LEGISLATIVE COUNCIL

REGULATION COMMITTEE

Delegated Legislation Monitor No. 7 of 2024

7 August 2024

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Regulation Committee

Delegated Legislation Monitor No. 7 of 2024

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'August 2024'

Chair: Hon Natasha Maclaren-Jones MLC

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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.[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

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

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

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

(iii) that the regulation may not have been within the general objects of the legislation under which it was made

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

(v) that the objective of the regulation could have been achieved by alternative and more effective means

(vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act

(vii) that the form or intention of the regulation calls for elucidation, or

(viii) that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

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. 7 of 2024

1.10 For this monitor, the Committee has reviewed 36 instruments notified on the NSW legislation website between 3 June 2024 and 12 July 2024. The Committee has:

- raised scrutiny concerns and sought further information in respect of four instruments, as set out in Chapter 1,
- concluded its review in respect of four instruments, as set out in Chapter 2, and
- concluded that 28 instruments raise no scrutiny concerns, as set out in Appendix 1.

1.11 A further 17 instruments notified between 24 June 2024 and 26 July 2024 remain under review, for consideration in a future monitor.

Chapter 1 New scrutiny matters for engagement

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

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

S.I. Number	2024 No 250
Notified 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 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*.

1.2 The amending regulation was made under the *Gaming Machines Act 2001* and the *Liquor Act 2007*. Items in the two amending schedules commence on various dates in 2024 and 2025.

1.3 The explanatory note to the amending regulation provides that its objects include amending the *Gaming Machines Regulation 2019* to require:

> the adoption of additional responsible gambling 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.

1.4 The objects also include amending the *Liquor Regulation 2018* to provide transitional arrangements for licences in relation to the additional responsible gambling practices for harm minimisation measures under the amending regulation.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

1.5 Under this ground, the Committee may request elucidation where ambiguity or uncertainty is identified, including perceived errors in drafting which may affect the operation of a regulation.

1.6 The Committee wrote to the Minister for Gaming and Racing in relation to the amending regulation on 16 July 2024 identifying scrutiny concerns under this ground.

1.7 Specifically, the Committee wrote to the Minister to seek clarification regarding the intended operation of the *Liquor Regulation 2018*, clause 135, as inserted by the amending regulation, Schedule 2[2], insofar as the clause relates to a gaming plan of management condition.

1.8 Clause 135(1) provides that the 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 a gaming plan of management condition, among other conditions. Clause 135(4) defines a gaming plan of management condition 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*.

1.9 While the amending regulation, Schedule 2[2], which inserts clause 135, commenced on 1 July 2024, Schedule 1[19], which inserts clause 50P, does not commence until 1 September 2024.

1.10 The Committee is concerned that the different commencement dates render the *Liquor Regulation 2018*, clause 135(1)I, (2)(c), (3)(c) and (4), definition of *gaming plan of management condition* inoperative, given the provisions appear to rely on the existence of the *Gaming Machines Regulation 2019*, clause 50P.

1.11 The Committee has also queried the retention of references to 'problem gambling' in the *Gaming Machines Regulation 2019*, clauses 46(2), definition of *gambling contact card* and 104(2)(b), given this term was replaced with 'gambling harm' in clauses 22, 24 and 41 by the amending regulation, Schedule 1[8].

1.12 For further detail regarding the Committee's scrutiny concerns, see the letter to the Minister for Gaming and Racing included in Appendix 3.

Committee conclusion

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

Industrial Relations (General) Amendment (Fees) Regulation 2024

S.I. Number	2024 No 253
Notified 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

1.14 The *Industrial Relations (General) Amendment (Fees) Regulation 2024* (the amending regulation) inserts additional fees and increases existing fees payable under the *Industrial Relations (General) Regulation 2020,* including fees payable in relation to the recently re-established Industrial Court of New South Wales.

1.15 The explanatory note provides that the amending regulation is made under the *Industrial Relations Act 1996* (the Act), including sections 183 and 407, the general regulation-making power. The amending regulation commenced on 1 July 2024.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

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

1.17 The Committee wrote to the Minister for Industrial Relations on 16 July 2024 to seek clarification on the intended meaning of Note 1 to items 5-7 in the *Industrial Relations (General) Regulation 2020*, Schedule 1, Part 3, as inserted by the amending regulation, Schedule 1[4]. The note provides as follows:

> **Note 1**— Except as provided in Note 2, fees under this item are chargeable—
> (a) to the Crown or a person acting on behalf of the Crown, and
> (b) to an industrial organisation or association registered under the Act, Chapter 5.

1.18 It is the view of the Committee that the grammatical construction of Note 1 means that the adjective 'registered' applies such that fees under the item are chargeable to an 'industrial organisation registered' or 'an association registered'.

1.19 The Act defines an industrial organisation as an industrial organisation of employees or employers registered, *or taken to be registered*, under the Act, Chapter 5. The Act, section 217(3) provides that the regulations may declare that an organisation or class of organisations is taken to be registered under Chapter 5.[4]

1.20 Therefore, it appears that Note 1 seeks to exclude those industrial organisations 'taken to be registered' under the Act, Chapter 5, such that they are not required to pay the relevant fees.

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[4] See the *Industrial Relations (General) Regulation 2020*, clause 32, which provides that Newcastle Trades Hall Council is taken to be registered as an industrial organisation of employees under the *Industrial Relations Act 1996*, Chapter 5.

1.21 The Committee has also queried the reference to registration under the Act, Chapter 5 in Note 1. The chapter predominately relates to industrial organisations, while Chapter 6 relates to the registration of associations. The current wording means associations registered under the Act, Chapter 6 are exempt from the requirement to pay the fees the note relates to, because of the operation of the *Industrial Relations (General) Regulation 2020*, clause 26(5)(b).

1.22 For further detail regarding the Committee's scrutiny concerns, see the letter to the Minister for Industrial Relations included in Appendix 3.

Committee conclusion

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

Liquor Amendment (Vibrancy Reforms) Regulation 2024

S.I. Number	2024 No 254
Notified 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

1.24 The *Liquor Amendment (Vibrancy Reforms) Regulation 2024* (the amending regulation) makes various amendments to the *Liquor Regulation 2018*. Most of the amendments are made consequent on amendments to the same provisions of the *Liquor Regulation 2018* 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.

1.25 The amending regulation expressly 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). It appears, to the Committee, that other provisions of the Act conferring regulation-making powers of relevance include sections 4(1), definition of *evidence of age document*, paragraph (f), 53(3)(d), 54(2A)(d), 59(2)(c), 96(3)(b), 116I, 127 and 159, the general regulation-making power.

1.26 The amending regulation commenced immediately after the commencement of the amending Act, Schedule 3[9]–[15], [17] and [21] on 1 July 2024.

1.27 The explanatory note to the amending regulation provides that its objects include clarifying notification requirements for certain applications made under the Act, making it an offence to fail to display a notice in certain areas of licensed premises regarding the need for minors to be accompanied by a responsible adult, and exempting licensed premises in special entertainment

precincts from certain licence conditions limiting noise if inconsistent with the relevant special entertainment precinct plan under the *Local Government Act 1993*.

1.28 The remaining object stated in the explanatory note, being the object of relevance to the Committee, relates to the amendment made by the amending regulation, Schedule 1[12], whereby the amending regulation makes 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 *Liquor Regulation 2018*, clause 44C). This 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.

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

1.29 Under this ground, the Committee will draw attention to 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.

1.30 The Committee wrote to the Minister for Gaming and Racing in relation to the amending regulation on 16 July 2024 identifying scrutiny concerns under this ground.

1.31 Specifically, the Committee wrote to the Minister to seek clarification regarding the rationale behind, and justification for, the offence established by clause 44C, which potentially conflicts with how the Act, Part 5, Division 3, as amended by the amending Act, deals with neighbourhood disturbances relating to licensed premises, in particular section 79A, which provides for the same duty, albeit without making breach of this duty an offence.

1.32 The Committee is concerned the offence may undercut the disturbance complaints process and remedies established by the Act, including by treating as equivalent the two kinds of disturbance, namely undue vs. unreasonable and serious, where different action is to be taken under the Act depending on the kind of disturbance and whether the licensed premises has been operating longer than the complainant has resided or worked in the area.

The form or intention of the regulation calls for elucidation

1.33 The Committee also sought clarification from the Minister regarding the intended effect of clause 130B(1)(c), as amended by the amending regulation, Schedule 1[16], to better understand how the clause aligns with clause 130B(1)(a) and (b) and the Act, section 94A, which provides an exemption from certain application requirements for applications for temporary boundary changes to licensed premises to incorporate certain outdoor space.

1.34 While clause 130B(1)(a) and (b) prescribe criteria land must satisfy for the exemption to extend to that land, paragraph (c) appears to instead deal with the duration of a temporary boundary change relating to that land.

1.35 In addition, the Committee sought confirmation that the reference to an application 'for a small bar' inserted by the amending regulation, Schedule 1[9] extends to any application for an

approval or authorisation that relates to a small bar, and not just an application for a small bar licence.

1.36 For further detail regarding the Committee's scrutiny concerns, see the letter to the Minister for Gaming and Racing included in Appendix 3.

Committee conclusion

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

Police Amendment Regulation 2024

S.I. Number	2024 No 258
Notified 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

1.38 The *Police Amendment Regulation 2024* (the amending regulation) inserts a savings and transitional provision into the *Police Regulation 2015* consequent on the commencement of the *Industrial Relations Amendment Act 2023* (the amending Act), Schedule 2.28, which amends the *Police Act 1990* (the Act) in connection with the re-establishment of the Industrial Court of New South Wales and related changes to the constitution of, and the conduct of hearings by, the Industrial Relations Commission of New South Wales (the Commission).

1.39 The amending regulation appears to have been made under the Act, section 221 and Schedule 4, clause 2 and commenced on publication on the NSW legislation website on 28 June 2024.

1.40 The amending regulation provides that proceedings under the Act pending before the Commission immediately before the commencement of the amending Act, Schedule 2.28 must be dealt with as if the subschedule had not commenced. The subschedule, which commenced on 1 July 2024, provides, in relation to proceedings under the Act, Part 9, Division 1A, that 'the rules of evidence and other formal procedures of a superior court of record apply to and in relation to the Commission in Court Session' (otherwise known as the Industrial Court of New South Wales).

1.41 The subschedule also provides that those proceedings, and proceedings under the Act, Part 9, Division 1C, are to be dealt with by judicial members of the Commission, being persons who hold or have held a judicial office of the State, the Commonwealth or another State or

Territory, or Australian lawyers of at least 7 years standing[5] Previously, those proceedings were to be dealt with by any members of the Commission who are Australian lawyers.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

1.42 Under this ground, the Committee may request elucidation where ambiguity or uncertainty is identified, including the perceived imposition of uncertain obligations or inclusion of inert provisions. The Committee also generally considers, in reviewing a regulation, the purpose or object, and intended effect, of the parent Act and how the regulation gives effect to those matters.

1.43 The Committee wrote to the Minister for Police and Counter-terrorism on 24 July 2024 to seek clarification regarding the intended effect of the amendments made by the amending Act, Schedule 2.28, in order to understand the intended effect of the amending regulation in suspending those amendments in relation to pending proceedings under the Act.

1.44 In particular, the Committee sought clarification regarding the circumstances in which the Commission in Court Session would hear proceedings under the Act, Part 9, Division 1A, thus engaging the Act, section 178(2), as inserted by the amending Act, Schedule 2.28[1], where it appears to the Committee that those proceedings are to be heard by a judicial member of the Commission, but not necessarily the Commission in Court Session.

1.45 Further, the Committee sought clarification regarding the rationale behind the amending regulation insofar as it relates to the amendments made by the amending Act, Schedule 2.28[2]–[4] so as to better understand the impact on pending proceedings and case management.

1.46 For further detail regarding the Committee's scrutiny concerns, see the letter to the Minister for Police and Counter-terrorism included in Appendix 3.

Committee conclusion

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

[5] *Industrial Relations Act 1996*, section 149.

Chapter 2 Concluded scrutiny matters

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

Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024

S.I. Number	2024 No 194
Notified on Legislation Website (LW)	07/06/2024
Tabled in Legislative Council (LC)	18/06/2024
Last date of notice for disallowance motion	26/09/2024

Overview

2.1 The *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024* (the amending regulation) amends the *Design and Building Practitioners Regulation 2021* (the regulation). The amending regulation was made under the *Design and Building Practitioners Act 2020* (the Act), sections 4(1) and (2)(b) and 107(5A). The amending regulation commenced on 1 July 2024, other than Schedule 1[3] which commenced on the day the regulation was published on the NSW legislation website.

2.2 As provided by the explanatory note, the objects of the amending regulation include:

- excluding temporary accommodation facilities from being building work for the purposes of the Act,
- continuing to exclude certain work relating to class 3 or 9c buildings from being building work until 30 June 2025, and
- providing that registered building practitioners are exempt from the insurance requirements under the Act until 30 June 2025.

2.3 The Committee wrote to the Minister for Better Regulation and Fair Trading on 26 June 2024 regarding scrutiny concerns identified in relation to clause 106, as substituted by the amending regulation, Schedule 1[5]. In its letter, the Committee conveyed that clause 106, which exempts registered building practitioners from the insurance requirements under the Act until 30 June 2025, may engage scrutiny grounds under the *Legislation Review Ac 1987*, section 9(b)(iii) and (iv).

2.4 The Minister responded to this correspondence on 15 July 2024. This response can be found in Appendix 3.

Scrutiny concerns

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

2.5 Under these grounds, the Committee is required to consider the objects and intended effects of the Act and how those objects appear to be implemented by the amending regulation. In the context of these scrutiny principles, the Committee will consider whether each provision is consistent with the Act, including whether a provision appears to be beyond the scope of the delegated legislation-making powers in the Act or makes unusual or unexpected use of these powers, including their use in a manner that, although technically lawful, significantly detracts from the operation of the scheme set out in the Act.

2.6 As substituted by the amending regulation, Schedule 1[5], clause 106 provides an exemption for registered building practitioners from the insurance requirements under the Act until June 2025.[6] A similar exemption existed in the regulation from 1 July 2022 to 30 June 2023, and then 1 July 2023 to 30 June 2024.

2.7 Clause 106 references the Act, section 107(5A) as the relevant regulation-making power.

2.8 Section 107(5A) provides that:

> The regulations may exempt all persons or bodies, specified persons or bodies or classes of persons or bodies, or all work, specified work or classes of work, or all or specified registrations—
> (a) from the insurance requirements under this Act, and
> (b) for a maximum period of 12 months.

2.9 This provision was inserted into the Act by way of an amendment moved by The Greens to the *Building Legislation Amendment Bill 2021* in the Legislative Council. In the second reading debate, then member of the Legislative Council, Mr David Shoebridge MLC explained the intention for the 12-month time limit, stating that:

> Having accepted the validity of the Government's arguments, we then proposed some amendments that expressly granted the Government the power to make regulations to exempt all persons or bodies, specified persons or bodies or all work specified work or classes of work, or all work, specified work or classes of work from the insurance requirements under the Act. But also time limiting it for a maximum period of 12 months because we think there should be pressure on the Government to stack up compulsory insurance…Our amendments Nos 1 and 2 expressly state that the current regulation-making power in section 107(5) does not include regulations relating to insurance requirements, and then we give a separate express time-limited power to exempt persons or works from the insurances requirements under this proposed new

[6] The *Design and Building Practitioners Act 2020,* section 24 provides that a registered building practitioner must not provide a building compliance declaration or do related building work, or hold out that the practitioner is adequately insured with respect to the provision of the declaration or doing the work, unless the practitioner is adequately insured with respect to the declaration and work.

> section 107(5A). We think that gets the balance right, and we understand that it is broadly supported. [7]

2.10 The Hon. Scott Farlow, on behalf of the then Government, also highlighted the temporary nature of the exemption and stated that:

> The amendment would allow insurance requirements to be temporarily deferred for new practitioners and we are supportive of putting a clear time limit on how long practitioners can be exempted. We want flexibility but agree that we still need to hold industry to account to move towards the mandatory expectations under the Act. [8]

2.11 The Committee also notes the comments made by the two members during debate on the Bill regarding the previous two-year exemption from insurance requirements included in clause 106 of the regulation as originally made. Mr Shoebridge expressed concern about the two-year delay before registered practitioners would be required to have adequate insurance under the Act.[9] In response, Mr Farlow acknowledged that an adequate insurance scheme was not yet available in New South Wales, but, despite this, the Government supported reducing the exemption from two years to 12 months:

> Following consultation on the draft supporting regulation…it became clear that if the entire scheme was turned on for all practitioners and buildings from 1 July 2021 that construction in New South Wales would come to a standstill. That was particularly a concern regarding the mandatory insurance obligations under the Act as advice from industry and insurers remains that it is unclear whether all practitioners would be able to secure adequate insurance due to the limited insurance options currently available. To allow other requirements to commence…the Government has agreed to defer the mandatory insurance requirement for practitioners under the scheme for 12 months commencing on 1 July this year.[10]

2.12 Accordingly, the *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2021,* which came into effect on 1 July 2021, amended clause 106 to bring the time limit forward by 12 months, changing the date from '30 June 2023' to '30 June 2022'.

2.13 Given the intention evinced in the Hansard debates, the Committee raised concerns that the amendment substituting clause 106 to exempt registered building practitioners from insurance requirements under the Act until 30 June 2025 may not have been made within the general objects of the Act under which it was made. Specifically, the Committee observed that where Parliament has provided for an exemption restricted to a single 12-month period, successive exemptions for registered building practitioners from insurance requirements may detract from the original operation and intention of the scheme set out in the Act.

2.14 In response to the concerns raised by the Committee, the Minister for Building provided the rationale for the third exemption as follows:

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7 *Hansard*, NSW Legislative Council, 10 June 2021, p 5976 (David Shoebridge).

8 *Hansard*, NSW Legislative Council, 10 June 2021, pp 5977-5978 (Scott Farlow).

9 *Hansard*, NSW Legislative Council, 10 June 2021, p 5976 (David Shoebridge).

10 *Hansard*, NSW Legislative Council, 10 June 2021, pp 5977 (Scott Farlow).

> While design practitioners have been subject to the insurance requirements under the Act since 1 July 2022, building practitioners have been exempted from this requirement as there is no way for them to meet the legislative standard of "adequate" insurance. This is because no insurer currently offers an insurance policy for the making of building compliance declarations under the DBP Act. However, there continues to be ongoing work between the NSW Government, Insurance Council of Australia, individual insurers and building practitioners representatives towards a long-term solution for the sector. Without the exemption, building practitioners would be required to stop all work on regulated buildings, including essential work on NSW apartment buildings, or face disciplinary action that could result in fines and suspension of licence.

2.15 In regard to the intention of section 107(5A), the Minister added that:

> Section 107(5A) of the DBP Act operates to ensure that any exemptions from insurance obligations under the DBP Act are subject to regular review to ensure there is an ongoing need for certain practitioners to be exempt and that Parliament retains the authority to consider the exemption on an annual basis. The Government does not consider that the regulation making power is limited to a one-off power to exempt a class of practitioners from obligations under the DBP Act.

Committee conclusion

2.16 The Committee thanks the Minister for his response and for engaging with the scrutiny concerns identified under the *Legislation Review Act 1987*.

2.17 However, based on the evidence set out above, the Committee maintains its concerns that clause 106 tests the limits of a regulation-making power that was intended to allow only a temporary deferral of insurance requirements under the Act. The clause means registered building practitioners remain exempt from what is arguably a key obligation under the Act, more than four years since the Act came into effect, in circumstances where members of Parliament have expressed concern about delays in 'mov[ing] towards the mandatory expectations under the Act'.

2.18 The amendments to the *Building Legislation Amendment Bill 2021* expressly excluded insurance requirements from section 107(5), which contemplates potentially indefinite exemptions, to make this particular exemption the subject of a 12-month limitation. The reference to a 'maximum period of 12 months' in section 107(5A)(b), read in contrast to section 107(5), suggests the intention may have been to limit the period of the operation of the exemption to a total period of 12 months, rather than successive periods of 12 months.

2.19 In addition to the fact that it appears to the Committee that this particular exemption was likely intended by the Parliament to be limited to 12 months only, the Committee is critical of the successive use of a regulation-making power that is transitional in nature, where this could effectively lead to an indefinite exemption. Even if it is not the case that section 107(5A) contemplates a one-off exemption, in the Committee's view it is arguably beyond the scope of the regulation-making powers under the Act for this exemption to be made more than a few times, undermining the scheme and related obligations established by the Act.

2.20 The Committee notes that while the Minister's response states that 'the Government does not consider that the regulation making power is limited to a one-off power to exempt a class of

practitioners from obligations under the DBP Act', the response does not provide any reasoning in support of this conclusion. The Committee does, however, appreciate the explanation from the Minister regarding why the exemption has been extended, noting that the requisite insurance policy is currently not available on the market.

2.21 While the Committee recognises the valid practical reasons for the exemption, the Committee considers that repeated exemptions for registered building practitioners in anticipation of an adequate insurance scheme is not an appropriate use of the relevant regulation-making power as articulated and debated in Parliament.

2.22 As this is the first time the Committee has identified this issue and drawn it to the attention of the Minister, the Committee is not recommending the amending regulation be disallowed on this occasion.

2.23 However, while the Committee is not recommending disallowance in this instance, the Committee will remain alert to the use of seemingly transitional provisions in this way, particularly where this arguably goes against the intention of the Parliament. The Committee strongly suggests that consideration be given to an alternative legislative solution before 30 June 2025 to support the ongoing deferral of insurance requirements, in light of the prevailing constraints, through an amendment to the Act. Further, the Committee notes that if an alternative legislative solution is not in place and the exemption is extended again by way of regulation, it is highly likely that the Committee will recommend that it be disallowed on this basis.

2.24 The Committee therefore draws this instrument to the attention of the House, noting that the amending 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. Despite not recommending the amending regulation be disallowed, the Committee requests that the Minister advise the Committee, before the first sitting day of 2025, on how the department intends to respond to the scrutiny concerns identified in this monitor, including the legislative approach to be taken, in light of the Committee's position that it is highly likely that disallowance will be recommended should the same exemption be sought by a further regulation.

Road Transport Amendment (Automated Seatbelt Enforcement) Rule 2024

S.I. Number	2024 No 197
Notified on Legislation Website (LW)	07/06/2024
Tabled in Legislative Council (LC)	18/06/2024
Last date of notice for disallowance motion	26/09/2024

Overview

2.25 The *Road Transport Amendment (Automated Seatbelt Enforcement) Rule 2024* (the amending rule), Schedule 1 amends the *Road Rules 2014* to, as stated in the explanatory note, 'provide for the enforcement of camera detected seatbelt offences by penalty infringement notice'. Schedules 2 and 3 amend the *Road Transport (Driver Licensing) Regulation 2017* and the *Road Transport (General) Regulation 2021* to update several references to rules in light of the changes made to the *Road Rules 2014* in Schedule 1.

2.26 The amending rule appears to have been made under the *Road Transport Act 2013*, sections 23, 24 and 26 and Schedule 1. The amending rule commenced on 1 July 2024.

2.27 Relevantly, the objects of the *Road Rules 2014* include:

> (b) to provide for road rules that are based on the *Australian Road Rules* so as to ensure that the road rules applicable in this State are substantially uniform with road rules applicable elsewhere in Australia, and
>
> (c) to provide for other road rules to be observed in this State in relation to matters that are not otherwise dealt with in the *Australian Road Rules*.[11]

2.28 The National Transport Commission (the NTC) regularly reviews the *Australian Road Rules*, which form the basis of a national uniform law scheme.[12] An amendment to the rules requires the approval of the Infrastructure and Transport Ministers' Meeting, a Ministerial Council consisting of the ministers responsible for road traffic in each State and Territory, and the Federal minister responsible for transport.[13]

2.29 The amending rule, Schedule 1 inserts examples of when seatbelts are taken to be properly adjusted and fastened, consolidates, with some changes, existing subrules that make it an offence for a driver to fail to ensure certain passengers comply with applicable seatbelt rules, and makes provision for the supply of, in relation to camera recorded offences, evidence of a medical or other exemption from seatbelt rules, or certain restraint or seating position rules that apply to children.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

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

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11 *Road Rules 2014*, r 3.

12 National Transport Commission, *Australian Road Rules*, https://www.ntc.gov.au/laws-and-regulations/australian-road-rules.

13 National Transport Commission, *Australian Road Rules*, https://www.ntc.gov.au/laws-and-regulations/australian-road-rules.

2.31 The Committee wrote to the Minister for Roads regarding three matters raised under this ground on 26 June 2024. The Minister responded on 3 July 2024. This correspondence can be found in Appendix 3.

I.

2.32 The first matter relates to the insertion of notes that flag departures in the *Road Rules 2014* from the *Australian Road Rules*. The amending rule, Schedule 1[5], [13] and [14] omit the text of certain subrules, while retaining the existing subrule numbering, as part of the consolidation mentioned above. Inserted in their place is the following note, taking rule 266(1), as substituted by Schedule 1[5], as an example:

> (1) * * * * *
>
> **Note—**
> The *Australian Road Rules*, rule 266(1) has not been reproduced in these Rules. The subrule has been left blank in order to preserve uniformity of numbering with the *Australian Road Rules*.[14]

2.33 The Committee queried the reference to rule 266(1), and other references to a 'corresponding subrule in the *Australian Road Rules*, rule 266' in the notes inserted by Schedule 1[7], [9] and [12]. This is because the latest version of the *Australian Road Rules* available on the NTC's website, current as at 9 June 2023, incorporates structural changes to Part 16, Division 3, such that rule 266 now contains only two subrules that provide definitions for the division i.e. the substantive content of the former rule 266 has been relocated to new rules in the division.

2.34 As a result, the references in the *Road Rules 2014* to the *Australian Road Rules*, rule 266 appear to be out of date when reviewing the latest version of the *Australian Road Rules*, and it seems different subrules should be referenced to achieve the intended uniformity.

2.35 Further, the Committee raised the potentially misleading nature of the notes inserted by the amending rule that provide that a particular subrule of the *Australian Road Rules* has not been reproduced, or that a particular rule of the *Road Rules 2014* (such as rule 264-2, as inserted by Schedule 1[2]) is an additional NSW road rule for which 'there is no corresponding rule in the *Australian Road Rules*', in circumstances where it seems more appropriate to say, similar to the note in Schedule 1[16], that the subrule is not *uniform* with the corresponding rule in the *Australian Road Rules*. That is, the same matters appear to be dealt with by the *Australian Road Rules*, just in a different location or a slightly different way.

2.36 In response to the Committee's concerns, the Minister reiterated that the intention behind the

> … established convention of stating that a rule in the NSW Road Rules is not uniform with the corresponding rule in the model Australian Road rules … is to ensure that overall, the numbering patterns are consistent, and any difference is clearly noted.

2.37 With regard to the amending rule's apparent inconsistency with the latest published version of the *Australian Road Rules*, the Minister explained that the NSW Government has not yet adopted the model rules that incorporate the NTC's 14th amendment package, which includes

[14] The other subrules substituted by Schedule 1[13] and [14] (the *Road Rules 2014*, rule 266(2C), (2D), (3B) and (3C)) refer to the apparently corresponding subrules of the *Australian Road Rules* (rule 266(2C), (2D), (3B) and (3C), respectively).

the changes to the numbering of the rules in Part 16, Division 3, including rule 266. For that reason, the references in the *Road Rules 2014* are consistent with an *earlier* version of the model rules.

2.38 The Minister noted the adoption of the 14th amendment package was deferred due to the planned implementation of automated seatbelt enforcement in New South Wales, but that the necessary changes are expected to be implemented in the second half of 2024, which 'may resolve current inconsistency with numbering'.

2.39 The Minister noted that regard will be had, as part of future maintenance of the *Road Rules 2014*, to the Committee's suggestion that it may be more appropriate for certain notes to refer to the equivalent rule or subrule of the *Australian Road Rules*, wherever located.

II.

2.40 The second matter raised by the Committee concerns the *Road Rules 2014*, rule 267(4), as substituted by the amending rule, Schedule 1[16], which provides that a person has the benefit of an exemption from the requirement to wear a seatbelt, as provided by rule 267(3) or (3A), if the driver produces the person's medical certificate, or a copy of the certificate, to the relevant authority. While subrule (3A) provides an exemption for a person carrying a medical certificate stating the person should not wear a seatbelt because of a medical condition or disability, subrule (3) provides an exemption for a person carrying:

> a certificate (other than a medical certificate issued under subrule (3A)), issued under another law of this jurisdiction, stating that the person is not required to wear a seatbelt.

2.41 As a result, it appeared to the Committee that 'medical' was included in error in subrule (4), as it didn't account for both medical (subrule (3A)) and non-medical (subrule (3)) certificates. The inclusion of the word means it is arguable a person cannot utilise the exemption provided by subrule (3), as the certificate they would be carrying is not a medical certificate.

2.42 The Minister clarified that the certificates referred to in subrule (3) include certificates for exemptions for activities like filming, and conveyed Transport for NSW's agreement that:

> a minor amendment should be progressed as part of updates to the rules to ensure the exemption applies consistently to medical and non-medical certificates as intended.

III.

2.43 The final matter queried was the insertion of a reference to the *Road Rules 2014*, rule 264-1 in the *Road Transport (General) Regulation 2021*, Schedule 5 by the amending rule, Schedule 3[1], where the same reference was also inserted into that penalty notice offences schedule by Schedule 3[2]. The result is that rule 264-1 is listed in the schedule twice: firstly as an offence for which the amount payable under a penalty notice by an individual is $410, and secondly as an offence for which the amount payable under a penalty notice by an individual is dependent on the number of unrestrained passengers in the motor vehicle, ranging from $410 for one unrestrained passenger to $1,728 for four or more.

2.44 The Minister noted that:

> In making the Rule it was important to be clear that the fine under new rule 264-1 for a driver not ensuring their passengers wear a seatbelt would continue to apply as it would have (for rules 265(3) and 266(1)) before the amendments were made.

2.45 The Minister advised that Transport for NSW agreed that the first reference to rule 264-1 may be unnecessary and will be removed in a future update to the *Road Rules 2014*.

Committee conclusion

2.46 The Committee appreciates the prompt response provided by the Minister and notes the undertaking to amend the *Road Rules 2014* to address the latter two issues identified above. This undertaking will be published on the Committee's webpage and will be updated when the relevant undertaking has been implemented.

2.47 While the Committee accepts the explanation provided by the Minister in relation to the first issue, the Committee suggests serious consideration be given to whether the latest version of the model rules *as adopted in New South Wales* could be made publicly available so as to avoid any potential confusion relating to perceived numbering errors, and whether an amendment to the *Road Rules 2014* is required to resolve the matter.

2.48 Currently, the *Road Rules 2014* defines the *Australian Road Rules* as:

> the document entitled the *Australian Road Rules* as approved by the Australian Transport Council,[15] and published by the National Transport Commission, from time to time.

2.49 So long as this definition remains unchanged, it is feasible to expect numbering inconsistencies may recur whenever the NSW Government does not adopt a set of structural changes to the model rules on the same day those changes are incorporated in a new consolidated version of the model rules published on the NTC website. This would seem to undermine the stated aim of ensuring that 'overall, the numbering patterns are consistent, and any difference is clearly noted'.

2.50 With that suggestion, and in light of the undertaking made, 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. Therefore, the Committee concludes its scrutiny of the amending rule.

NSW Admission Board Amendment (Fees) Rule 2024

S.I. Number	GG n2024-1093
Notified on Legislation Website (LW)	14/06/2024

15 Now the Infrastructure and Transport Ministers' Meetings.

Tabled in Legislative Council (LC)	18/06/2024
Last date of notice for disallowance motion	26/09/2024

Overview

2.51 The *NSW Admission Board Amendment (Fees) Rule 2024* (the amending rule) amends the *NSW Admission Board Rules 2015* (the rules) to replace the Third Schedule, which prescribes fees relating to admission as a lawyer, appointment as a public notary, the diploma-in-law and other applications and services provided by the Legal Profession Admission Board (the Board). The explanatory note provides that the object of the amending rule is to 'increase the fees payable for the services provided by the Board'.

2.52 The amending rule was made by the Board under the *Legal Profession Uniform Law Application Act 2014*, section 21A and commenced on 1 July 2024.

2.53 The Committee has identified concerns under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (vii). These scrutiny concerns were conveyed in a letter to the Presiding Member of the Board on 26 June 2024. The Presiding Member responded on 22 July 2024. This correspondence can be found in Appendix 3.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

2.54 The Committee is required to consider whether the form or intention of the rule calls for elucidation, including with respect to the inclusion of inert provisions.

2.55 The first matter raised by the Committee under this ground concerned the inclusion of public notary fees in the rules. The Committee noted that the *Public Notaries Act 1997*, section 9(d) and (f) enable the Board to make rules with respect to applications for appointment as a public notary, the approval of such applications and the fees payable to the Board for the appointment of public notaries.

2.56 The *Public Notaries Appointment Rules* were last amended on 1 July 2023 by the *Public Notaries Appointment Amendment (Fees) Rule 2023* to provide for fee increases. These fees aligned with the public notary fees inserted into the rules by the *NSW Admission Board Amendment (Fees) Rule 2023*. However, the increased fees substituted by the amending rule mean that two instruments appear to prescribe different fees relating to public notaries.

2.57 To the Committee, the inclusion of public notary fees in the rules seemed unusual, given the rules expressly provide that they are made under the *Legal Profession Uniform Law Application Act 2014*, section 21A, and do not otherwise relate to public notaries. The Committee noted the risk of confusion regarding whether the lower fees in the *Public Notaries Appointment Rules*, as substituted by the *Public Notaries Appointment Amendment (Fees) Rule 2023*, prevail, being the rules expressly made under the *Public Notaries Act 1997*.

2.58 In response, the Presiding Member accepted the Committee's concern, advising that the combined publication of the fees across both the rules and the *Public Notaries Appointment Rules* was made in error. The Presiding Member advised that the matter has been rectified by two separate instruments: the *NSW Admission Board Amendment (Fees) Rule 2024 Erratum* and the *Public Notaries Appointment Amendment (Fees) Rule 2024*, published on 5 July 2024.

2.59 However, upon further inquiry it became evident these rules had not been successfully published in the Gazette on that date. The rules were instead published in the Gazette on 26 July 2024, with the effect of relocating the increased public notary fees from the rules to the *Public Notaries Appointment Rules.*

2.60 The Committee also requested clarification regarding certain fees listed for 'Other services/applications'. Specifically, the Committee queried the services for which a 'Skills Assessment letter' or 'Qualification in law satisfies NSW admission requirements (original academic transcript required)' fee is charged, as the Committee was uncertain about whether the services are distinct from the consideration of an 'Application for assessment of academic qualification (Form A1-A3)' or an 'Application for assessment of PLT qualifications (Form P1-P3)'.

2.61 The Presiding Member provided the following response:

> The Board is empowered under s.21A (1)(e) of the *Legal Profession Uniform Law Application Act 2014* to make rules with respect to fees in relation to the exercise of its functions.
>
> The Board is designated by the Commonwealth Government as the relevant migration skills assessment authority for lawyers and as such, provides, as part of its functions, the service of providing a 'skills assessment letter' to lawyers seeking to immigrate to Australia, for visa purposes, as distinct from Applications for Assessment of academic or PLT qualifications.

2.62 Finally, the Committee queried whether 'PLT' should be substituted with 'PTE' in relation to the fee charged for an 'Application for review of decision of AESC or PLT sub-committee (Form R1/R2)', as the rules refer to the relevant sub-committee as the Practical Training Exemptions Sub-Committee.

2.63 The Presiding Member responded to the above suggestion as follows:

> The use of the acronym PLT (Practical Legal Training) is a standard term used throughout Australia by Admissions Authorities. I am of the view that the changing the acronym to PTE is liable to bring New South Wales out of line with the rest of Australia. For any fee increase in 2025, I will ask the Executive Officer to not use an acronym to substitute for each and, instead, request that the full name of each sub-committee be used.

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

2.64 Under this ground, the Committee is required to consider the consistency of the rule with the objects and intended effects of the *Legal Profession Uniform Law Application Act 2014*, including

the potential unlawful sub-delegation of legislative power and the imposition of fees without or beyond power.

2.65 In considering the amending rule in the context of this scrutiny principle, the Committee queried the imposition of a fee of $210 for a 'Late Application – Public Notary'. The Committee noted that the *Public Notaries Act 1997* and the *Public Notaries Appointment Rules* are silent on timeframes for applications for appointment as a public notary. Rather, it appears the timeframes underpinning this late fee are set by the 'Guide for applicants for appointment as a Public Notary in NSW', published on the Board's website. The Committee is concerned this fee is not ascribable to a rule, but to an external document. As such, the Committee requested clarification regarding the basis for this fee, with the view that its imposition may not be within the general objects of the legislation under which it is made.

2.66 The Presiding Member provided the following response:

> In respect of Issue 2 (Late application fee – Public Notary) the late fee should be seen as charging a different application fee for appointment as a Public Notary, such application fee being permitted by Rule 7 of the *Public Notaries Appointment Rules*, based on the time it is lodged.
>
> The purpose of the fee is to stop applications being made shortly before a Board meeting and reflects the additional work in preparing supplementary papers for the Board. In practice, the fee is rarely levied (no more than four times per year) and once the Board's new online system is introduced in 2025, the need for a late fee is likely to change. I will ask the Board's Executive Officer to report to the Board on the need for a late fee including the need to codify the closure dates for applications in the rules, or to consider whether the Board should simply specify a cut-off date with no option to lodge an application out of time and thereby abolish the late fee.

Committee conclusion

2.67 The Committee appreciates the consideration and clarification provided by the Presiding Member in response to the issues raised by the Committee, and, in particular, the prompt remedial action taken to resolve the incorrect combined publication of public notary fees.

2.68 Regarding the imposition of a late fee for public notary applications, noting this fee has now been relocated to the *Public Notaries Appointment Rules*, the Committee maintains its concerns about the timeframes for applications being set by an external document and agrees with the suggestion that closure dates be codified in the *Public Notaries Appointment Rules*, should a late fee still be proposed.

2.69 While the Committee appreciates the widespread use of the 'PLT' acronym, the Committee notes the suggestion to refer in the fees schedule to the 'PTE sub-committee', instead of the 'PLT sub-committee', is focused on achieving internal consistency with the rest of the rules and avoiding the suggestion of there being a subcommittee other than the Practical Training Exemptions Sub-Committee that could make the relevant reviewable decision. Just as 'AESC' appears to be an acronym for the Academic Exemptions Sub-Committee, it would seem more appropriate for 'PLT sub-committee' to read 'PTE sub-committee' if the intention is to refer to the Practical Training Exemptions Sub-Committee. However, the Committee agrees that

using the name of each subcommittee in full in future amending rules is the best option for avoiding any potential confusion.

2.70 Subject to the further comments above, the Committee is of the view that the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(iii) and (vii) have been appropriately addressed. Therefore, the Committee concludes its scrutiny of the amending rule.

NSW Admission Board Fifth Amendment Rule 2024

S.I. Number	GG n2024-1095
Notified on Legislation Website (LW)	14/06/2024
Tabled in Legislative Council (LC)	18/06/2024
Last date of notice for disallowance motion	26/09/2024

Overview

2.71 The *NSW Admission Board Fifth Amendment Rule 2024* (the amending rule) amends the *NSW Admission Board Rules 2015* to, as stated in the explanatory note:

> make a failure to complete the Board's examination within ten years as [sic] a 'failure to progress' issue that will exclude a student-at-law from sitting further of the Board's examinations, subject to their being permitted to apply for relaxation of that rule.

2.72 The amending rule was made by the Legal Profession Admission Board (the Board) under the *Legal Profession Uniform Law Application Act 2014*, section 21A and commenced on 1 July 2024.

2.73 The amending rule, rule 3(1) inserts rule 66A into the *NSW Admission Board Rules 2015* (the rules), which provides that, subject to rule 67, which provides for applications for the relaxation of certain rules, a student-at-law is excluded from taking an examination in a subject set out in rule 53 if 10 years have elapsed since the student-at-law enrolled in their first subject.

2.74 The other amendment made by the amending rule is to substitute rule 67(3) to extend the application of the rule to rule 66A as follows:

> (3) The Executive Officer may, in circumstances which he or she regards as sufficiently special and upon such conditions as he or she things [sic] fit, relax rule 64, rule 65, rule 66 *or rule 66A*. [emphasis added]

2.75 The amendment also inserted a note to rule 67(3) flagging that a candidate may, under rule 71, apply for the review of a determination of the Executive Officer of the Board made under rule 67.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

2.76 Under this ground, the Committee may raise potential errors in drafting that affect the meaning or interpretation of the regulation.

2.77 The Committee wrote to the Presiding Member of the Board under this ground on 26 June 2024. The Presiding Member responded on 22 July 2024. This correspondence can be found in Appendix 3.

2.78 The Committee queried whether consequential amendments were required, in light of the amending rule and previous amendments to rule 67, to omit the reference to the Performance Review Sub-Committee in rule 71(1), and to omit rule 27G, which provides for the appointment of the sub-committee 'to determine applications under rule 67', where it appears the sub-committee no longer has that or any other function.

2.79 In the rules as originally made, a person could apply under rule 67 to the Examinations Committee for a relaxation of rule 64, 65 or 66. The Examinations Committee was to refer that application to the Performance Review Sub-Committee or the Executive Officer for determination. Rule 71 enabled a person aggrieved by a determination of the Performance Review Sub-Committee or the Executive Officer under rule 67 to apply to the Examinations Committee for review. The *NSW Admission Board Amendment Rule 2023*, published in Gazette No 465 of 6 October 2023, amended rule 67 to provide for applications to be made directly to the Executive Officer.[16] However, rule 71 remains unchanged. In those circumstances, it appeared to the Committee that the reference to the Performance Review Sub-Committee in rule 71(1) is redundant, and that there may not be a continued need for the sub-committee at all given it no longer receives applications under rule 67.

2.80 The Presiding Member responded as follows:

> I appreciate that the *NSW Admission Board Rules 2015* no longer provide a function for the Performance Review Sub-Committee. The Board's Examination Committee is considering the question of the Sub-Committee's future functions and the Rules may be amended to provide for such functions in the future.

2.81 The Committee also raised two minor typographical and numbering errors that the Presiding Member agreed should be corrected in a future amendment to the rules.

Committee conclusion

2.82 The Committee appreciates the prompt response provided by the Presiding Member and notes that consideration is being given to the status of the Performance Review Sub-Committee and that minor corrections will be made in a future amendment to the rules.

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16 Rule 67(1) in the latest consolidated version of the *NSW Admission Board Rules 2015* published on the Board's website differs from rule 67(1) as substituted by the *NSW Admission Board Amendment Rule 2023*. Inconsistencies between this consolidated version and amending rules gazetted to date is the subject of ongoing correspondence and will be discussed in a future monitor.

2.83 Upon further review, the Committee requests that consideration also be given to whether rule 67(1) should be amended to refer to new rule 66A, to make clear that a person excluded from sitting an examination by that rule may make an application to the Executive Officer. That would appear to align with the amendment to rule 67(3) made by the amending rule, rule 3(2).

2.84 The Committee is of the view that the scrutiny concern identified under the *Legislation Review Act 1987,* section 9(1)(b)(vii) has been appropriately addressed. Subject to the above comment, the Committee concludes its scrutiny of the amending rule.

Appendix 1 Instruments with no scrutiny concerns

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

Instrument	SI number/ Government Gazette reference
Births, Deaths and Marriages Registration Amendment (Fees) Regulation 2024	2024 No 192
Electoral Amendment (Technology Assisted Voting at By-elections) Regulation 2024	2024 No 195
Uniform Civil Procedure (Amendment No 101) Rule 2024	2024 No 199
Biosecurity (National Livestock Identification System) Amendment (Electronic Devices) Regulation 2024	2024 No 214
Building, Development and Strata Legislation Amendment Regulation 2024	2024 No 215
Coal Mine Subsidence Compensation Amendment (Contributions) Regulation 2024	2024 No 216
Heavy Vehicle (Adoption of National Law) Amendment (Infringement Notice Penalties) Regulation 2024	2024 No 219
Mining Amendment (Base Rates of Royalty for Coal) Regulation 2024	2024 No 220
Transport Administration (General) Amendment (State Tax Exemption) Regulation 2024	2024 No 222
Water Management (General) Amendment (Water Supply Authorities) Regulation 2024	2024 No 223
Work Health and Safety Amendment (Notification of Silicosis Cases and Deaths) Regulation 2024	2024 No 225
Government Sector Employment Amendment Regulation 2024	2024 No 236
Cemeteries and Crematoria Amendment (Interment Service Levy) Regulation 2024	2024 No 245
Greyhound Racing Amendment (Appointment of Administrator) Regulation 2024	2024 No 252
Poisons and Therapeutic Goods Amendment (Prescription Database) Regulation 2024	2024 No 257
Poppy Industry Regulation 2024	2024 No 259
Protection of the Environment Operations (Waste) Amendment (Waste Facility Contributions) Regulation 2024 (No 2)	2024 No 260
Sporting Venues (Invasions) Regulation 2024	2024 No 262

Instrument	SI number/ Government Gazette reference
Water Management (General) Amendment (Access Licence) Regulation 2024	2024 No 264
Work Health and Safety Amendment (Engineered Stone) Regulation 2024	2024 No 265
Rail Safety National Law National Regulations (Fees) Amendment Regulations 2024	2024 No 277
Work Health and Safety Amendment (Penalty Notices) Regulation 2024	2024 No 288
Industrial Relations Commission Amendment (Industrial Court) Rules 2024	2024 No 289
Environmental Planning and Assessment Amendment (Development Levies) Regulation 2024	2024 No 297
Civil Procedure Act 2005 and Local Court Act 2007—Local Court of New South Wales Practice Note Civ 1	GG n2024-1055
Passenger Transport Act 1990—Order Fixing Fees	GG n2024-1059
Supreme Court Act 1970—Supreme Court Practice Note SC EQ 07	GG n2024-1145
National Parks and Wildlife Act 1974—Notice of Reservation of a National Park	NSWGG-2024-262-1

Appendix 2 Minutes

Draft minutes no. 12
Monday 5 August 2024
Regulation Committee
Room 1136, Parliament House, Sydney, 11.16 am

1. Members present
Mrs Maclaren-Jones, *Chair*
Mrs Carter
Mr Donnelly
Dr Kaine (*via teleconference*)
Ms Mihailuk (*via teleconference*)
Mr Murphy
Mr Nanva (*via teleconference*)

2. Apologies
Ms Boyd, *Deputy Chair*

3. Previous minutes
Resolved, on the motion of Mr Murphy: That draft minutes no. 11 be confirmed.

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

Sent:

- 27 June 2024 – Letter from Chair to the Minister for Roads, the Hon. John Graham MLC regarding scrutiny concerns identified in the *Road Transport Amendment (Automated Seatbelt Enforcement) Rule 2024*.
- 27 June 2024 – Letter from Chair to the Minister for Better Regulation and Fair Trading, Minister for Building, the Hon. Anoulack Chanthivong regarding scrutiny concerns identified in the *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024*.
- 27 June 2024 – Letter from Chair to Presiding Member, Legal Profession Admission Board, the Hon. A R Emmett AO KC regarding scrutiny concerns identified in the *NSW Admission Board Fees and Fifth Amendment Rules 2024*.
- 4 July 2024 – Letter to the Hon. Ben Franklin, President of the Legislative Council regarding the process undertaken earlier this year by the Regulation Committee to appoint an external legal adviser and to draw attention to the steps the Committee intends on taking regarding this process in the future.
- 16 July 2024 – Letter from Chair to the Minister for Gaming and Racing, the Hon. David Harris regarding scrutiny concerns identified in the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*.
- 16 July 2024 – Letter from Chair to the Minister for Gaming and Racing, the Hon. David Harris regarding scrutiny concerns identified in the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*.

- 16 July 2024 – Letter from Chair to the Minister for Industrial Relations, the Hon. Sophie Cotsis regarding scrutiny concerns identified in the *Industrial Relations (General) Amendment (Fees) Regulation 2024*.
- 24 July 2024 – Letter from Chair to the Minister for Police and Counter-terrorism, the Hon. Yasmin Catley regarding scrutiny concerns identified in the *Police Amendment Regulation 2024*.

Received:

- 4 July 2024 – Letter from Minister for Roads, the Hon. John Graham MLC regarding scrutiny concerns identified in the *Road Transport Amendment (Automated Seatbelt Enforcement) Rule 2024*.
- 15 July 2024 – Letter from Minister for Better Regulation and Fair Trading, Minister for Building, the Hon. Anoulack Chanthivong regarding scrutiny concerns identified in the *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024*.
- 17 July 2024 – Letter from the Australian Neurodivergent Parents Association regarding the process to establish an inquiry into the impact of the New South Wales mandatory reporting system on Disabled parents and their children.
- 19 July 2024 – Letter from Ms Helen Mason, Executive Officer, Scrutiny of Acts and Regulations Committee, Parliament of Victoria regarding the Australia-New Zealand Scrutiny of Legislation Conference to be held in December 2024.
- 22 July 2024 – Letter from Presiding Member, Legal Profession Admission Board, the Hon. Justice Payne regarding scrutiny concerns identified in the *NSW Admission Board Fees and Fifth Amendment Rules 2024*.
- 25 July 2024 – Letter from Ms Helen Mason, Executive Officer, Scrutiny of Acts and Regulations Committee, Parliament of Victoria regarding the Australia-New Zealand Scrutiny of Legislation Conference to be held in December 2024.

5. Proposed exemption from stage repeal of Road Rules 2014

The Committee noted that following the resolution of the Committee on 17 June 2024, the secretariat reviewed the proposed exemption from staged repeal of the Road Rules 2014 under the *Subordinate Legislation Act 1989,* section 10 and provided an email update to the Committee regarding this review on 5 July 2024.

6. Australia-New Zealand Scrutiny of Legislation Conference

The Committee noted that on 19 July 2024 the Scrutiny of Acts and Regulations Committee, Parliament of Victoria, provided the draft program for the upcoming Australia-New Zealand Scrutiny of Legislation Conference, which takes place from 3-5 December 2024. As part of the program, the Chair will be presenting a paper entitled 'Breaking new ground – expanding the scrutiny function of the New South Wales Legislative Council's Regulation Committee'.

Committee discussed if any members are interested in attending the conference alongside the Chair and noted that this would be discussed further at the Committee's next meeting.

7. Consideration of Chair's draft report

The Chair submitted her draft report entitled *Delegated Legislation Monitor No. 7 of 2024*, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mrs Carter: That:

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

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

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

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

The report be tabled in the House on Wednesday 7 August 2024.

8. Correspondence arising from Monitor No. 7 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. 7 of 2024.

9. Correspondence arising from the Regulation Committee's technical scrutiny function

Resolved, on the motion of Ms Mihailuk: That:

The Committee authorise the Chair to send correspondence to responsible ministers or bodies regarding scrutiny concerns identified under the *Legislation Review Act 1987* prior to the publication of a monitor on an ongoing basis.

Correspondence sent to ministers or bodies regarding identified scrutiny concerns in this period will be provided to Committee members for information.

10. Adjournment

The Committee adjourned at 11.37 pm.

11. Next Meeting

Monday 12 August 2024, 11.00 am, Room 1136 (consideration of the Committee report entitled 'Scrutiny of Delegated Legislation Monitor No. 8 of 2024').

Madeleine Dowd
Committee Clerk

Appendix 3 Correspondence

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

1. Sent 27 June 2024 – Letter from Chair to the Minister for Roads, the Hon. John Graham regarding scrutiny concerns identified in the *Road Transport Amendment (Automated Seatbelt Enforcement) Rule 2024*.
2. Sent 27 June 2024 – Letter from Chair to the Minister for Better Regulation and Fair Trading, Minister for Building, the Hon. Anoulack Chanthivong regarding scrutiny concerns identified in the *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024*.
3. Sent 27 June 2024 – Letter from Chair to Presiding Member, Legal Profession Admission Board, the Hon. A R Emmett AO KC regarding scrutiny concerns identified in the *NSW Admission Board Fees and Fifth Amendment Rules 2024*.
4. Received 4 July 2024 – Letter from Minister for Roads, the Hon. John Graham regarding scrutiny concerns identified in the *Road Transport Amendment (Automated Seatbelt Enforcement) Rule 2024*.
5. Received 15 July 2024 – Letter from Minister for Better Regulation and Fair Trading, Minister for Building, the Hon. Anoulack Chanthivong regarding scrutiny concerns identified in the *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024*.
6. Sent 16 July 2024 – Letter from Chair to the Minister for Gaming and Racing, the Hon. David Harris regarding scrutiny concerns identified in the *Gaming Machines and Liquor Amendment (Harm Minimisation Measures) Regulation 2024*.
7. Sent 16 July 2024 – Letter from Chair to the Minister for Gaming and Racing, the Hon. David Harris regarding scrutiny concerns identified in the *Liquor Amendment (Vibrancy Reforms) Regulation 2024*.
8. Sent 16 July 2024 – Letter from Chair to the Minister for Industrial Relations, the Hon. Sophie Cotsis regarding scrutiny concerns identified in the *Industrial Relations (General) Amendment (Fees) Regulation 2024*.
9. Received 22 July 2024 – Letter from Presiding Member, Legal Profession Admission Board, the Hon. Justice Payne regarding scrutiny concerns identified in the *NSW Admission Board Fees and Fifth Amendment Rules 2024*.
10. Sent 24 July 2024 – Letter from Chair to the Minister for Police and Counter-terrorism, the Hon. Yasmin Catley regarding scrutiny concerns identified in the *Police Amendment Regulation 2024*.

LEGISLATIVE COUNCIL

REGULATION COMMITTEE

26 June 2024

The Hon. John Graham MLC
Minister for Roads
Minister for Arts, Night-time Economy
Minister for Jobs and Tourism

D24/031262

By email

Dear Minister

Road Transport Amendment (Automated Seatbelt Enforcement) Rule 2024

As you are aware, on 19 October 2023, the Legislative Council adopted a resolution expanding the functions of the Regulation Committee to incorporate systematic review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987,* section 9(1)(b).

The Committee 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 18 June 2024.

- *Road Transport Amendment (Automated Seatbelt Enforcement) Rule 2024*

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

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

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

Parliament House, Macquarie Street, Sydney NSW 2000 AUSTRALIA
Telephone (02) 9230 3050
Regulation.Committee@parliament.nsw.gov.au

Scrutiny concerns

	Provision	Issue
1	Schedule 1[5], [7], [9], [12], [13], [14], relating to the insertion of various notes	Each of these amendments relates to departures in the NSW *Road Rules 2014* from the *Australian Road Rules*. In Schedule 1[5], [13] and [14] the amending instrument omits from rule 266 various subrules and inserts placeholder subrules, indicated by asterisks accompanied in each instance by a note. The notes state that the relevant subrule "has not been reproduced in these rules. The subrule has been left blank in order to preserve uniformity of numbering with the *Australian Road Rules*". The Committee appreciates that, in accordance with rule 8, notes do not form part of the Rules. Nonetheless, it appears to the Committee that the rationale for the placeholders and notes (preservation of uniformity with the *Australian Road Rules*) may not account for the restructuring and renumbering of the *Australian Road Rules,* Part 16, Division 3 arising from the *Australian Road Rules Amendments 2023*. The version of the model *Australian Road Rules* linked to on the National Transport Commission webpage is current as at 9 June 2023. Amendments made in 2023 substituted rule 266 and restructured the part, including by inserting Subdivision 2 relating to requirements about wearing seatbelts and seating positions. It follows that the *Australian Road Rules* no longer contains a rule 266 in a form that is analogous to the NSW *Road Rules 2014,* rule 266. In the case of each of Schedule 1[7], [9] and [12] a note is simply inserted and the Committee similarly notes that in each case the "corresponding subrule" does not seem to appear in the *Australian Road Rules*, rule 266, but elsewhere in Part 16, Division 3. The Committee is seeking clarification regarding whether there is an explanation for the apparent discrepancies or whether further amendments are required to the NSW *Road Rules 2014* to achieve the desired signposting effect to the restructured *Australian Road Rules.* The Committee also queries whether the notes could or should signpost where, although the numbering does not align, the NSW rule or subrule is nonetheless contained in the *Australian Road Rules*. So, for example, while rule 264-1, as a whole, is a NSW-specific provision, subrules (1) and (2) have equivalents in the national model law. It is potentially misleading for the note to that rule, in those circumstances, to provide that there is no corresponding rule in the *Australian Road Rules.*
2	Schedule 1[16], relating to the insertion of rule 267(4)	Schedule 1[16] substitutes rule 267(4) to provide that "a person is exempt under subrule (3) or (3A) only if the driver produces the relevant medical certificate or copy of the certificate" in certain circumstances. This is drafted in similar terms to rule

		264-2(3), as inserted by Schedule 1[2], which provides "Subrules (1) and (2) only apply to a driver who produces the relevant medical certificate or a copy of the certificate" in certain circumstances, as relevant to that rule. The intention in both cases appears to be to require the driver to produce the relevant medical certificate or, alternatively, a copy of that medical certificate. Both subrules (1) and (2) of rule 264-2 relate expressly to medical certificates. However, the same is not true of rule 267(3) and (3A). The Committee is concerned that, because rule 267(3) concerns "certificates (other than a medical certificate issued under subrule (3A)", the substituted rule 267(4) may be ineffective to enable a person to avail themselves of the exemption in 267(3) when relying on a certificate referred to in that subrule. The Committee seeks clarification on this point.
3	Schedule 3[1], relating to the insertion of a reference to rule 264-1	The Committee is seeking clarification about the rationale for Schedule 3[1] inserting the reference to rule 264-1 in the list of offences beginning with "Rules 72…". The Committee's concern relates to potential duplication in the *Road Transport (General) Regulation 2021*, Schedule 5 because the amendment made by Schedule 3[2] provides for penalty amounts for offences under rule 264-1 on a tiered basis, depending on the number of unrestrained passengers. Those penalties rise from a base penalty of Level 5 in the case of 1 unrestrained passenger (which mirrors the penalty prescribed by the first amendment). Given this, the amendment made by Schedule 3[1], to the extent it inserts a reference to rule 264-1, seems superfluous. The Committee would welcome clarification on the rationale for the inclusion of the first reference to rule 264-1.

Please provide a response to the issues identified as nos 1-3 by **10 July 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

26 May 2024

The Hon. Anoulack Chanthivong
Minister for Better Regulation and Fair Trading
Minister for Industry and Trade
Minister for Innovation, Science and Technology
Minister for Building
Minister for Corrections

D24/031222

By email

Dear Minister,

Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024

As you are aware, on 19 October 2023, the Legislative Council adopted a resolution expanding the functions of the Regulation Committee to incorporate systematic review of delegated legislation against the scrutiny principles set out in section 9(1)(b) of the *Legislation Review Act 1987*.

The Committee is now required to review all statutory rules that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 18 June 2024.

- *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024*

The Committee has identified issues under the *Legislation Review Act 1987,* section 9(1)(b)(iii) and (iv). I am writing to you as the 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.

Parliament House, Macquarie Street, Sydney NSW 2000 AUSTRALIA
Telephone (02) 9230 3050
Regulation.Committee@parliament.nsw.gov.au

Scrutiny concerns

	Provision	Issue
1	Clause 106, as substituted by Schedule 1[5]	As substituted by Schedule 1[5] of the amending regulation, clause 106 provides an exemption for registered building practitioners from the insurance requirements under the *Design and Building Practitioners Act 2020* (the Act) until 30 June 2025. A similar exemption currently exists in the regulation from 1 July 2023 to 30 June 2024 and, before that, was provided for from 1 July 2022 to 30 June 2023. Clause 106 references the Act, section 107(5A) as the relevant regulation-making power. Section 107(5A) provides that the regulations may exempt all persons or bodies, specified persons or bodies or classes of persons or bodies, or all work, specified work or classes of work, or all or specified registrations from the insurance requirements under the Act, and *for a maximum period of 12 months*. This time limit was inserted into the Act by the *Building Legislation Amendment Act 2021*. The Committee notes that the Act, section 24(4) also empowers the regulations to exempt a practitioner or class of practitioners from the operation of section 24, which requires a registered building practitioner to be adequately insured to provide a building compliance declaration or do related building work. The Committee considers that the amendment substituting clause 106 to exempt registered building practitioners from insurance requirements under the Act until 30 June 2025 may not have been made within the general objects of the legislation under which it was made. The amendments to sections 107(5) and (5A) during the passage of the *Building Legislation Amendment Bill 2021* expressly carved out insurance from section 107(5) (which permits the regulations to provide for indefinite exemptions) to insert a 12-month limitation. Section 107(5A) provides "for a maximum period of 12 months" and, read in contrast to section 107(5), suggests the object of the reference to the "maximum period" may have been to limit the period of the operation of the exemption for a total period of 12 months, rather than successive periods of 12 months. Additionally, the extrinsic materials from the Hansard debates relating to the amendments appear to support construing the reference to "a maximum period" as a reference to a single period. Alternately, the Committee considers the provision makes unusual and unexpected use of the regulation-making power and may not accord with the spirit of the Act. The Committee has concerns that, where Parliament has provided an express time limit for an exemption, successive exemptions for registered building practitioners, from insurance requirements,

		may detract from the original operation and intention of the scheme set out in the Act. The Committee seeks further information regarding the rationale to exempt registered building practitioners from insurance requirements for an additional 12-month period, and how this amendment accords with the objects and spirit of the Act, section 107.
2	Explanatory note	The explanatory note to the amending regulation does not identify that the instrument, specifically, Schedule 1[1], [3] and [5], 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 have been made under a Henry VIII provision.

Please provide a response to the issue identified as no 1 by **10 July 2024**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

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

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

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

REGULATION COMMITTEE

26 June 2024

The Hon. A R Emmett AO KC
Presiding Member
Legal Profession Admission Board

D24/031219

By email

Dear Judge,

NSW Admission Board Fees and Fifth Amendment Rules 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 instruments, notice of the making of which was tabled in Parliament on 18 June 2024.

- *NSW Admission Board Amendment (Fees) Rule 2024*
- *NSW Admission Board Fifth Amendment Rule 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 Presiding Member of the Legal Profession Admission Board to seek clarification on the issues outlined below.

The Committee will consider your response and publish its conclusions regarding the instrument in a future 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.

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NSW Admission Board Amendment (Fees) Rule 2024

	Provision	Issue
1	Clause 3, proposed Third Schedule, Public Notary fees	The Committee is of the view that the form or intention of the rule calls for elucidation in relation to the inclusion of public notary fees in the *NSW Admission Board Rules 2015*. The *Public Notaries Act 1997*, section 9(d) and (f) enable the Legal Profession Admission Board (the Board) to make rules for or with respect to applications for appointment as a public notary and the approval of such applications, and the fees payable to the Board in relation to the appointment of public notaries. The *Public Notaries Appointment Rules* were last amended on 1 July 2023 by the *Public Notaries Appointment Amendment (Fees) Rule 2023* to provide for fee increases (Government Gazette No 272 of 23 June 2023). These fees aligned with the public notary fees inserted in the *NSW Admission Board Rules 2015* by the *NSW Admission Board Amendment (Fees) Rule 2023* (Government Gazette No 217 of 28 April 2023). However, the increased fees substituted by the *NSW Admission Board Amendment (Fees) Rule 2024* means the two instruments purportedly prescribe different fees relating to public notaries. The Committee requests clarification regarding the inclusion of public notary fees in the *NSW Admission Board Rules 2015*, Third Schedule, given the rules expressly provide that they are made under the *Legal Profession Uniform Law Application Act 2014*, section 21A, and do not otherwise relate to public notaries. The Committee notes the risk of confusion regarding whether the lower fees in the *Public Notaries Appointment Rules*, as substituted by the *Public Notaries Appointment Amendment (Fees) Rule 2023*, prevail, being the rules expressed to be made under the *Public Notaries Act 1997*. For completeness, the Committee raises an issue regarding a specific public notary fee in the following row.
2	Clause 3, proposed Third Schedule, Late Application – Public Notary fee	The Third Schedule lists a fee of $210 for a Late Application – Public Notary. The Committee requests clarification regarding the basis for this fee and is of the view that this fee may not be within the general objects of the legislation under which it is made. The *Public Notaries Act 1997* and *Public Notaries Appointment Rules* are silent on timeframes for applications for appointment as a public notary. It appears the timeframes underpinning this late fee are set by the 'Guide for applicants for appointment as a Public Notary in NSW', published on the Board's website. The Committee is concerned this fee is not referable to a rule, but to an external document.
3	Clause 3, proposed Third Schedule, Skills Assessment letter and	The Committee requests clarification regarding the services for which these fees are charged, as the Committee is uncertain about whether the services are distinct from the consideration

	Qualification in law satisfies NSW admission requirements (original academic transcript required) fees	of an Application for assessment of academic qualification (Form A1-A3) or an Application for assessment of PLT qualifications (Form P1-P3).
4	Clause 3, proposed Third Schedule, Application for review of decision of AESC or PLT sub-committee (Form R1/R2) fee	The Committee considers it would avoid any potential confusion if "PLT" were substituted with "PTE", given the *NSW Admission Board Rules 2015* refers to the relevant sub-committee as the Practical Training Exemptions Sub-Committee.

NSW Admission Board Fifth Amendment Rule 2024

	Provision	**Issue**
5	Clause 3, item 2, proposed rule 67(3)	The Committee requests clarification regarding whether rule 27G, and "Performance Review Sub-Committee" in rule 71(1), should be omitted, given the Performance Review Sub-Committee is no longer empowered to relax certain rules under the *NSW Admission Board Rules 2015*, rule 67. The Committee notes the error in "he or she things fit", for potential revision in a future amendment to the rules.
6	Clause 3, item 1, proposed rule 66A	The Committee notes that the inclusion of a sub-rule (1) is unnecessary and inconsistent with the structure of the *NSW Admission Board Rules 2015*, other than rule 79.

Please provide a response to the issues identified as nos 1, 2, 3 and 5 by **10 July 2024**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

The issues identified as nos 4 and 6 are for information and noting only and do 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 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: BN24/00397
3 July 2024

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

Road Transport Amendment (Automated Seatbelt Enforcement) Rule 2024

Dear Committee Chair

Thank you for the Committee's review of the Road Transport Amendment (Automated Seatbelt Enforcement) Rule 2024 (the Rule). I respond to each of the concerns raised in turn.

The first concern raised by the Committee relates to the numbering conventions in the NSW Road Rules, including the established convention of stating that a rule in the NSW Road Rules is not uniform with the corresponding rule in the model Australian Road rules. This is to ensure that overall, the numbering patterns are consistent, and any difference is clearly noted. The Committee notes that the amendments introduced by the Rule are not fully consistent with the numbering of the latest published model rules.

This is because NSW has not yet adopted the model Australian Road Rules 2023 (which incorporated the National Transport Commission's 14th amendment package of rules, approved by Transport ministers in May 2023). There is consistency with the current numbering of the NSW road rules, which reflects the earlier version of the model rules.

The 14th amendment package includes updates to improve readability, but not the policy intent, of certain seatbelt offences and these changes affect the number of the model rules (including rule 266). Adoption of the 14th amendment package has been deferred in NSW due to the planned implementation of automated seatbelt enforcement and the necessary amendments in the Rule to enable the enforcement program. It is important to note that the model Australian Road Rules are not adapted for automated seatbelt enforcement as this has been recently implemented in some jurisdictions only.

Transport for NSW has commenced detailed review of the amendments in the 14th amendment package for adoption in NSW (where appropriate), with a view to implementing these changes in the second half of 2024. This may resolve current inconsistency with numbering.

The Committee also notes that signposting should include reference to equivalent rules in the model Australian Road Rules even when the numbering does not align. Transport thanks the

Committee for this suggestion and it will be considered as part of future maintenance to the road rules.

The second concern noted by the Committee is that the amendments to rule 267(4) means that a person with a non-medical exemption certificate can no longer rely on the exemption in rule 267(3). Non-medical certificates may apply to exemptions for activities such as for filming (e.g. allowing a videographer to be in vehicle's tray top) and are very rarely provided. Transport for NSW has discussed the concern raised by the Committee with the Parliamentary Council's Office (PCO) and agree that a minor amendment should be progressed as part of updates to the rules to ensure the exemption applies consistently to medical and non-medical certificates as intended.

The third concern raised by the Committee is that referencing rule 264-1 twice in Schedule 5 of the Transport (General) Regulation 2021 may be superfluous. The Regulation which the Committee refers to specifies fine amounts. In making the Rule it was important to be clear that the fine under new rule 264-1 for a driver not ensuring their passengers wear a seatbelt would continue to apply as it would have (for rules 265(3) and 266(1)) before the amendments were made. In light of the Committee's suggestion, Transport has discussed with the PCO and agree that the additional reference in the list of offences beginning with "Rules 72..." may be unnecessary and will be removed in future updates.

I would like to thank the Committee for providing the opportunity to clarify these points, and for identifying improvements to the drafting and clarity of the regulations.

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

The Hon Anoulack Chanthivong MP
Minister for Better Regulation and Fair Trading, Minister for Industry and Trade,
Minister for Innovation, Science and Technology, Minister for Building,
Minister for Corrections

NSW GOVERNMENT

Ref: COR-02856-2024

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

Dear Ms Maclaren-Jones, Natasha

Thank you for your correspondence on behalf of the Legislative Council Regulation Committee about the *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024 (Amendment Regulation)*. The Committee has sought clarification on the use of regulation making powers to provide a new 12 month exemption to insurance requirements under the *Design and Building Practitioners Act 2020* (DBP Act) for registered building practitioners.

The amending regulation has introduced an exemption from insurance obligations under the DBP Act for registered building practitioners, which will lapse on 30 June 2025. This exemption is the third exemption that has been made for registered building practitioners, which have been made on an annual basis since the DBP Act commenced.

While design practitioners have been subject to the insurance requirements under the DBP Act since 1 July 2022, building practitioners have been exempted from this requirement as there is no way for them to meet the legislative standard of "adequate" insurance. This is because no insurer currently offers an insurance policy for the making of building compliance declarations under the DBP Act. However, there continues to be ongoing work between the NSW Government, Insurance Council of Australia, individual insurers and building practitioner representatives towards a long-term solution for the sector. Without the exemption, building practitioners would be required to stop all work on regulated buildings, including essential work on NSW apartment buildings, or face disciplinary action that could result in fines and suspension of licence.

The Government remains satisfied that the amending regulation has been made lawfully. Section 107(5A) of the DBP Act operates to ensure that any exemptions from insurance obligations under the DBP Act are subject to regular review to ensure there is an ongoing need for certain practitioners to be exempt and that Parliament retains the authority to consider the exemption on an annual basis. The Government does not consider that the regulation making power is limited to a one-off power to exempt a class of practitioners from obligations under the DBP Act.

The Government is committed to ensuring that building practitioners are subject to exacting obligations under the DBP Act to ensure homeowners have confidence in their homes and that there is a comprehensive suite of consumer protections where defects are found. The Government welcomes the Committee's ongoing involvement in supporting the design and delivery of the reforms to restore confidence to the NSW construction industry.

If the Committee have any further queries, I would encourage the Committee to contact Tom Kearney, Executive Director Policy and Programs Building Commission NSW on .

Sincerely,

14-7-24

Anoulack Chanthivong MP
Minister for Better Regulation and Fair Trading, Minister for Industry and Trade,
Minister for Innovation, Science and Technology, Minister for Building,
Minister for Corrections

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.

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Telephone
Regulation.Committee@parliament.nsw.gov.au

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

LEGISLATIVE COUNCIL

REGULATION COMMITTEE

16 July 2024

The Hon. Sophie Cotsis, MP
Minister for Industrial Relations
Minister for Work Health and Safety

D24/034887

By email

Dear Minister

Industrial Relations (General) Amendment (Fees) 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:

- *Industrial Relations (General) Amendment (Fees) Regulation 2024*

The Committee has identified issues under the *Legislation Review Act 1987,* section 9(1)(b)(vii) on the basis that the instrument 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.

Parliament House, Macquarie Street, Sydney NSW 2000 AUSTRALIA

Regulation.Committee@parliament.nsw.gov.au

Scrutiny concerns

	Provision	Issue
1	Proposed Schedule 1, Part 3, items 5-7, Note 1	The *Industrial Relations (General) Amendment (Fees) Regulation 2024*, Schedule 1[4] inserts various fees in relation to the recently re-established Industrial Court of New South Wales. Proposed Schedule 1, Part 3, items 5-7, Note 1 provides that "except as provided in Note 2, fees under this item are chargeable to the Crown or a person acting on behalf of the Crown, and to an industrial organisation or association registered under the *Industrial Relations Act 1996* (the Act), Chapter 5." The *Industrial Relations (General) Regulation 2020* (***the regulation***), clause 26(5)(a) provides that fees under Schedule 1 are not payable by an industrial organisation unless expressly provided for by Schedule 1. The Act, Dictionary defines an industrial organisation to mean an industrial organisation of employees or employers registered, or taken to be registered, under the Act, Chapter 5. With the omission of the article 'an' before 'association registered', the construction of Note 1 indicates that the adjective 'registered' applies to both entities, hence fees under this item are chargeable to an industrial organisation registered or an association registered. It appears that Note 1 seeks to override the definition of ***industrial organisation*** in the Act to specifically exclude those industrial organisations 'taken to be registered'. This leads to a potentially unusual result where, for example, the Newcastle Trades Hall Council, which is taken to be registered as an industrial organisation of employers under the Act, Chapter 5 (see the regulation, clause 32), is not required to pay the fees set out in items 5-7. The Committee also observes that Note 1 refers to registration under the Act, Chapter 5. This chapter predominately relates to industrial organisations, while Chapter 6 relates to the registration of an association. The result is that the regulation, clause 29(5)(b) still operates to exempt associations registered under the Act, Chapter 6 from the payment of fees. The Committee considers that Note 1 calls for elucidation, and seeks clarification on the following: • Whether the intention is that only registered industrial organisations are required to pay the fees under items 5-7, and • The rationale for referencing the Act, Chapter 5 rather than Chapter 6, consistent with the regulation, clause 26(5)(b).

Please provide a response to the issue identified above by **30 July 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

LEGAL PROFESSION ADMISSION BOARD

The Hon Natasha Maclaren-Jones MLC
Chair of the Regulation Committee
Legislative Council
Parliament of New South Wales

Your ref: D24/031219

By email

17 July 2024

Dear Ms Maclaren-Jones

Re: Legal Profession Admission Board
NSW Admission Board Amendment (Fees) Rule 2024 and
NSW Admission Board Fifth Amendment Rule 2024

I refer to your letter dated 26 June 2024 addressed to the Hon. A R Emmett AO KC.

I confirm that Mr Emmett concluded in his role as Presiding Member of the Legal Profession Admission Board (the **Board**) on 30 June 2024 and that, upon the nomination of the Chief Justice of the Supreme Court, I commenced as Presiding Member of the Board on 1 July 2024.

I note that that the Regulation Committee of the Legislative Council (Committee) has sought clarification of a number of issues in relation to Rules made by the Board the pursuant to section 21 of the *Legal Profession Uniform Law Application Act 2014*.

You requested a response to issues identified in your letter by Wednesday 10 July 2024 but I understand that, following the Board's Legal Officer, Ms Plater, contacting Ms Dowd, Director of the Regulation Committee, an extension has been granted for the Board to respond until Wednesday 17 July 2024.

Consideration has now been given to all of the issues identified in your letter.

NSW Admission Board Amendment (Fees) Rule 2024

Issue 1 – Schedule 3 Public Notaries Fees - The validity of the Committee's concerns in respect of Issue 1 is accepted. The combined publication of the NSW Admission Board and Public Notaries fees was incorrect and was made in error by the Office of the Board. It has now been remedied by two separate instruments (see NSW Admission Board Amendment (Fees) Rule 2024 Erratum and the Public Notaries Appointment Amendment (Fees) Rule 2024, published on 5 July 2024). I trust that this resolves the matter to satisfaction of the committee.

Issue 2 - In respect of Issue 2 (Late application fee – Public Notary) the late fee should be seen as charging a different application fee for appointment as a Public Notary, such application fee being permitted by Rule 7 of the *Public Notaries Appointment Rules*, based on the time it is lodged.

The purpose of the fee is to stop applications being made shortly before a Board meeting and reflects the additional work in preparing supplementary papers for the Board. In practice, the fee is rarely levied (no more than four times per year) and once the Board's new online system is introduced in 2025, the need for a late fee is likely to change. I will ask the Board's Executive Officer to report to the Board on the need for a late fee including the need to codify the closure dates for applications in the rules, or to consider whether the Board should simply specify a cut-off date with no option to lodge an application out of time and thereby abolish the late fee.

Issue 3 – fee for Skills Assessment letter - The Board is empowered under s.21A (1)(e) of the *Legal Profession Uniform Law Application Act* 2014 to make rules with respect to fees in relation to the exercise of its functions.

The Board is designated by the Commonwealth Government as the relevant migration skills assessment authority for lawyers and as such, provides, as part of its functions, the service of providing a 'skills assessment letter' to lawyers seeking to immigrate to Australia, for visa purposes, as distinct from Applications for Assessment of academic or PLT qualifications.

Issue 4 - Application for review of decision of AESC or PLT sub-committee - The use of the acronym PLT (Practical Legal Training) is a standard term used throughout Australia by Admissions Authorities. I am of the view that the changing the acronym to PTE is liable to bring New South Wales out of line with the rest of Australia. For any fee increase in 2025, I will ask the Executive Officer to not use an acronym to substitute for each and, instead, request that the full name of each sub-committee be used.

NSW Admission Board Fifth Amendment Rule 2024

Issue 5 - Clause 3, item 2, proposed rule 67(3) - I appreciate that the *NSW Admission Board Rules 2015* no longer provide a function for the Performance Review Sub-Committee. The Board's Examination Committee is considering the question of the Sub-Committee's future functions and the Rules may be amended to provide for such functions in the future.

I accept that the spelling error in Rule 67(3) should be corrected in a future amendment.

Issue 6 - Clause 3, item 1, proposed rule 66A - I agree that Rule 66A as a matter of style should stand on its own rather than as a subrule numbered (1). The Board will correct that in the next Rule change that is published.

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I trust that the above responses, including the proposed actions, will resolve the issues raised to the satisfaction of the committee.

If you have any queries regarding the Board's response, I would be grateful if you could first please contact Ms Leigh Plater, the Board's Legal Officer, on .

Yours sincerely

The Honourable Justice Payne
Presiding Member

LEGISLATIVE COUNCIL

REGULATION COMMITTEE

24 July 2024

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

D24/036128

By email

Dear Minister

Police Amendment Regulation 2024

As you are aware, on 19 October 2023, the Legislative Council adopted a resolution expanding the functions of the Regulation Committee to incorporate systematic review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987,* section 9(1)(b).

The Committee is now required to review all statutory rules that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was published on the NSW legislation website on 28 June 2024, and will be tabled in Parliament on 6 August 2024:

- *Police Amendment Regulation 2024*

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

The Committee will consider your response and publish its conclusions regarding the instrument in a future 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 1, proposed clause 150	The Committee seeks clarification regarding the intended effect of the savings and transitional provision inserted by the *Police Amendment Regulation 2024* (the ***amending regulation***). The provision relates to the amendments to the *Police Act 1990* (***the Act***) made by the *Industrial Relations Amendment Act 2023*, Schedule 2.28. The Committee requests clarification of the Minister's views regarding the nature of the amendments effected by the subschedule in order to understand the intended effect of the amending regulation in suspending those amendments in relation to pending proceedings under the *Police Act 1990*. ***Div 1A proceedings*** The Act, Part 9, Division 1A enables a police officer to apply to the Industrial Relations Commission for a review of certain orders made under the Act, section 173 (***Div 1A proceedings***). It is the Committee's understanding that Div 1A proceedings are to be heard by the Industrial Relations Commission, rather than the Industrial Relations Commission in Court Session. Whereas other amendments in the *Industrial Relations Amendment Act 2023* expressly confer jurisdiction on the Industrial Relations Commission in Court Session for certain proceedings (see, for example, Schedule 2.21), the Act, section 174 continues to refer to the Industrial Relations Commission only. Div 1A proceedings are required to be dealt with by a judicial member of the Commission unless the President of the Commission otherwise directs (the Act, section 179). However, this does not necessarily mean jurisdiction is conferred on the Commission in Court Session (*Industrial Relations Act 1996*, section 151). It is also the Committee's understanding that an appeal against a decision of the Commission in Div 1A proceedings lies to the Full Bench of the Commission (*Industrial Relations Act 1996*, section 187) rather than the Commission in Court Session (compare, for example, an appeal under the *Industrial Relations Act 1996*, sections 153(1)(k) and 197B). The Committee also notes the Act, section 180, which provides that the *Evidence Act 1995*, section 128 applies to Div 1A proceedings "as if a reference in that section to a court were a reference to the Commission". Against this background, the Committee queries the effect of Schedule 2.28[1] and, in turn, the effect of the amending regulation in suspending that amendment for pending proceedings. Schedule 2.28[1] inserts section 178(2) into the Act, which provides that, for Div 1A proceedings, the rules of evidence and other formal procedures of a superior court of record apply to and in relation to *the Commission in Court Session*. This provision mirrors the wording of the *Industrial Relations Act 1996*, section 163. In order to consider the potential scope of the amending regulation, the Committee seeks clarification regarding the circumstances in which the Commission in Court Session would hear Div 1A proceedings so as to engage section 178(2). ***Case management of pending proceedings*** Schedule 2.28[2]–[4] relate to changes to the constitution of the Commission for the purposes of the review of certain matters under the Act. The effect is to require those matters to be dealt with by *judicial* members of the Commission (the Act, sections 179(2), 181G(1)(c) and 181K). Previously,

		those provisions provided for those matters to be dealt with by a member who is an Australian lawyer. The Committee requests clarification regarding the rationale behind the amending regulation, as it seems judicial members of the Commission, being Australian lawyers, would have been eligible to hear matters under the relevant provisions as in force immediately before the commencement of the *Industrial Relations Amendment Act 2023*, Schedule 2.28[2]–[4]. Is the intention to afford the Commission flexibility to allow non-judicial members hearing pending proceedings to continue to hear those proceedings? The Committee raises this question in order to understand the potential impact of the amending regulation on the Commission's case management functions.

Please provide a response to the issue identified as no 1 by **7 August 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