegate their functions to members of staff of the Ministry of Health or the NSW Health Service. To assist with the Committee's record keeping, the Committee would appreciate an update from the Minister when the regulation has been amended.
- 1.44** The Committee is of the view that the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii) have been appropriately addressed. On this basis, the Committee concludes its scrutiny of the regulation.



## Energy and Utilities Administration Amendment (Abolition of Net Zero Board) Regulation 2024

SI number / GG reference	2024 No 601
Published on Legislation Website (LW)	29/11/2024
Tabled in Legislative Council (L.C)	11/02/2025
Last date of notice for disallowance motion	27/05/2025

### Overview

- 1.45 The [Energy and Utilities Administration Amendment \(Abolition of Net Zero Board\) Regulation 2024](#) (amending regulation) amends the *Energy and Utilities Administration Regulation 2021* (the regulation), as stated in the explanatory note, to remove provisions relating to the Net Zero Emissions Clean Economy Board (the Board), which has been abolished by the Minister for Climate Change under the *Climate Change (Net Zero Future) Act 2023*, Schedule 2, section 2.
- 1.46 The amending regulation was made under the *Energy and Utilities Administration Act 1987* (the Act), including sections 34W and 53, the general regulation-making power. The amending regulation commenced on 29 November 2024.
- 1.47 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (vii) in relation to the amending regulation by letter sent to the Minister for Climate Change on 16 December 2024. The Minister responded on 13 January 2025. 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 and the form or intention of the regulation calls for elucidation***

- 1.48 Under these grounds, the Committee will consider the consistency of a regulation with the objects and intended effects of the parent Act, including whether a provision appears to be beyond the scope of regulation-making powers in the parent Act, and may seek elucidation about matters that appear ambiguous or uncertain.
- 1.49 The amending regulation, Schedule 1[3] inserts clause 5 into the regulation. Clause 5 appears to rely on the regulation-making power conferred by the Act, Schedule 3, clause 13(1)(d), as in force immediately before 30 June 2024.
- 1.50 Clause 5 prescribes persons or consultants made available to assist the Australian Energy Regulator under the *Competition and Consumer Act 2010* of the Commonwealth, section 44AAC as a class of persons whom the regulator may appoint to be inspectors for the purposes of coal

market price emergencies declared under the schedule. However, Schedule 3 was repealed on 30 June 2024.

- 1.51** Given that the appointment of persons to be inspectors is for purpose of the Act, Schedule 3 as in force immediately before 30 June 2024, and that schedule has been repealed, the Committee was unsure about the rationale for inserting, and the intended operation of, the regulation, clause 5.
- 1.52** On this basis, the Committee sought clarification from the Minister for Climate Change on whether the substance of clause 5 remained relevant and necessary. If so, the Committee queried the relevant regulation-making power, given the Act, Schedule 3, clause 13(1)(d) had been repealed and there does not appear to be a reference to coal market price emergencies elsewhere in the statute book.
- 1.53** In response to the Committee, the Minister advised that:

I agree with your assessment that clause 5 is no longer relevant or necessary. When this regulation was first drafted, the intent was to not interfere with the unrelated matter of coal market price emergencies. As you point out, the schedule of the parent Act that dealt with coal market price emergencies was repealed in mid-2024, so retention of clause 5 is no longer appropriate.

I have instructed my Department that clause 5 is to be repealed at the next available opportunity, most likely when other amendments to the regulation are also needed.

### **Committee conclusion**

- 1.54** The Committee appreciates the Ministers thoughtful and prompt engagement with the scrutiny concerns raised by the Committee. The Committee acknowledges the Minister's commitment to repeal clause 5 at the next available opportunity and would appreciate an update from the Minister when the regulation has been amended.
- 1.55** The Committee is satisfied the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (vii) have been appropriately addressed. The Committee concludes its scrutiny of the regulation.

## Supreme Court Act 1970—Supreme Court Practice Note SC EQ 4

SI number / GG reference	NSW-GG-2024-413-1
Published on Legislation Website (LW)	18/10/2024
Tabled in Legislative Council (L.C)	22/10/2024
Last date of notice for disallowance motion	18/03/2025

### Overview

- 1.56** The [Supreme Court Practice Note SC Eq 4](#) (the Practice Note) relates to the structure and operation of the Corporations List in the Equity Division of the Supreme Court of New South Wales. The Practice Note was made under the *Supreme Court Act 1970*, section 124(11), and commenced on 17 October 2024. The Practice Note replaces the *Supreme Court Practice Note SC Eq 4*, which was issued on 13 October 2023.
- 1.57** The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) in relation to the Practice Note by letter sent to the Chief Justice of New South Wales on 13 December 2024. The A/Executive Director and Principal Registrar of the Supreme Court responded on behalf of the Chief Justice on 29 January 2025. This correspondence is included in Appendix 2.

### Scrutiny concerns

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

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

#### *I.*

- 1.59** The Practice Note, section 24 states that:

This section of this Practice Note implements the *Practice Note – Harmonisation in schemes of arrangements* as developed by the Committee for the Harmonisation of Rules of the Council of Chief Justices of Australia and New Zealand and adopted by the Supreme Court of New South Wales.<sup>1</sup>

- 1.1** The Committee was unable to locate a copy of the *Practice Note – Harmonisation in schemes of arrangements* and sought confirmation as to whether a copy was publicly available.
- 1.2** In response, the A/Executive Director and Principal Registrar on behalf of the Chief Justice explained that:

whilst the Harmonisation Committee did work on the topic of schemes of arrangement, it did not (and has no power to) issue Practice Notes but similar Practice Notes to SC Eq 4 deriving from the work of the Harmonisation Committee have been adopted in the Federal Court and the Supreme Court of Victoria.

## II.

- 1.3 The Practice Note, Schedule 1 refers to the functions of the court under the *Corporations Act 2001* (Cth) (the Act) that have been delegated to the registrar under the *Civil Procedure Act 2005*, section 13. Section 13(1)(a) states that:

The senior judicial officer of any court may, by instrument in writing direct that any function of the court under this Act or any other Act or law in respect of which the court has jurisdiction (including any rules of court) may be exercised by such registrars or other officers of the court, and in such circumstances and subject to such conditions, as are specified in the instrument.

- 1.4 Schedule 1, column 1 identifies the relevant provision of the Act, and column 2 identifies the nature of the registrar's power under the relevant provision of the Act. Of the provisions listed, sections 449E(1), 473(1), 473(2), 473(3) and 542(3)(a) are former provisions of the Act, having been repealed by the *Insolvency Law Reform Act 2016* (Cth).

- 1.5 Recognising that several years have passed since these provisions were repealed, the Committee sought clarification on the continued need to list these former provisions in Schedule 1 and empower the registrar to exercise the prescribed functions of the court under the Act. The Committee queried whether it is the case that there remain ongoing proceedings that necessitate listing these former provisions as provisions in respect of which the registrar may exercise certain powers.

- 1.6 In response to the Committee, the A/Executive Director and Principal Registrar on behalf of the Chief Justice clarified that:

The Schedule makes it plain that the sections you have referred to have been repealed (referring to them as “former” sections). **Applications may still be made under the former provisions, which can have continuing application in insolvency administrations commenced while they were in force.** The Court will keep this matter under review but does not see any need for further elucidation given the clear reference in the Schedule to the fact that the provisions have been repealed. (emphasis added)

### Committee conclusion

- 1.7 The Committee appreciates the engagement by the A/Executive Director and Principal Registrar on behalf of the Chief Justice with the scrutiny concerns raised by the Committee.
- 1.8 The Committee acknowledges the response regarding the *Practice Note – Harmonisation in schemes of arrangements*, and the Committee has no further comments on this matter.
- 1.9 Further, the Committee appreciates confirmation that applications may still be made under former provisions of the Act, and it remains necessary to list *former* sections 449E(1), 473(1),

473(2), 473(3) and 542(3)(a) in the Practice Note, Schedule 1, column 1 and notes that the Court has endeavoured to keep this matter under review as necessary.

- 1.10** The Committee is satisfied the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii) have been appropriately addressed. The Committee concludes its scrutiny of the Practice Note.



## Chapter 2 Instruments with no scrutiny concerns

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

<b>Instrument</b>	<b>SI number/ GG reference</b>
Bail Amendment (Electronic Monitoring) Regulation 2024	2024 No 522
Criminal Procedure Amendment (Expansion of Traffic Offender Intervention Program) Regulation 2024	2024 No 561
Environmental Planning and Assessment Amendment (Development Consents) Regulation 2024	2024 No 562
Transport Administration (General) Amendment (Transport Asset Manager) Regulation 2024	2024 No 563
Court Security and Surveillance Devices Amendment (Body-Worn Recording Devices) Regulation 2024	2024 No 575
Environmental Planning and Assessment Amendment (Government and Non-Government Schools) Regulation 2024	2024 No 577
Point to Point Transport (Taxis and Hire Vehicles) Amendment (Disqualifying Offences) Regulation 2024	2024 No 578
Personal Injury Commission (Amendment No 3) Rule 2024	2024 No 587
Environmental Planning and Assessment Amendment (Hornsby Transport Oriented Development Precinct) Regulation 2024	2024 No 588
Environmental Planning and Assessment Amendment (Macquarie Park Transport Oriented Development Precinct) Regulation 2024	2024 No 589
Health Legislation Amendment (Fees) Regulation 2024	2024 No 598
Law Enforcement (Powers and Responsibilities) Amendment (Hand-held Scanners) Regulation 2024	2024 No 603
Marine Pollution Amendment Regulation 2024	2024 No 604
Surveying and Spatial Information Regulation 2024	2024 No 605
Water Management (General) Amendment (Fire Fighting Exemptions) Regulation 2024	2024 No 606
Government Sector Legislation Amendment (Miscellaneous) Regulation 2024	2024 No 611
State Debt Recovery Act 2018—Referable Debt Order	2024 No 614
Electricity Infrastructure Investment Amendment (Functions) Regulation 2024	2024 No 626
Electricity Infrastructure Investment Amendment Regulation 2024	2024 No 627

<b>Instrument</b>	<b>SI number/ GG reference</b>
Electricity Supply (General) Amendment (Renewable Fuel Scheme) Regulation 2024	2024 No 628
Environmental Planning and Assessment Amendment (Development Levies) Regulation (No 2) 2024	2024 No 629
Environmental Planning and Assessment Amendment (Sea Bed Mining and Exploration) Regulation 2024	2024 No 630
Environmental Planning and Assessment Amendment (Temporary Housing) Regulation 2024	2024 No 631
Gaming Machines Amendment Regulation 2024	2024 No 633
Health Services Amendment (Visiting Medical Officers) Regulation 2024	2024 No 634
Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Amendment Regulation 2024	2024 No 635
Motor Vehicle Legislation Amendment (Tax and Registration Charges) Regulation 2024	2024 No 636
Private Health Facilities Amendment (Psychedelic-assisted Therapy) Regulation 2024	2024 No 638
Rail Safety National Law National Regulations (Drug and Alcohol Testing) Amendment Regulations 2024	2024 No 639
Surveillance Devices Amendment (Body-Worn Video) Regulation 2024	2024 No 640
Tattoo Industry Amendment Regulation 2024	2024 No 641
Work Health and Safety (Mines and Petroleum Sites) Amendment Regulation 2024	2024 No 642
Education and Care Services National Amendment (Transitional Provisions) Regulations 2024	2024 No 658
Children's Court Act 1987—Practice Note 19 Support Plan Conference Pilot	NSWGG-2024-448-5
Public Notaries Act 1997—Public Notaries Appointment Amendment (Miscellaneous) Rule 2024	NSWGG-2024-469-7
Supreme Court Act 1970—Supreme Court Practice Note SC Gen 23	NSWGG-2024-470-1
District Court Act 1973—District Court General Practice Note 2 Generative AI Practice Note and Judicial Guidelines	NSWGG-2025-8-9



# Appendix 1 Minutes

## Draft minutes no. 21

Monday 10 February 2025

Regulation Committee

Room 1254, Parliament House, Sydney, 11.01 am

### 1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Boyd, *Deputy Chair (via teleconference)*

Mrs Carter

Mr Donnelly

Ms Mihailuk (from 11.03 am)

Mr Nanva (*via teleconference*)

Mr Murphy

### 2. Previous minutes

Resolved, on the motion of Mr Murphy: That draft minutes no. 20 be confirmed.

### 3. Correspondence

The Committee noted the following items of correspondence:

#### **Received:**

- 29 January 2024 – Letter from Chair to Chief Justice of NSW, the Hon. A S Bell regarding scrutiny concerns identified in the *Supreme Court Act 1970*–Supreme Court Practice Note SC EQ 4

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

The Chair submitted her draft report entitled *Delegated Legislation Monitor No. 1 of 2025*, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: That:

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

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

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

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

The report be tabled in the House on Wednesday 12 February 2025.

### 5. Correspondence arising from Monitor No. 1 of 2025

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. 1 of 2025.

### 6. Tabling of the Delegated Legislation Monitor

Resolved, on the motion of Mrs Carter: That, from the second sitting week of 2025, the Delegated Legislation Monitor be tabled on a sitting Tuesday.

### 7. Adjournment

The Committee adjourned at 11.06 am.

**8. Next Meeting**

Monday 17 February 2025, 11.00 am, Room 1254 (consideration of the Committee report entitled 'Delegated Legislation Monitor No. 2 of 2025').

Madeleine Dowd  
**Committee Clerk**

## Appendix 2 Correspondence

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

- Sent 25 November 2024 – Letter from Chair to Minister for Police and Counter-terrorism, the Hon Yasmin Catley MP regarding scrutiny concerns identified in the *Police Amendment (Police Officer Support Scheme) Regulation 2024*
- Sent 28 November 2024 – Letter from Chair to Minister for Music and the Night-time Economy, the Hon John Graham MLC regarding scrutiny concerns identified in the *Music Festivals Amendment (Delegation) Regulation 2024*
- Sent 13 December 2024 – Letter from Chair to Chief Justice of NSW, the Hon. A S Bell regarding scrutiny concerns identified in the *Supreme Court Act 1970–Supreme Court Practice Note SC EQ 4*
- Sent 16 December 2024 – Letter from Chair to Minister for Climate Change, the Hon Penny Sharpe MLC regarding scrutiny concerns identified in the *Energy and Utilities Administration Amendment (Abolition of New Zero Board) Regulation 2024*
- Received 13 December 2024 – Letter from Minister for Police and Counter-terrorism, the Hon Yasmin Catley MP regarding scrutiny concerns identified in the *Police Amendment (Police Officer Support Scheme) Regulation 2024*
- Received 16 December 2024 – Letter from Minister for Music and the Night-time Economy, the Hon John Graham MLC regarding scrutiny concerns identified in the *Music Festivals Amendment (Delegations) Regulation 2024*
- Received 13 January 2025 – Letter from Minister for Climate Change, the Hon Penny Sharpe MLC regarding scrutiny concerns identified in the *Energy and Utilities Administration Amendment (Abolition of Net Zero Board) Regulation 2024*
- Received 29 January 2024 – Letter from A/Executive Director and Principal Registrar, Rebel Kenna on behalf of the Chief Justice of NSW, the Hon. A S Bell regarding scrutiny concerns identified in the *Supreme Court Act 1970–Supreme Court Practice Note SC EQ 4*



25 November 2024

The Hon. Yasmin Catley, MP  
Minister for Police and Counter-terrorism  
Minister for the Hunter

D24/058819

By email

Dear Minister

### **Police Amendment (Police Officer Support Scheme) 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 15 October 2024:

- *Police Amendment (Police Officer Support Scheme) Regulation 2024*

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

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

Further information about the Committee's work practices and the application of the scrutiny principles is available in the *Guidelines for the operation of the Regulation Committee's technical scrutiny function*, on the [NSW Parliament website](#).

## Scrutiny concerns

	Provision	Issue
1	Schedule 1[2], proposed clause 135J(4)(b)	<p>Schedule 1[2], proposed clause 135J(4)(a) provides that, if an incapacitated police officer fails to comply with a request to provide further information, or to undergo further assessment, to assist the CEEP panel in deciding whether to approve the officer's application for catastrophic or exceptional extension payments, the application is taken to have been suspended until the officer complies with the request.</p> <p>Clause 135J(4)(b) provides that, if the incapacitated police officer subsequently complies with the request, any payments under the regulation, Part 6A, Division 3 to which the officer would have been entitled but for the failure to comply may be reinstated to the day the payments ceased to be made.</p> <p>Noting an application may be made within the last 6 months an incapacitated police officer receives payments under clause 135I, the Committee seeks confirmation that, as suggested by clause 135J(4)(b), those payments may cease, from the date the application is taken to be suspended until the end of the 7-year period, for failure to comply with the request of the CEEP panel. The Committee queries whether this is because of the operation of clause 135ZI, noting that clause enables <i>the Commissioner</i> to cease payments for failure to comply with a notice given by the Commissioner requiring an incapacitated police officer to 'give the Commissioner information that relates to the police officer's injury or eligibility or receipt of payments', which varies from the clause 135J(3) requirement of the CEEP panel to provide further information, <i>or to undergo further assessment</i>. If not, the Committee queries which provisions directly enable payments under the division to be ceased for failure to comply with a request under clause 135J(3).</p> <p>Further, in relation to the reference to 'under this division' in clause 135J(4)(b), the Committee queries whether payments other than payments under clause 135I are intended to be captured by this, including whether it is intended that catastrophic or exceptional extension payments be backdated to the date an application, which is later approved, was made.</p>
2	Schedule 1[2], proposed clause 135T(2)	<p>The <i>Police Act 1990 (the Act)</i>, section 219(3) provides that 'A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.'</p> <p>Schedule 1[2], proposed clause 135T(2) makes it an offence, punishable by a maximum penalty of 50 penalty units, for a party to a dispute to fail, without reasonable excuse, to comply with a requirement of clause 135T.</p> <p>The Committee queries whether another provision of the Act authorises this penalty, as it appears the penalty may be erroneous.</p>
3	Schedule 1[2], proposed clause 135ZL(3), definition of <b>relevant person</b> ,	<p>Schedule 1[2], proposed clause 135ZL deals with information sharing between the Commissioner and relevant persons.</p> <p>Clause 135ZL(3), definition of <b>relevant person</b>, paragraph (f)(iii) provides that a relevant person includes an entity that holds information relevant to the police officer support scheme or an approved death and disability insurance policy in force under the Act, section 199C before the commencement of the clause.</p>

	paragraph (f)(iii)	The Committee queries whether the subparagraph should instead refer to the Act, section 199B, noting section 199B(2) provides that the police officer support scheme may include one or more insurance policies or other arrangements, while section 199C deals with contributions by police officers.
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Please provide a response to the issue identified as nos 1–3 by **13 December 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 [redacted] or [Regulation.Committee@parliament.nsw.gov.au](mailto:Regulation.Committee@parliament.nsw.gov.au).

Kind regards

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



28 November 2024

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

D24/059427

By email

Dear Minister

### **Music Festivals Amendment (Delegation) 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 and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 12 November 2024:

- *Music Festivals Amendment (Delegation) Regulation 2024*

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

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

Further information about the Committee's work practices and the application of the scrutiny principles is available in the *Guidelines for the operation of the Regulation Committee's technical scrutiny function*, on the [NSW Parliament website](#).

## Scrutiny concerns

	Provision	Issue
1	Schedule 1, proposed section 15	<p>The <i>Music Festivals Amendment (Delegation) Regulation 2024</i> (<b><i>the amending regulation</i></b>), Schedule 1 inserts section 15 into the <i>Music Festivals Regulation 2024</i>.</p> <p>Section 15 relies on the regulation-making power in the <i>Music Festivals Act 2019</i> (<b><i>the Act</i></b>), section 20(1)(b), which allows an office holder to delegate the exercise of their functions under the Act to a person, or a class of persons, authorised by the regulations. Section 20(2) defines <b><i>office holder</i></b> to mean the Minister for Music and the Night-time Economy, the secretary of the department in which the Act is administered (presumably the Department of Creative Industries, Tourism, Hospitality and Sport) (<b><i>the Secretary</i></b>), and the secretary of the Ministry of Health (<b><i>the Health Secretary</i></b>).</p> <p>The <i>Music Festivals Regulation 2024</i>, section 15 specifies members of staff of the Ministry of Health and members of staff of the NSW Health Service as authorised persons for the Act, section 20(1)(b).</p> <p>Though the explanatory note to the amending regulation states that the object of the regulation is to provide for delegations of the Health Secretary's functions under the Act to the persons specified, section 15 does not appear to be limited in this way so as to apply only in relation to the Health Secretary's functions under the Act. The Committee is concerned the section, as currently worded, could operate to enable the Minister and Secretary, as office holders to whom section 20 applies, to delegate their functions under the Act to members of staff of the Ministry of Health and the NSW Health Service. This is inconsistent with the object stated in the explanatory note.</p> <p>The Committee is therefore seeking elucidation regarding the intended operation of the <i>Music Festivals Regulation 2024</i>, section 15, as it appears to the Committee that an amendment to the section might be appropriate to better reflect the intention expressed in the explanatory note.</p>

Please provide a response to the issue identified as no 1 by **12 December 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 [redacted] or [Regulation.Committee@parliament.nsw.gov.au](mailto:Regulation.Committee@parliament.nsw.gov.au).

Kind regards

The Hon Natasha Maclaren-Jones MLC  
Committee Chair





LEGISLATIVE COUNCIL

REGULATION COMMITTEE

13 December 2024

The Hon. A S Bell  
Chief Justice of New South Wales

D24/062526

By email

Dear Chief Justice

#### **Supreme Court Act 1970–Supreme Court Practice Note SC EQ 4**

As you may be 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 22 October 2024:

- *Supreme Court Act 1970–Supreme Court Practice Note SC EQ 4*

The Committee has two queries regarding the practice note that fall within the ambit of the *Legislation Review Act 1987*, section 9(1)(b)(vii) on the basis that the form or intention of the instrument calls for elucidation. I am writing to you as the Chief Justice of New South Wales 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. 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
	Section 24	<p>Practice Note SC EQ 4 (<i>the Practice Note</i>), section 24 states that 'this section of this Practice Note implements the <i>Practice Note – Harmonisation in schemes of arrangements</i> as developed by the Committee for the Harmonisation of Rules of the Council of Chief Justices of Australia and New Zealand and adopted by the Supreme Court of New South Wales.'</p> <p>The Committee would appreciate confirmation as to whether a copy of the <i>Practice Note – Harmonisation in schemes of arrangements</i> is publicly available, and if so, where.</p>
	Schedule 1	<p>The Practice Note, Schedule 1 refers to the functions of the court under the <i>Corporations Act 2001</i> (Cth) (<i>the Act</i>) that have been delegated to the registrar under the <i>Civil Procedure Act 2005</i>, section 13. Section 13(1)(a) states that 'the senior judicial officer of any court may, by instrument in writing direct that any function of the court under this Act or any other Act or law in respect of which the court has jurisdiction (including any rules of court) may be exercised by such registrars or other officers of the court, and in such circumstances and subject to such conditions, as are specified in the instrument'.</p> <p>Schedule 1, column 1 identifies the relevant provision of the Act, and column 2, the nature of the registrar's power under the relevant provision of the Act. Of the provisions listed, sections 449E(1), 473(1), 473(2), 473(3) and 542(3)(a) are former provisions of the Act, having been repealed by the <i>Insolvency Law Reform Act 2016</i> (Cth). The Committee recognises that several years have passed since these provisions were repealed, and for this reason, would appreciate clarification on the continued need to list these former provisions in Schedule 1 and empower the registrar to exercise the prescribed functions of the court under the Act. For example, is it the case that there remain ongoing proceedings that necessitate listing these former provisions as provisions in respect of which the registrar may exercise certain powers?</p>

Please provide a response to the issue identified as nos 1 and 2 by **17 January 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

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

Kind regards

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



16 December 2024

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

D24/062718

By email

Dear Minister

**Energy and Utilities Administration Amendment (Abolition of Net Zero Board)  
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 and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was published on the NSW legislation website on 29 November 2024, and will be tabled in Parliament on 11 February 2025:

- *Energy and Utilities Administration Amendment (Abolition of Net Zero Board) Regulation 2024*

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

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

Further information about the Committee's work practices and the application of the scrutiny principles is available in the *Guidelines for the operation of the Regulation Committee's technical scrutiny function*, on the [NSW Parliament website](#).

## Scrutiny concerns

	Provision	Issue
1	Clause 5, as inserted by, Schedule 1[3]	<p>Schedule 1[3] inserts clause 5 into the <i>Energy and Utilities Administration Regulation 2021 (the regulation)</i> in purported reliance on the regulation-making power conferred by the <i>Energy and Utilities Administration Act 1987 (the Act)</i>, Schedule 3, clause 13(1)(d), as in force immediately before 30 June 2024. Clause 5 prescribes persons or consultants made available to assist the Australian Energy Regulator under the <i>Competition and Consumer Act 2010</i> of the Commonwealth, section 44AAC as a class of persons whom the regulator may appoint to be inspectors for the purposes of coal market price emergencies declared under the schedule. The Committee notes, however, that Schedule 3 was repealed on 30 June 2024.</p> <p>Given that the appointment of persons to be inspectors is for purpose of the Act, Schedule 3 as in force immediately before 30 June 2024, and that schedule has been repealed, the Committee is unsure about the rationale for inserting, and the intended operation of, the regulation, clause 5. On this basis, the Committee seeks clarification on whether the substance of clause 5 remains relevant and necessary. If so, the Committee queries the relevant regulation-making power, given the Act, Schedule 3, clause 13(1)(d) has been repealed and there does not appear to be a reference to coal market price emergencies elsewhere in the statute book.</p>

Please provide a response to the issue identified by **17 January 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

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

Kind regards

The Hon Natasha Maclaren-Jones MLC  
Committee Chair

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

Regulation.Committee@parliament.nsw.gov.au

Dear Ms Maclaren-Jones,

Thank you for your correspondence on behalf of the Legislative Council Regulation Committee (the Committee) regarding the Committee's scrutiny of the *Police Amendment (Police Officer Support Scheme) Regulation 2024* (the Regulation).

The issues raised by the Committee are noted. Examination and consideration of the issues has been undertaken and the following responses are submitted for the Committee's information.

	Provision	Response
1	Schedule 1[2], proposed clause 135J(4)(b)	<p>a) The intent of 135J(4)(b) is for any officers who subsequently comply with 135J(3) (providing further information or undergoing further assessment as part of the CEEP application) whose payments under 135I have since ended due to the conclusion of the 7-year period of cover, would, upon the CEEP application being approved, receive payments backdated to the date the 7-year period concluded.</p> <p>b) There is no intention to cease payments under 135I in the event a CEEP application is suspended due to a failure to comply with 135J(3). 135I payments would continue until the end of the 7-year period, regardless of the status of the CEEP application (though those 135I payments may cease for other reasons and under other provisions; for example, 135I(3) and 135ZI).</p> <p>c) The question relating to whether the Commissioner's ability to cease 135I payments in the event of a failure to comply with 135J(3) arises under 135ZI is taken to be clarified in light of the above commentary.</p> <p>d) As noted above, it was the intent that clause 135J(4)(b) refers to payments under the division 'ceasing' due the exhaustion of the 7-year period set out under clause 135I, and entitlement to payments under the division being 'reinstated' under clause 135J when a CEEP application is approved.</p> <p>On that basis, and to more closely align with the intent of the provision, we consider that clause 135J(4)(b) could be amended to the effect of:</p>

		<p>(b) if the incapacitated police officer subsequently complies with the request -- any catastrophic or exceptional extension payments to which the incapacitated police officer would have been entitled but for the failure to comply may be backdated to the day the payments would have otherwise commenced.</p> <p>e) The intent is that CEEPs may be backdated where there are delays in the Commissioner's information gathering process, through no fault of the officer, which result in the CEEP application is not being decided and approved until after cessation of the 7-year period.</p>
2	Schedule 1[2], proposed clause 135T(2)	<p>The issue outlined by the Committee in relation to clause 135T(2) of the Regulation is appreciated. Consideration will be given following consultation with the Parliamentary Council to set out that the maximum penalty for an offence under clause 135T(2) is 20 penalty units, due to the operation of section 219(3) of the Police Act 1990 (NSW).</p> <p>While s128 of the Act authorises a regulation creating an offence punishable by up to 50 penalty units, such regulation must be made for the purposes of section 128 which relates to the misconduct matters information system, and thus does not capture clause 135T(2).</p>
3	Schedule 1[2], proposed clause 135ZL(3), definition of <b>relevant person</b> , paragraph (f)(iii)	<p>Clause 135ZL(3) refers to the now repealed clause 199C that was in place prior to 01 October 2024, which read as follows:</p> <p><b>199C Approved death and disability insurance policy to be taken out on behalf of police officers</b></p> <p><i>An approved death and disability insurance policy is required to be taken out on behalf of police officers by the NSW Police Force or by FSS Trustee Corporation.</i></p> <p>It is noted that clause 135ZL(f)(iii) could be more clearly articulated, such as 'other information relevant to the scheme or an approved death and disability insurance policy in force under section 199C under the Act in place immediately prior to the commencement of this clause on 1 October 2024.'</p>

Thank you for writing about this matter.

Sincerely,

**Yasmin Catley MP**

Minister for Police and Counter-terrorism

Minister for the Hunter

## The Hon John Graham MLC

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



Ref: A9224704 | DF24/026798

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

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

Re: Music Festivals Amendment (Delegations) Regulation 2024

Dear Chair,

Thank you for your correspondence relating to the Regulation Committee's consideration of the Music Festivals Amendment (Delegations) Regulation 2024.

I acknowledge the Committee's consideration of the Regulation and agree that the intent of the Regulation is not to allow for the delegation of functions held by the Minister and/or the Secretary of the Department of Creative Industries, Tourism, Hospitality and Sport (DCITHS) to members of staff of the Ministry of Health or NSW Health Service.

While in practice this delegation would not occur, to avoid any ambiguities I intend to progress further amendments to the Regulation to address these concerns as soon as practicable in the new year.

A more detailed response to the concerns raised in your correspondence is outlined in the table below.

Item	Provision	Response
1	Schedule 1, proposed section 15	<p>Section 20 of the <i>Music Festivals Act 2019</i> provides that an office holder, which includes the Health Secretary, may delegate the exercise of a function of the office holder under the Act, other than the power of delegation, to</p> <ul style="list-style-type: none"><li>- a person employed in the Department of Creative Industries Hospitality, Tourism and Sport (the department in which the Music Festivals Act 2019 is administered), or</li><li>- a person, or a class of persons, authorised for the purposes of this section by the regulations.</li></ul> <p>The Music Festivals Amendment (Delegations) Regulation 2024 (<b>the Amending Regulation</b>) was developed to address a drafting oversight in the <i>Music Festivals Amendment Act 2024</i>, which was that the Act did not specify that the Health Secretary could delegate functions to employees within the Ministry of Health or the NSW Health Service. Without the ability for the Health Secretary to delegate their functions to members within the Ministry of Health or the NSW Health Service, the Health Secretary would be required to personally exercise their functions under the Act.</p>

	<p>The Amending Regulation was intended to enable the Secretary of the Ministry of Health (Health Secretary) to delegate their functions under the <i>Music Festivals Act 2019</i> (the Act) to relevant members within the Ministry of Health and the NSW Health Service. The Amending Regulation achieved this by inserting clause 15 into the Music Festivals Regulation 2024, which provided that for the Act, section 20(1)(b), the following are 'authorised' persons:</p> <ul style="list-style-type: none"><li>- (a) members of staff of the Ministry of Health,</li><li>- (b) members of staff of the NSW Health Service.</li></ul> <p>While the Amending Regulation inserted section 15 into the Regulation to address this drafting oversight, it is noted that section 20(1) of the Act does not specify or limit the person or class of persons to which the office holder may delegate functions. Therefore, it is noted that the way in which section 20(1) of the Act is constructed could unintentionally operate as to enable any of the office holders to delegate their functions to any of the persons or class of persons authorised under section 20(1) of the Act. This would not be the intended outcome, as the intention is for the Health Secretary to only be authorised to delegate their functions to members of staff within the Ministry of Health or the NSW Health Service.</p> <p>It is noted that in practice, the delegation provision as introduced by the Amending Regulation would only be delegated by the Health Secretary to a member of staff of the Ministry of Health or NSW Health Service.</p> <p>However, to avoid any ambiguities between the drafting of the Regulation and its intended operation, a further amendment will be developed to the Regulation as soon as is practicable to clarify that the class of persons listed in clause 15(a) and (b) is only relevant for the purposes of functions associated with the Health Secretary under the Act.</p>
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Thank you for raising these issues and I trust this response addresses your queries.

Sincerely,

**John Graham/MLC**

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

13/12/24





**The Hon Penny Sharpe MLC**

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

Your ref: D24/062718  
Our ref: MD24/8353

The Hon Natasha Maclaren-Jones MLC  
Chair  
Regulation Committee

By email: [regulation.committee@parliament.nsw.gov.au](mailto:regulation.committee@parliament.nsw.gov.au)

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

Thank you for your letter about scrutiny concerns relating to clause 5 of the Energy and Utilities Administration Amendment (Abolition of Net Zero Board) Regulation 2024 identified under the *Legislation Review Act 1987*, section 9(1)(b).

I agree with your assessment that clause 5 is no longer relevant or necessary. When this regulation was first drafted, the intent was to not interfere with the unrelated matter of coal market price emergencies. As you point out, the schedule of the parent Act that dealt with coal market price emergencies was repealed in mid-2024, so retention of clause 5 is no longer appropriate.

I have instructed my Department that clause 5 is to be repealed at the next available opportunity, most likely when other amendments to the regulation are also needed.

If you have any further questions about this issue, please contact Ms Cris Hickey, Director, Climate Change and Sustainability Policy, Department of Climate Change, Energy, the Environment and Water on \_\_\_\_\_ or at \_\_\_\_\_

Thank you for taking the time to bring these matters to my attention.

Sincerely

**Penny Sharpe MLC**

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

*13/1/25*

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**From:** Chambers of the Chief Justice of NSW  
**Sent:** Wednesday, 29 January 2025 1:17 PM  
**To:** Regulation Committee  
**Cc:** Edwina Chapman  
**Subject:** RE: Correspondence from Chair of the Regulation Committee - Supreme Court Practice Note SC EQ 4

Dear Ms McLaren-Jones,

**Re: Supreme Court Act 1970–Supreme Court Practice Note SC EQ 4**

The Chief Justice has asked me to respond to your letter of 13 December 2024.

In relation to the first matter you raise, whilst the Harmonisation Committee did work on the topic of schemes of arrangement, it did not (and has no power to) issue Practice Notes but similar Practice Notes to SC Eq 4 deriving from the work of the Harmonisation Committee have been adopted in the Federal Court and the Supreme Court of Victoria.

In relation to the second matter, the Schedule makes it plain that the sections you have referred to have been repealed (referring to them as “former” sections). Applications may still be made under the former provisions, which can have continuing application in insolvency administrations commenced while they were in force. The Court will keep this matter under review but does not see any need for further elucidation given the clear reference in the Schedule to the fact that the provisions have been repealed.

Kind regards,

Rebel.



**Rebel Kenna | A/Executive Director & Principal Registrar  
Supreme Court of New South Wales**

Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000  
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