LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

Delegated Legislation Monitor No. 9 of 2025

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Delegated Legislation Committee

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New South Wales Parliament Legislative Council Delegated Legislation Committee

Delegated Legislation Monitor No. 9 of 2025

'August 2025'

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 consider all instruments of a legislative nature that are subject to disallowance while they are so subject, against the scrutiny principles set out in Legislation Review Act 1987, section 9(1)(b) on a 12-month trial basis from the first sitting day in 2024.[3]

1.3 On 12 February 2025, the Legislative Council resolved to amend the resolution establishing the Regulation Committee to permanently expand the Committee to include the technical review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b). The House also resolved to change the name of the Regulation Committee to the Delegated Legislation Committee to more accurately reflect the Committee's role and remit.

1.4 Paragraph (3) of the amended resolution requires that:

> The committee is:
>
> (a) 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.".

1.5 In accordance with paragraph (3), the Committee considers any instrument that is disallowable, during the period within which it may be disallowed. This 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.

1.6 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.

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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.

1.7 With regard to the scrutiny principles the Committee is required to assess instruments against, the *Legislation Review Act 1987*, section 9(1)(b) sets out eight grounds of scrutiny as follows:

(i) that the regulation trespasses unduly on personal rights and liberties

(ii) that the regulation may have an adverse impact on the business community

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

(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.

1.8 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.

1.9 Each sitting week, the Committee publishes a Delegated Legislation Monitor setting out its progress and conclusions relating to the technical scrutiny of disallowable instruments. The monitor sets 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.

1.10 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. 9 of 2025

1.11 For this monitor, the Committee has reviewed 48 instruments published on the NSW legislation website or in the NSW Government Gazette between 2 April 2025 and 4 July 2025. The Committee has:

- concluded its scrutiny of four instruments, as set out in Chapter 1,
- concluded that 38 instruments raise no scrutiny concerns, as set out in Chapter 2,
- raised scrutiny concerns in relation to six instruments, for consideration in a future monitor, as set out in Chapter 3, and
- concluded on an 'Other matter', as set out in Chapter 4.

1.12 A further 16 instruments notified between 27 June 2025 and 25 July 2025 remain under review, for consideration in a future monitor.

Chapter 1 Concluded scrutiny matters

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

Residential Tenancies Amendment Regulation 2025

SI number	2025 No 139
Published on Legislation Website/	02/04/2025
Tabled in Legislative Council	06/05/2025
Last date of notice for disallowance motion	09/09/2025

Overview

1.1 The *Residential Tenancies Amendment Regulation 2025* (amending regulation) makes various amendments to the *Residential Tenancies Regulation 2019,* to, among other matters—

- require a landlord, or the landlord's agent, to give certain information to the Secretary,
- update the standard form of residential tenancy agreement, and
- provide that the offences under the *Residential Tenancies Act 2010* (the Act), sections 35(2)-(5), 73H, 85(2), 86(1) and 87(1) and (2) and the regulation, clause 23L(1) are penalty notice offences.

1.2 The amending regulation was made under various provisions of the Act and commenced on different dates between 19 May 2025 and 1 July 2025.

1.3 The Committee raised scrutiny concerns under the *Legislation Review Act 1987,* section 9(1)(b)(vii) in relation to the amending regulation by letter sent to the Minister for Better Regulation and Fair Trading on 23 May 2025. The Minister responded by letter on 12 June 2025.

1.4 The Committee requested additional information by a further letter sent to the Minister for Better Regulation and Fair Trading on 30 June 2025. The Minister responded to this correspondence on 14 July 2025. All correspondence referred to is included in Appendix 2.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

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

I.

1.6 Proposed section 23L(1), as inserted by the amending regulation, Schedule 1[7] provides an offence, punishable by a fine of up to 10 penalty units, relating to requirements of a landlord or landlord's agent to give the information specified in subclause (2) to the Secretary—

> (1) For the Act, section 222A(2), a landlord, or the landlord's agent, must give the information in subclause (2) to the Secretary—
>
> (a) when a claim is made for the payment of a rental bond for the tenancy under the Act, section 163 if—
>
> (i) the landlord, or an agent of the landlord, makes the claim, or
>
> (ii) the claim is made jointly by the landlord, or an agent of the landlord, and the tenant, or an agent of the tenant, or
>
> (b) within 14 days after the landlord is notified by the Secretary under the Act, section 164(2) of a claim for the payment of a rental bond for the tenancy made by a tenant without the consent of all the other parties to the residential tenancy agreement.
>
> Maximum penalty—10 penalty units.

1.7 As the landlord *or* the landlord's agent must provide the information, the Committee sought clarification as to who may be liable for the commission of the offence in the circumstance that the information is not provided to the Secretary. Specifically, the Committee sought elucidation on whether the intention was that—

- the offence will be committed by a landlord, regardless of whether they are acting on their own or through the landlord's agent, or
- *either* the landlord, or the landlord's agent, may be liable depending on which party took steps to make the claim under section 23L(1)(a) or received notice from the Secretary under section 23L(1)(b), or
- *both* the landlord and the landlord's agent be liable should the information not be provided, irrespective of each party's degree of involvement in the process.

1.8 The Committee noted that other provisions in the current Act and in the *Residential Tenancies Bill 2024* similarly prescribe offences relating to obligations of 'a landlord *or* landlord's agent', including existing sections 159-162 and 165, and proposed sections 35 and 85-87. However, only a small subset of these offences is based on a *failure* to perform a duty rather than a positive act, making it clearer in most cases which party will be liable for a contravention.

1.9 In response to the Committee, the Minister stated the following—

> Schedule 1[7], proposed section 23L of the Amendment Regulation requires that the landlord or the landlord's agent provide certain information to the Secretary either when making a claim for the rental bond or within 14 days of being notified that a claim for the bond was made by a tenant. This regulation will commence on 1 July 2025.
>
> I am advised that the obligation to provide the information is intended to fall on the party that makes the claim or alternatively that receives the notification that a claim has been made. Either the landlord or the landlord's agent may be liable, depending on who

> completed the claim process without giving the information, or alternatively whoever received notification of a claim being made by a tenant and then did not provide the prescribed information within 14 days.

1.10 In relation to the above response from the Minister, the Committee sought further clarification regarding whether a defence of reasonable excuse would be available to a landlord or the landlord's agent should either party fail to give the prescribed information to the Secretary. In its request for further clarification, the Committee noted that such a defence had not been expressly provided for in the proposed clause 23L or the relevant regulation-making power, proposed section 222A(2), as inserted by the *Residential Tenancies Bill 2024*, Schedule 1[22]. The Committee also noted that the *Residential Tenancies Act 2010*, section 165, which similarly requires the giving of certain documents, does expressly provide for the defence of reasonable excuse.

1.11 In response to the Committee's further request for information, the Minister stated the following—

> I am advised that clause 23L is a strict liability offence and does not include a legislated defence of reasonable excuse. It is not uncommon for the Residential Tenancies Act 2010 (the Act) to have a strict liability offence where a person is required to provide information. For example:
>
> - Section 26 requires the landlord or agent to give tenants information about material facts for a property, sale or mortgagee actions, strata by-laws and strata renewal, as well as a copy of the Tenant Information Statement. There is a maximum penalty of 20 penalty units.
>
> - Section 29(2) requires the landlord or agent to give the tenant the completed condition report at the start of the tenancy, with a maximum penalty of 20 penalty units.
>
> - Section 36 requires a person receiving a rental payment in -person to provide a rent receipt, with a maximum penalty of 10 penalty units.
>
> These sections do not include a legislated defence of reasonable excuse, and clause 23L aligns with this existing approach. However, in NSW, common law defences such as an honest and reasonable mistake of fact can apply to a strict liability offence.

1.12 In the response, the Minister also provided the following additional information in relation to this matter—

> Additionally, NSW Fair Trading enforcement officers have a range of enforcement tools that they use to support the operation of tenancy laws. When assessing conduct, officers may take into account mitigating factors, for example if the offence has occurred for the first time. Alternative means of engagement include education or guidance.
>
> The process to report the information has also been designed to make it as simple and seamless as possible, as it is integrated with the ordinary bond claim process in Rental Bonds Online.
>
> I am advised that the system can distinguish between a bond where the landlord uses an agent, compared to one where the landlord self-manages the property. This enables correct identification of the users involved in the bond claim process.

> The system sends notifications to agents and landlords to remind them to provide the data – this includes both emails and text messages at both 7 and 14 days. The agent and landlord portal also has an 'actions centre' which provides a 'to do' item for the agent or landlord to complete.
>
> In practice, there is no separate reporting process that a landlord or agent must seek out, but rather the data collection occurs as the landlord or agent completes the finalisation and release of the rental bond as they would normally do. This reduces the burden of reporting for landlords and agents and minimises inadvertent non-reporting.

II.

1.13 Schedule 1[30] proposes to provide that the offences under the *Residential Tenancies Act 2010,* sections 35(2)–(5), 73H, 85(2), 86(1) and 87(1) and (2) are penalty notice offences. In writing to the Minister, the Committee noted that two of the offences have a penalty notice offence amount that equals 50 per cent of the maximum penalty amount.

1.14 For an individual under section 86(1) and 87(1) offences, the prescribed maximum penalty amount is $11,000 (100 penalty units) and the penalty notice offence amount is $5,500. For persons other than an individual,[4] the maximum penalty amount is $71,500 (650 penalty units) and the penalty notice offence amount is $35,750.

1.15 Section 86(1) makes it an offence for a landlord or landlord's agent to give a termination notice on a ground that is not genuine. Section 86(2) provides that it is a defence under this section if the landlord or landlord's agent shows that the landlord or agent did not know, and could not reasonably have found out, the ground for giving the termination notice was not genuine.

1.16 Section 87(1) makes it an offence for a landlord or landlord's agent to contravene a provision of Part 5, division 2, subdivision 1 specifying that the landlord must not enter into a residential tenancy agreement for residential premises for a specified period (a tenancy exclusion period). Subsection (4) makes it a defence for the landlord's agent if the agent did not know, and could not reasonably have found out, that the residential premises was subject to a tenancy exclusion period.

1.17 The Committee sought information regarding the rationale behind and justification for the chosen amounts for sections 86(1) and 87(1), given that the Committee is generally of the view that penalty notice amounts in excess of 20–25 per cent of the maximum penalty for an offence are inadvisable.

1.18 In response, the Minister advised that:

> Sections 86(1) and 87(1) of the *Residential Tenancies Act 2010* (the Act) respectively set out the offences for giving a termination notice on a ground that is not genuine and re-letting a rental property during a tenancy exclusion period.
>
> These are offences that incur the maximum penalties under the Act. These penalties reflect the significant impact caused to tenants by the offences, as they either lead to or follow a tenant losing their home without lawful grounds.

[4] For example, a corporation or a body corporate.

> I am advised that Penalty Infringement Notice (PIN) amounts should be proportionate to the nature and seriousness of the offence. In some situations where there are exceptional circumstances. Such as a demonstrated public interest or impacts on vulnerable people, it may be appropriate to set a PIN at 50 per cent of the maximum penalty amount.

1.19 The Minister also highlighted that this principle of proportionality is demonstrated in the penalty notice amounts some existing sections of the Act, including:

- section 64A(1), which requires a landlord to comply with smoke alarm regulations. The maximum penalty is 20 penalty units.
- section 105C(3), which requires a person not to disclose information relating to a domestic violence termination notice. The maximum penalty is 20 penalty units.
- section 160(1), which mandates that a landlord, agent or person does not require or receive security from a tenant other than a rental bond. The maximum penalty is 20 penalty units.

1.20 Lastly, the Minister iterated that the penalty notice offence amounts for sections 86(1) and 87(1) 'reflect the serious impacts of an unlawful termination on the tenant, including possible homelessness.' The Minister emphasised that:

> There is also a strong public interest in ensuring compliance with these provisions. A third of the NSW population are tenants, and allowing unlawful terminations would result in tenants being fearful of enforcing their other rights due to fear of an unlawful termination.
>
> These offences therefore were found to warrant significant PINs that can operate as a genuine and effective deterrent against unlawful terminations, and to prevent the PINs from being simply absorbed as a cost of business.
>
> I note that the other PIN offences introduced in the Amendment Regulation under sections 35(2)(5), 73H, 85(2) and 87(2) incur a PIN proportionate to 20 per cent of the maximum penalty.

III.

1.21 Proposed section 60, as inserted by the amending regulation, Schedule 1[15] provides that:

> The Act, section 35 and Schedule 2, clause 33 do not apply to a residential tenancy agreement in relation to Centrepay operated by the Commonwealth until a date specified by the Minister in a notice published in the Gazette.

1.22 The Committee noted that there are two notes (see the Standard Form Agreement as amended by Schedule 1[16] and [18]) in the amending regulation which iterate the transitional arrangement for Centrepay operated by the Commonwealth. For clarity and to ensure that the regulation remains current, the Committee suggested that the Minister remove these notes following publication of the notice in the Gazette as referred to in proposed section 60.

1.23 While the Committee did not request a response on this minor issue, the Minister advised that:

> …following the publication of a notice in the Gazette, there will be opportunities to align with updates to the standard form agreement as further tenancy reforms progress. Through these updates, notes relating to the Gazettal of the notice may be removed.

Committee conclusion

1.24 The Committee welcomes the Minister's prompt and considered engagement with the scrutiny concerns raised by the Committee.

1.25 The Committee considers that the Minister's response sufficiently addresses the Committee's concerns regarding proposed section 23L, and clarifies that the landlord or the landlord's agent may be liable depending on which party—

- took the steps to make a claim under section 23L(1)(a) and did not give the information prescribed in subclause 23L(2), or
- was notified by the Secretary under section 23L(1)(b) and then did not provide the prescribed information within 14 days.

1.26 The Committee thanks the Minister for the confirmation provided in the further response that, whilst proposed clause 23L is a strict liability offence and does not include a legislated defence of reasonable excuse, common law defences in New South Wales, such as honest and reasonable mistake of fact may apply to strict liability offences. The Committee also thanks the Minister for the provision of additional information surrounding the enforcement tools utilised by NSW Fair Trading officers in the practical operation of tenancy laws.

1.27 The Committee appreciates the explanation provided by the Minister regarding the rationale for the penalty notice offence amount for sections 86(1) and 87(1). As previously discussed in Delegated Legislation Monitor No. 13 of 2024, the Committee considers that it is generally advisable that a penalty notice amount not exceed 20-25 per cent of the maximum penalty for the relevant offence, consistent with the recommendations of the New South Wales Law Reform Commission (the Commission) report into penalty notices.[5] However, the Commission also recognised that in exceptional circumstances involving public interest, it may be appropriate that the penalty notice be up to 50 per cent of the maximum court fine, for example, where there is a need to provide effective deterrence because the offender stands to make a profit from the activity.

1.28 The Committee is of the view that there are potential problems in extending penalty notice offences beyond strict and absolute liability offences, as it may be difficult to assess whether an offence has been committed. The Committee considers that it is generally best practice that where penalty notice offences extend to offences containing a mental element, defence or proviso, the issuing agencies should publish suitable guidelines that will assist the public to understand what constitutes offending behaviour.

1.29 Lastly, the Committee appreciates the Minister's intention to update the standard form agreement as further tenancy reforms progress, which may include removing the notes relating to the Gazettal of the notice.

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5 See Delegated Legislation Monitor No. 13 of 2024, paragraph 1.82.

1.30 In light of this, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii) have been appropriately addressed. The Committee concludes its scrutiny of the amending regulation.

Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025

SI number	2025 No 198
Published on Legislation Website	09/05/2025
Tabled in Legislative Council	27/05/2025
Last date of notice for disallowance motion	16/09/2025

Overview

1.31 The *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025* (the amending regulation) amends the *Biodiversity Conservation Regulation 2017* (the regulation) to, among other things, prescribe entering into a 'strategic offset delivery agreement' (SODA) as a biodiversity conservation measure in relation to certain State significant development and State significant infrastructure, for the purposes of the biodiversity offsets scheme set up under the *Biodiversity Conservation Act 2016* (the Act). A SODA is an agreement requiring an applicant or proponent of development to fund actions that benefit biodiversity values to be carried out by the Secretary of the Department in which the Act is administered (see the regulation, section 6.2(f)).

1.32 The amending regulation was made under the *Biodiversity Conservation Act 2016,* section 6.4. Section 6.4(1) provides that, for the purposes of the biodiversity offsets scheme, the biodiversity conservation measures to offset or compensate for impacts on biodiversity values after any measures taken to avoid or minimise those impacts under the avoid, minimise and offset hierarchy include the retirement of biodiversity credits and other actions that benefit the biodiversity values of the impacted land or other biodiversity values. Section 6.4(2) provides that the regulations may make provision with respect to the class of biodiversity credits to be retired, the other actions that qualify or do not qualify as biodiversity conservation measures and the circumstances in which biodiversity conservation measures may include a combination of the retirement of biodiversity credits and other actions.

1.33 The amending regulation commenced on publication on the NSW legislation website on 9 May 2025.

1.34 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) in relation to the amending regulation by letter sent to the Minister for the Environment on 6 June 2025. The Minister responded by letter on 23 June 2025.

1.35 The Committee requested additional information by a further letter sent to the Minister for the Environment on 8 July 2025. The Minister responded to this correspondence on 23 July 2025. All correspondence referred to is included in Appendix 2.

Scrutiny concerns

That the form or intention of the regulation calls for elucidation

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

1.37 The regulation, clause 6.3A, as inserted by Schedule 1[3] of the amending regulation, provides detail regarding the requirements for a SODA. In particular, clause 6.3A(1) provides that a SODA may be entered into by an applicant or proponent of major project development *after* the development consent for, or approval of, the development is given. Clause 6.3A(3)(a) provides that a SODA must specify the number and class of biodiversity credits that would, at the time of entering the SODA, *otherwise have been required* under the relevant planning approval for the major project development, including under an instrument or agreement required to be made or entered into under the consent or approval in relation to that requirement.

1.38 The Committee noted that it may be a condition of development consent granted for State significant development or infrastructure under the *Environmental Planning and Assessment Act 1979* that biodiversity credits of a specified number and class be retired. For example, the *Biodiversity Conservation Act 2016*, section 7.14(3) provides that:

> If the relevant authority decides to grant development consent or approval and the biodiversity offsets scheme applies to the proposed development or infrastructure, the conditions of the consent or approval must, subject to subsection (3A), require the applicant to *retire biodiversity credits* to offset the residual impact on biodiversity values of the number and class specified in the biodiversity development assessment report. (*emphasis added)*

1.39 The Committee sought clarification from the Minister regarding the intended interaction between the regulation, clause 6.3A, and a condition of development consent or other planning approval requiring the retirement of biodiversity credits. In particular, the Committee requested confirmation of whether entering into a SODA is intended to relieve an applicant or proponent from a requirement to comply with such a condition.

1.40 In response to the Committee, the Minister stated the following:

> The Biodiversity Offsets Scheme requires developers to avoid, minimise and then offset biodiversity impacts. Biodiversity offsets for each project are set in the conditions of planning approval. The Regulation is a mechanism of offset *delivery*. The regulation does not reduce or change conditions of a planning approval but instead enables the Environment Agency Head to deliver offset obligations on behalf of the proponent through a Strategic Offset Delivery Agreement (SODA).
>
> Under the Regulation, offsets will be delivered using methods already established under the Biodiversity Offsets Scheme, including purchasing and retiring like-for-like credits or funding conservation actions targeted at threatened species or ecological communities impacted by the project.
>
> A SODA must specify the same number and type of credits that were required by the planning approval. A SODA must not be entered into unless the benefit to biodiversity matches or exceeds the benefits that would have otherwise resulted from retiring the required credits.

> The Regulation requires the preparation of a Conservation Investment Strategy which outlines how the offsets will be identified and prioritises:
> - Protecting and restoring biodiversity values
> - Improving habitat connectivity
> - Supporting resilience to climate change
> - Delivering in-perpetuity conservation outcomes, and
> - Benefitting landholders in the specified region (the region impacted by the development).
>
> The proponent funds this work, as they would if meeting offset obligations through other methods.
>
> Information detailing progress and expenditure under a SODA will be published quarterly in the public register.

1.41 The Committee considered further clarification was necessary in relation to the intended interaction between clause 6.3A and a condition of development consent or other planning approval specifically requiring the *retirement of biodiversity credits* (rather than another biodiversity conservation measure). For example, in the case of a development consent granted under the *Environmental Planning and Assessment Act 1979* subject to a condition that a number of biodiversity conservation credits be retired, whether entering into a SODA under the *Biodiversity Conservation Act 2016* would have the effect of satisfying that particular condition.

1.42 In its request for further clarification, the Committee directly queried whether clause 6.3A of the regulation is intended to give effect to section 6.29A of the Act, which specifically contemplates that the regulations may prescribe alternative measures for the retirement of biodiversity credits to those required under an approval. The Committee also suggested that, if the clause is intended to give effect to section 6.29A, this could be made clear by amending clause 6.3A to refer to section 6.29A of the Act as clause 6.3A currently only refers to section 6.4 of the Act as a source of regulation-making power.

1.43 The Act, section 6.29A provides that:

> (1) A person who is required under this Act or another Act, including under an instrument, approval or agreement, to retire biodiversity credits may satisfy the requirement by instead undertaking prescribed biodiversity conservation measures determined in accordance with the regulations.
>
> (2) If the person undertakes the prescribed biodiversity conservation measures, the requirement to retire biodiversity credits is satisfied.
>
> (3) A regulation under this section may apply, adopt or incorporate a publication of the Environment Agency Head as in force from time to time.

1.44 In response to the Committee's further request for clarification, the Minister stated the following:

> All measures listed in clause 6.2 of the Biodiversity Conservation Regulation 2017 (the Regulation), including Strategic Offset Delivery Agreements (SODAs), are prescribed biodiversity conservation measures under section 6.29A of the *Biodiversity Conservation Act 2016* (the Act). Section 1.6(1) of the Act defines 'prescribed biodiversity

conservation measures' by referring to the biodiversity conservation measures prescribed under section 6.4(2)(b) of the Act.

I note the Committee's suggested to amend clause 6.3A of the Regulation to refer to section 6.29A of the Act. Both the biodiversity conservation measures in clause 6.2 of the Regulation and the SODA provisions in clause 6.3A of the Regulation reference the section of the Act that contains the relevant regulation-making power (section 6.4) for prescribing actions that do or do not qualify as biodiversity conservation measures.

References to the Act in the Regulation are a matter determined by Parliamentary Counsel.

Committee conclusion

1.45 The Committee appreciates the Minister's detailed and prompt engagement with the Committee's concerns, and the Minister's confirmation that a SODA, and all other biodiversity conservation measures listed in clause 6.2 of the regulation, are intended to be 'prescribed biodiversity conservation measures' under section 6.29A of the Act. The Committee considers that the intention of the regulation has been sufficiently elucidated.

1.46 In light of this, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act* 1987, section 9(1)(b)(vii) have been appropriately addressed. The Committee concludes its scrutiny of the regulation.

1.47 However, while the intention has been made clear, the Committee maintains the view that, if a biodiversity conservation measure is intended to be a prescribed biodiversity conservation measure for the purposes of section 6.29A in particular, it is preferred practice going forward that the regulation explicitly refers to section 6.29A as a regulation-making power in order to make that intention, and the intended interaction between the regulation and another approval, instrument or agreement that specifically requires a different biodiversity conservation measure to be undertaken, clear.

Uncollected Goods Regulation 2025

SI number	2025 No 243
Published on Legislation Website/	30/05/2025
Tabled in Legislative Council	03/06/2025
Last date of notice for disallowance motion	19/10/2025

Overview

1.48 The *Uncollected Goods Regulation 2025* (the regulation) is a principal regulation that repealed and remade the *Uncollected Goods Regulation 2020*, which would otherwise have been repealed on 1 September 2025 by the *Subordinate Legislation Act 1989*, section 10(2) as part of the automatic sunsetting of delegated legislation in New South Wales.

1.49 The regulation was made under various provisions of the *Uncollected Goods Act 1995* (the Act) and provided for, among other things, goods that are 'uncollected goods' for the purposes of the Act.

1.50 The regulation commenced on publication on the NSW legislation website on 30 May 2025.

1.51 The Committee raised a scrutiny concern under the *Legislation Review Act 1989*, section 9(1)(b)(vii) by letter sent to the Minister for Better Regulation and Fair Trading on 18 June 2025. The Minister responded by letter on 8 July 2025. This correspondence is included in Appendix 2.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

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

1.53 The Act, section 5 sets out the goods that are 'uncollected' for the purposes of the Act. Section 5(2)(f) provides that goods are also uncollected goods if they are of a kind prescribed by the regulations.

1.54 The regulation, section 4(1)(b)(i) provides that goods are uncollected goods if an association reasonably believes the goods have been abandoned or left behind on a development lot or neighbourhood lot in a scheme, within the meaning of the *Community Land Management Act 2021*. The regulation, section 4(2) then provides that section 4(1)(b)(i) does not affect the requirement for the association to obtain the consent of the owner of the lot to enter and remove the uncollected goods from the lot.

1.55 The Act, section 5(2)(e) provided that goods are also uncollected goods if an owners corporation reasonably believes the goods have been abandoned or left behind on common property of a strata scheme (within the meaning of the *Strata Schemes Management Act 2015*).

1.56 The Committee noted that, while the Act, section 5(2)(e) only extended to goods that have been abandoned or left behind on *common property* in relation to a strata scheme, in relation to a scheme under the *Community Land Management Act 2021*, the regulation, section 4(1)(b)(i) appeared to extend the application of the Act beyond common property.

1.57 The Committee was concerned about the inconsistency between the way the Act and the regulations dealt with similar categories of property, particularly where the regulation appeared to extend the application of the Act to private residential property. Therefore, the Committee sought clarification from the Minister regarding the following:

(a) the scenario to which the regulation, section 4(1)(b)(i) is intended to apply, and

(b) whether a development lot or neighbourhood lot could contain private residential property.

1.58 In response to paragraph (a) of the Committee's query, the Minister advised that:

> Section 4(1)(b)(i) of the Regulation is intended to apply to situations where goods have been abandoned by an unrelated third-party on properties that form part of a lot, such as car parks and storage spaces, in a community land scheme. In such a situation, an owners corporation would be able to access procedures under the Act to commence the process of removal of goods from a lot, only after obtaining consent of the lot owner to do so.
>
> I am advised that this provision was included in response to difficulties faced by some owners corporations in dealing with such goods, and to align community land laws with strata laws.
>
> The *Strata Schemes Legislation Amendment Act 2025* amended the *Uncollected Goods Act 1995* by adding a new definition of uncollected goods – an owners corporation reasonably believes the goods have been abandoned or left behind on the lot of an owner in a strata scheme, within the meaning of the *Strata Schemes Management Act 2015* and acts with the consent of the owner. These changes commenced on 1 July 2025.

1.59 In response to paragraph (b), the Minister advised that:

> Neighbourhood lots can include privately owned residential property. A development lot does not include residential property – this is land that has been retained by the developer for further subdivision (into a precinct of neighbourhood scheme, or to create association property). The association would need the consent of the lot owner before commencing any procedures in the Act.

Committee conclusion

1.60 The Committee appreciates the Minister's fulsome engagement with the Committee's queries. In particular, the Committee appreciates the information provided in relation to the commencement of the *Strata Schemes Legislation Amendment Act 2025,* Schedule 3.8 on 1 July 2025

which inserts section 5(2)(e1) to provide that goods are also uncollected goods if an owners corporation reasonably believes the goods have been abandoned or left behind on the lot of an owner in a strata scheme, within the meaning of the *Strata Schemes Management Act 2015* and acts with the consent of the owner.

1.61 The Committee considers that the commencement of the Act, Schedule 3.8, section 5(2)(e1) results in the Act and the regulations dealing with similar categories of property in similar ways, and in turn, satisfies Committee concerns.

1.62 The Committee also appreciates the Minister's elucidation of the situation to which section 4(1)(b)(i) of the regulation is intended to apply, and confirmation that the land to which the provision applies may include residential property.

1.63 In light of this, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii) have been appropriately addressed. The Committee concludes its scrutiny of the regulation.

Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025

SI number	2025 No 260
Published on Legislation Website/	06/06/2025
Tabled in Legislative Council	24/06/2025
Last date of notice for disallowance motion	21/10/2025

Overview

1.64 The *Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025* (the amending regulation), amends the *Water Management (General) Regulation 2018* (the regulation) to insert a new Part 10A, which establishes a scheme to facilitate negotiations between the Water Administration Ministerial Corporation and affected landholders in relation to proposed releases of water for environmental purposes.

1.65 The amending regulation is made under the *Water Management Act 2000*, section 399B, which provides that the regulations may make provision for or with respect to a scheme to facilitate consultation and negotiations with owners and occupiers of land, and other persons, who may be affected by proposed releases of water for environmental purposes.

1.66 The amending regulation commenced on 6 June 2025, concurrently with the commencement of section 399B of the Act.

1.67 The Committee raised scrutiny concerns under the *Legislation Review Act 1987,* section 9(1)(b)(vii) in relation to the amending regulation by letter sent to the Minister for Water on 8 July 2025. The Minister responded by letter on 22 July 2025. The Committee sent a further letter to the Minister on 25 July 2025, but this correspondence did not require a response. All correspondence is included in Appendix 2.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

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

1.69 The amending regulation inserts Part 10A into the regulation. Within Part 10A, section 247C(1) provides that the Minister may, by order published in the Gazette, declare that a proposed environmental water release is a release to which the part applies. Section 247C(2) provides that the declaration must describe the proposed environmental water release and ***an*** area of land likely to be affected by the release (*emphasis added*).

1.70 The Committee was of the view that section 247C(2)(b) was intended to require a Ministerial declaration to describe *all* of the land likely to be affected by an environmental water release, as otherwise not all affected landholders would be able to participate in the scheme but rather only those holders of the specific land described in the declaration. The Committee therefore sought clarification from the Minister regarding the intended effect of section 247C(2)(b), and queried whether, if the intended effected was to require all land likely to be affected to be described, section 247C(2)(b) should have used the words 'the area' or 'the areas' rather than 'an area' in order to ensure precision in relation to the area or areas of land in question.

1.71 In response to the Committee, the Minister stated the following:

> The intent of section 247C(2)(b) of the Regulation is to enable a staged approach to landholder negotiations. This is particularly important where the proposed environmental water release, as outlined in the Minister's declaration, affects a large number of landholders. This provision recognises the practical need to manage negotiations over time and allows for flexibility in project delivery. It also accommodates projects that may require staged implementation to achieve full delivery, especially where thousands of landholders are involved.
>
> Section 247C(6) of the Regulation allows the Minister to amend and update the declaration to describe an addition area of land likely to be affected by the release. This ensures negotiations can be rolled out progressively. The intent is that all affected landholders will be invited to negotiate before the Minister declares and end to negotiations under section 247F(6).

Committee conclusion

1.72 The Committee appreciates the Minister's considered engagement with the scrutiny concerns raised by the Committee.

1.73 The Committee acknowledges the clarification that the intention of section 247C(2)(b) is to enable a staged approach to landholder negotiations and that all landholders will be invited to negotiate before the Minister declares an end to negotiations under section 247F(6).

1.74 The Committee maintains the view, as communicated in follow up correspondence to the Minister, that it would be clearer for section 247C to be amended to explicitly reflect the intention that all landholders will eventually be invited to participate in the scheme, as to put the matter beyond doubt.

1.75 In light of this, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act* 1987, section 9(1)(b)(vii) have been appropriately addressed. The Committee concludes its scrutiny of the regulation.

Chapter 2 Instruments with no scrutiny concerns

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

Instrument	SI number/ GG reference
Parking Space Levy Amendment (Exempt Parking Spaces) Regulation 2025	2025 No 213
Water Management (General) Amendment (Exemptions for Infrastructure) Regulation 2025	2025 No 259
Water Management (General) Amendment (Specific Purpose Access Licence) Regulation 2025	2025 No 261
Dams Safety Amendment (Levy) Regulation 2025	2025 No 267
Education and Care Services National Amendment Regulation 2025	2025 No 273
Automatic Mutual Recognition Legislation Amendment (Compensation Fund) Regulation 2025	2025 No 275
Crimes (Administration of Sentences) Amendment (Reports by Community Corrections Officer) Regulation 2025	2025 No 277
Government Information (Public Access) Amendment (Crown Solicitor's Office) Regulation 2025	2025 No 280
Heavy Vehicle (Adoption of National Law) Amendment (Infringement Notice Penalties) Regulation 2025	2025 No 281
Residential Tenancies Amendment (Termination Notice for Significant Renovations or Repairs) Regulation 2025	2025 No 284
Roads Amendment (Penalty Notice) Regulation 2025	2025 No 285
Associations Incorporation Amendment (Financial Reporting Thresholds) Regulation 2025	2025 No 296
Births, Deaths and Marriages Registration Regulation 2025	2025 No 297
Environmental Planning and Assessment Amendment (Network Operators) Regulation 2025	2025 No 300
Explosives Amendment (Miscellaneous) Regulation 2025	2025 No 301
Industrial Relations (General) Amendment (Fees) Regulation 2025	2025 No 303
Motor Vehicles Taxation Regulation 2025	2025 No 304
Public Health Amendment (Fees) Regulation 2025	2025 No 305
Roads Amendment (NSW Motorways) Regulation 2025	2025 No 306
Transport Legislation Amendment (Penalties, Fees and Charges) Regulation 2025	2025 No 308

Instrument	SI number/ GG reference
Rail Safety National Law National Regulations (Fees) Amendment Regulations 2025	2025 No 321
Electricity Infrastructure Investment Amendment (Revenue Determinations) Regulation 2025	2025 No 328
Protection of the Environment Operations (General) Amendment (Regulation of PFAS) Regulation 2025	2025 No 331
Civil Procedure Act 2005 and Industrial Relations Act 1996—Industrial Relations Commission of New South Wales Practice Note No. 24B	NSWGG-2025-225-1
Professional Standards Act 1994—The CPA Australia Professional Standards Scheme	NSWGG-2025-227-1
Statutory and Other Offices Remuneration Act 1975—Report and Determination pursuant to section 14(2) of the Statutory and Other Offices Remuneration Act 1975 – Full-time non-presidential member, Personal Injury Commission, (Division Head, Police Officer Support Scheme)	NSWGG-2025-237-4
Legal Profession Uniform Law Application Act 2014—NSW Admission Board Amendment (Fees) Rule 2025	NSWGG-2025-246-7
Public Notaries Act 1997—Public Notaries Appointment Amendment (Fees) Rule 2025	NSWGG-2025-246-9
National Parks and Wildlife Act 1974—Notice of Reservation of a National Park	NSWGG-2025-255-1
National Parks and Wildlife Act 1974—Notice of Reservation of a National Park	NSWGG-2025-255-2
National Parks and Wildlife Act 1974—Notice of Reservation of a National Park	NSWGG-2025-255-3
Legal Profession Uniform Law Application Act 2014—NSW Admission Board Third Amendment Rule 2025	NSWGG-2025-259-1
Legal Profession Uniform Law Application Act 2014—NSW Admission Board Fourth Amendment Rule 2025	NSWGG-2025-259-2
Legal Profession Uniform Law Application Act 2014—NSW Admission Board Second Amendment Rule 2025 – Erratum	NSWGG-2025-259-3
Local Court Act 2007—Practice Note 20 Bail Proceedings	NSWGG-2025-260-4
Public Notaries Act 1997—Erratum – Public Notaries Appointment Amendment (Fees) Rule 2025	NSWGG-2025-274-7
Local Court Act 2007—Practice Note – Court Closure AVL Proceedings (Downing Centre)	NSWGG-2025-275-3
Local Court Act 2007—Practice Note - Bail Proceedings (Weekend Centralised Bail Courts)	NSWGG-2025-275-4

Chapter 3 Instruments raising scrutiny concerns

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

Responsible minister or body	Instrument	SI number / GG reference
Minister for Health	Public Health (Tobacco) Amendment (Tobacco Licensing Scheme) Regulation 2025	2025-258
Minister for Building	Building, Design and Strata Legislation Amendment Regulation 2025	2025-276
Attorney General	Surrogacy Amendment (Qualified Counsellors) Regulation 2025	2025-326
Minister for the Environment	National Parks and Wildlife Amendment Regulation 2025	2025-329
The Honourable Antony Payne, Presiding Member of the Legal Profession Admission Board	Legal Profession Uniform Law Application Act 2014—NSW Admission Board Second Amendment Rule 2025	NSWGG-2025-180-1
His Honour Judge Michael Allen, Chief Magistrate of the Local Court of New South Wales	Local Court Act 2007—Practice Note – Bail Division Proceedings	NSWGG-2025-260-2

Chapter 4 Other matters

This chapter details other matters related to the Committee's scrutiny function that may be broader than what is generally captured in Chapter 2 of the monitor. Where necessary, the Committee may report on matters of interest relating to delegated legislation in this chapter.

Application of the *District Court Act 1973*, section 161(7) and (8) to Criminal Practice Notes

Overview

4.1 In exercising its technical scrutiny function, the Committee wrote to the Chief Justice of the District Court on 19 May 2025 to seek clarification on the application of the *District Court Act*, section 161(7) and (8) to practice notes of the criminal jurisdiction of the Court. The Committee had concerns that should section 161 not apply to criminal practice notes, such practice notes would potentially not be subject to disallowance by either House of Parliament.

4.2 The Committee noted that section 161(7) and (8) appear to be the provisions that require a criminal practice note issued by the District Court to be published in the Gazette and that apply the *Interpretation Act 1987*, sections 40 and 41 to criminal practice notes. The provisions apply to a practice note '… which regulates the practice or procedure of the Court, or of any class of proceedings in the Court'.

4.3 However, section 161(7) and (8) are contained in section 161, which is headed 'Civil procedure rules'. Section 161 is also contained Part 3, which is headed 'The civil jurisdiction of the Court'.

4.4 In writing to the Chief Justice of the District Court, the Committee suggested that it may be prudent to seek an amendment to the *District Court Act 1970* to either relocate section 161(7) and (8) to a section of the Act that does not appear to be limited to the Court's civil jurisdiction, or to replicate section 161(7) and (8) in section 171, which is the equivalent provision for the Court's criminal jurisdiction.

4.5 The Committee noted that equivalent provisions found in the *Local Court Act 2007* (see section 27) and the *Supreme Court Act 1970* (see section 124(11) and (12)) are contained in parts of those Acts that have general application and that are not limited to a particular jurisdiction of the Court concerned.

4.6 In response to the Chair's correspondence, the Chief Justice of the District Court made the following comments:

> The concerns raised by the committee regarding sub-sections 161(7) and (8) of the *District Court Act 1973* have force.
>
> As such, the Court is in correspondence with the Law Reform and Legal Services Division to seek amendment of the *District Court Act 1973* suggested by the committee by either relocating s 161(7) and (8) to a section of the Act that does not appear to be limited to the Court's civil jurisdiction, or to replicate section 161(7) and (8) in section 171, which is the equivalent provision for the Court's criminal jurisdiction.

4.7 The Committee appreciates the Chief Justice's engagement with the Committee and looks forward to any future changes that may result of the Committee's correspondence.

Appendix 1 Minutes

Draft minutes no. 26
Monday 4 August 2025
Delegated Legislation Committee
Room 1136, Parliament House, Sydney, 12.32 pm

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

2. Previous minutes
Resolved, on the motion of Mr Donnelly: That draft minutes no. 25 be confirmed.

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

Sent:

- 26 June 2025 – Letter from Chair to Minister for Energy, the Hon Penny Sharpe MLC, regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 8 of 2025.
- 30 June 2025 – Letter from Chair to Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, requesting additional information regarding scrutiny concerns identified in the *Residential Tenancies Amendment Regulation 2025*.
- 2 July 2025 – Letter from Chair to Presiding Member of the Legal Profession Admission Board, the Hon Justice Antony Payne, responding to correspondence from the Presiding Member received on 13 June 2025 and regarding scrutiny concerns identified and the process of reviewing of instruments.
- 4 July 2025 – Letter from Chair to Minister for Transport, the Hon John Graham MLC, regarding minor issues identified in the *Parking Space Levy Amendment (Exempt Parking Spaces) Regulation 2025*.
- 8 July 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC, regarding scrutiny concerns identified in the *Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025*.
- 8 July 2025 – Letter from Chair to Minister for the Environment, the Hon Penny Sharpe MLC, regarding additional information provided by the Minister regarding scrutiny concerns identified in the *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025*.
- 17 July 2025 – Letter from Chair to Chief Magistrate of the Local Court of New South Wales, His Honour Judge Michael Allen, regarding scrutiny concerns identified in the *Local Court of New South Wales – Practice Note – Bail Division Proceedings*.
- 18 July 2025 – Letter from Chair to Attorney General, the Hon Michael Daley MP, regarding scrutiny concerns identified in the *Surrogacy Amendment (Qualified Counsellors) Regulation 2025*.

- 21 July 2025 – Letter from Chair to Minister for Planning and Public Spaces, the Hon Paul Scully MP, regarding minor issues identified in the *Environmental Planning and Assessment Amendment (Network Operators) Regulation 2025*.
- 22 July 2025 – Letter from Chair to the Minister for Health, the Hon Ryan Park MP, regarding scrutiny concerns identified in the *Public Health (Tobacco) Amendment (Tobacco Licensing Scheme) Regulation 2025*.
- 24 July 2025 – Letter from Chair to the Minister for Environment, the Hon Penny Sharpe MLC, regarding scrutiny concerns identified in the *National Parks and Wildlife Amendment Regulation 2025*.
- 25 July 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC, responding to the Minister's correspondence regarding scrutiny concerns identified in the *Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025*.

Received:

- 23 June 2025 – Letter from Minister for the Environment, the Hon Penny Sharpe MLC, providing additional information regarding scrutiny concerns identified in the *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025*.
- 8 July 2025 –Letter from Acting Minister for Better Regulation and Fair Trading, the Hon Jihad Dib MP, regarding scrutiny concerns identified in the *Uncollected Goods Regulation 2025*.
- 14 July 2025 – Letter from Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, providing additional information regarding scrutiny concerns identified in the *Residential Tenancies Amendment Regulation 2025*.
- 20 June 2025 – Letter from Minister for Building, the Hon Anoulack Chanthivong MP, regarding previous scrutiny concerns raised by the Delegated Legislation Committee and the Government's intention to amend the *Design and Building Practitioners Regulation 2021* and the *Design and Building Practitioners Act 2020*.
- 22 July 2025 – Letter from Minister for Water, the Hon Rose Jackson MLC, regarding scrutiny concerns identified in the *Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025*.
- 23 July 2025 – Letter from Minister for the Environment, the Hon Penny Sharpe MLC, providing additional information regarding scrutiny concerns identified in the *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025*.

4. Criminal practice notes of the District Court of New South Wales and a proposed new monitor chapter entitled 'Other matters'

The Committee noted the following:

- As previously circulated, on 19 May 2025 the Committee sent correspondence to the Chief Judge of the District Court of New South Wales regarding the gazettal and disallowance of criminal practice notes of the District Court.
- This matter has since been resolved and is due to be reported in the current monitor before the Committee for consideration.
- As the matter involved a category or class of instruments and was broader than what is captured in the 'Concluded matters' chapter of the monitor, the secretariat has proposed an additional chapter in the monitor entitled 'Other matters', in order to provide a platform to report on this matter and other matters of similar nature if they were to arise in the future.
- A draft version of this chapter has been included in the Chair's draft report for consideration in item 7 below.

Resolved, on the motion of Mr Murphy: That the Committee authorise the secretariat to adopt a new chapter in the monitor of the Committee entitled 'Other matters' as an option to report on matters that are broader than what is captured in the 'Concluded matters' chapter of the monitor but relate to the scrutiny functions of the Committee.

5. Correspondence from the Minister for Building in relation to the Design and Building Practitioners Regulation 2024

The Committee noted that on 20 June 2025, correspondence was received from the Minister for Building, the Hon Anoulack Chanthivong MP, regarding the government's intention to amend the *Design and Building Practitioners Regulation 2021* and the *Design and Building Practitioners Act 2020*. The correspondence related to concerns identified by the Committee in relation to the *Design and Building Practitioners Regulation 2024,* as set out in Delegated Legislation Monitor No. 7 of 2024, and a new instrument of a similar nature, the *Building, Design and Strata Legislation Amendment Regulation 2025*.

Resolved, on the motion of Mrs Carter: That:

(a) the Committee write to the Minister for Building outlining its concerns in relation to the *Building, Design and Strata Legislation Amendment Regulation 2025,* being the same concerns set out in Delegated Legislation Monitor No. 7 of 2024, and

(b) the Committee request that the Minister provide a summary of the legal advice being relied upon to state that the regulation has been lawfully made, as referred to in correspondence from the Minister.

Resolved, on the motion of Mrs Carter: That Delegated Legislation Monitor No. 10 be drafted for consideration by the Committee to reflect that, in regard to the *Building, Design and Strata Legislation Amendment Regulation 2025,* the Committee acknowledge the intention of the Government to address the Committee's concerns by way of amendment to the *Design and Building Practitioners Act 2020* and the *Design and Building Practitioners Regulation 2021* to remove the 12-month period limitation on the regulation making power to commence on assent.

6. Consideration of Chair's draft report

The Chair submitted her draft report entitled Delegated Legislation Monitor No. 9 of 2025, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: That:

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

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

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

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

The report be tabled in the House on Tuesday 5 August 2025.

7. Inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, the *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987* relating to delegated legislation

7.1 Consideration of the Discussion paper

Resolved, on the motion of Ms Boyd: That the Committee adopt the discussion paper and authorise for it to be provided to stakeholders invited to make a submission to the inquiry, and published on the NSW Parliament inquiry page in the 'Other documents' tab.

7.2 Stakeholder list

Resolved, on the motion of Ms Mihailuk: That the Chair's stakeholder list be circulated to the committee and members then be provided with the opportunity to nominate additional stakeholders within 24 hrs and that the committee agree to additional stakeholders by email, unless a meeting of the committee is required to resolve any disagreement.

7.3 Submissions

Committee noted that, as previously resolved by the Committee on 23 June 2025, the submission portal will open on 11 August 2025 and stakeholders will be provided with the discussion paper when invited to make a submission.

8. Adjournment

The Committee adjourned at 12.53 pm.

9. Next Meeting

Monday 8 September 2025, 12.30 pm, Room 1136 (consideration of the Committee report entitled 'Delegated Legislation Monitor No. 10 of 2025).

Madeleine Dowd
Committee Clerk

Appendix 2 Correspondence

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

- Sent 23 May 2025 – Letter from Chair to Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, regarding scrutiny concerns identified in the *Residential Tenancies Amendment Regulation 2025*.
- Sent 6 June 2025 – Letter from Chair to Minister for the Environment, the Hon Penny Sharpe MLC, regarding scrutiny concerns identified in the *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025*.
- Sent 18 June 2025 – Letter from Chair to the Minister for Better Regulation and Fair Trading, the Hon. Anoulack Chanthivong MP, regarding scrutiny concerns identified in the *Uncollected Goods Regulation 2025*.
- Sent 30 June 2025 – Letter from Chair to Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, requesting additional information regarding scrutiny concerns identified in the *Residential Tenancies Amendment Regulation 2025*.
- Sent 8 July 2025 – Letter from Chair to Minister for the Environment, the Hon Penny Sharpe MLC, regarding additional information provided by the Minister regarding scrutiny concerns identified in the *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025*.
- Sent 8 July 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC, regarding scrutiny concerns identified in the *Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025*.
- Sent 25 July 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC, responding to correspondence regarding scrutiny concerns identified in the *Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025*.
- Received 12 June 2025 – Letter from Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, responding to correspondence from the Chair regarding scrutiny concerns identified by the Committee in the *Residential Tenancies Amendment Regulation 2025*.
- Received 23 June 2025 – Letter from Minister for the Environment, the Hon Penny Sharpe MLC, providing additional information regarding scrutiny concerns identified in the *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025*.
- 8 July 2025 – Letter from Acting Minister for Better Regulation and Fair Trading, the Hon Jihad Dib MP, regarding scrutiny concerns identified in the *Uncollected Goods Regulation 2025*.
- Received 14 July 2025 – Letter from Minister for Better Regulation and Fair Trading, the Hon Anoulack Chanthivong MP, providing additional information regarding scrutiny concerns identified in the *Residential Tenancies Amendment Regulation 2025*.
- Received 22 July 2025 – Letter from Minister for Water, the Hon Rose Jackson MLC, regarding scrutiny concerns identified in the *Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025*.

- Received 23 July 2025 – Letter from Minister for the Environment, the Hon Penny Sharpe MLC, providing additional information regarding scrutiny concerns identified in the *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025*.

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

23 May 2025

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

D25/024034

By email:

Dear Minister

Residential Tenancies Amendment Regulation 2025

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). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 6 May 2025:

- *Residential Tenancies Amendment Regulation 2025*

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 Delegated Legislation Committee's technical scrutiny function,* on the NSW Parliament website.

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

Scrutiny concerns

<table>
<tr><th></th><th>Provision</th><th>Issue</th></tr>
<tr><td>1</td><td>Schedule 1[7], proposed section 23L</td><td>Proposed section 23L(1), as inserted by the Residential Tenancies Amendment Regulation 2025 (the amending regulation) provides an offence, punishable by a fine of up to 10 penalty units, relating to requirements of a landlord or landlord's agent to give the information specified in subclause (2) to the Secretary.

As the landlord or the landlord's agent must provide the information, the Committee seeks clarification as to who may be liable for the commission of the offence in the circumstance that the information is not provided to the Secretary. Is it the intention that this offence will be committed by a landlord, whether acting on their own or through the landlord's agent? Or that either the landlord, or the landlord's agent, may be liable depending on which party took steps to make the claim (s 23L(1)(a)) or received notice from the Secretary (s 23L(1)(b))? Or is it the intention that both the landlord and the landlord's agent be liable should the information not be provided, irrespective of each party's degree of involvement in the process?

The Committee notes that other provisions in the current Act and to be inserted by the Residential Tenancies Bill 2024, similarly prescribe offences relating to obligations of 'a landlord or landlord's agent', including existing sections 159-162 and 165, and proposed sections 35 and 85-87. However, the Committee notes that only a small subset of these offences is based on a failure to perform a duty rather than a positive act, making it clearer in most cases which party will be liable for a contravention.</td></tr>
<tr><td>2</td><td>Schedule 1[28] and [30], proposed schedule 4, table</td><td>Schedule 1[30] proposes to provide that the offences under the Residential Tenancies Act 2010, sections 35(2)–(5), 73H, 85(2), 86(1) and 87(1) and (2) are penalty notice offences. The Committee notes that several of the offences have a penalty notice offence amount that equals 50 per cent of the maximum penalty amount. For example, both sections 86(1) and 87(1) prescribe the following maximum penalty amounts and penalty notice amounts:

<table>
<tr><th></th><th>Maximum penalty amount</th><th>Penalty notice offence amount</th></tr>
<tr><td>for an individual</td><td>$11,000</td><td>$5,500</td></tr>
<tr><td>otherwise</td><td>$71,500</td><td>$35,750</td></tr>
</table>

The Committee generally considers that penalty notice amounts in excess of 20–25 per cent of the maximum penalty for the offence are inadvisable. The Committee requests information regarding the rationale behind and justification for the chosen amounts.</td></tr>
<tr><td>3</td><td>Schedule 1[15], proposed section 60</td><td>Proposed section 60, as inserted by the amending regulation, Schedule 1[15] provides that 'The Act, section 35 and Schedule 2, clause 33 do not apply to a residential tenancy agreement in relation to Centrepay operated by the</td></tr>
</table>

		Commonwealth until a date specified by the Minister in a notice published in the Gazette.' The Committee notes that there are two notes (see the Standard Form Agreement as amended by Schedule 1[16] and [18]) in the amending regulation which iterate the transitional arrangement for Centrepay operated by the Commonwealth. For clarity and to ensure that the regulation remains current, the Committee suggests removing these notes following publication of the notice in the Gazette as referred to in proposed section 60.

Please provide a response to the issue identified as nos 1 and 2 by **9 June 2025**, 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 – Delegated Legislation Committee, on 9230 3050 or dlc@parliament.nsw.gov.au.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

6 June 2025

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

D25/027547

By email:

Dear Minister

Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025

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). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 27 May 2025:

- *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025*

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 Delegated Legislation Committee's technical scrutiny function,* on the NSW Parliament website.

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

Scrutiny concerns

	Provision	Issue
1	Schedule 1[3], proposed clause 6.3A	Schedule 1[1] inserts clause 6.2(2)(f) into the *Biodiversity Conservation Regulation 2017* (the ***regulation***). The new paragraph provides for an additional biodiversity conservation measure to offset or compensate for impacts on biodiversity values under the biodiversity offsets scheme set up in the *Biodiversity Conservation Act 2016*, Part 6. The new measure relates specifically to major project development and consists of 'entering into an agreement requiring the applicant or proponent of the development to fund actions that benefit biodiversity values to be carried out by the Environment Agency Head (a ***strategic offset delivery agreement***)...' 'Major project development' is defined to mean certain State significant development or infrastructure under the *Environmental Planning and Assessment Act 1979*. Clause 6.3A, as inserted by Schedule 1[3], provides more detail about the requirements for a strategic offset delivery agreement, or 'SODA'. Clause 6.3A(1) provides that a SODA may be entered into by an applicant or proponent of major project development *after* the development consent for, or approval of, the development is given. Clause 6.3A(3) provides that '[a] SODA must—(a) specify the number and class of biodiversity credits that would, at the time of entering the SODA, otherwise have been required under the relevant planning approval for the major project development…' The Committee notes that it may be a condition of development consent granted for State significant development or infrastructure under the *Environmental Planning and Assessment Act 1979* that biodiversity credits of a specified number and class be retired (see the *Biodiversity Conservation Act 2016*, section 7.14). The Committee requests clarification of the intended interaction between clause 6.3A of the regulation and a condition of development consent or other planning approval requiring the retirement of biodiversity credits. In particular, the Committee requests confirmation of whether entering into a SODA is intended to relieve an applicant or proponent from a requirement to comply with such a condition.

Please provide a response to the issues identified as no 1 by **23 June 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

If you have any questions about this correspondence, please contact Madeleine Dowd, Director – Delegated Legislation Committee, on 9230 3050 or dlc@parliament.nsw.gov.au.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

18 June 2025

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

D25/030288

By email:

Dear Minister

Uncollected Goods Regulation 2025

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). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 3 June 2025:

- *Uncollected Goods Regulation 2025*

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 Delegated Legislation Committee's technical scrutiny function,* on the NSW Parliament website.

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

Scrutiny concerns

	Provision	Issue
1	Section 4(1)(b)	The *Uncollected Goods Act 1995* (the ***Act***), section 5 sets out the goods that are 'uncollected' for the purposes of the Act. Section 5(2)(e) provides that goods are uncollected goods if 'an owners corporation reasonably believes the goods have been abandoned or left behind on common property of a strata scheme'. Section 5(2)(f) provides that goods are uncollected goods if they are of a kind prescribed by the regulations. The *Uncollected Goods Regulation 2025* (the ***regulation***), section 4(1)(b)(i) provides that goods are uncollected goods if an association reasonably believes the goods have been abandoned or left behind on a development lot or neighbourhood lot in a scheme, within the meaning of the *Community Land Management Act 2021*. The regulation, section 4(2) then provides that section 4(1)(b)(i) does not affect the requirement for the association to obtain the consent of the owner of the lot to enter and remove the uncollected goods from the lot. The Committee notes that, in relation to a strata scheme, the Act, section 5(2)(e) only extends to goods that have been abandoned or left behind on *common property*. However, in relation to a scheme under the *Community Land Management Act 2021*, the regulation, section 4(1)(b)(i) appears to extend the application of the Act beyond common property. The Committee seeks clarification as to— (a) the scenario to which the regulation, section 4(1)(b)(i) is intended to apply, and (b) whether a development lot or neighbourhood lot could contain private residential property.

Please provide a response to the issue identified as no 1 by **Wednesday 2 July 2025,** noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

If you have any questions about this correspondence, please contact Madeleine Dowd, Director – Delegated Legislation Committee, on 9230 3050 or dlc@parliament.nsw.gov.au.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

30 June 2025

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

D25/033168

By email:

Dear Minister

Residential Tenancies Amendment Regulation 2025

Thank you for your letter dated 12 June 2025 responding to the scrutiny concerns raised by the Delegated Legislation Committee in respect to the *Residential Tenancies Amendment Regulation 2025*.

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

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

Scrutiny concerns

Provision	**Issue**
Residential Tenancies Amendment Regulation 2025, Schedule 1[7], proposed clause 23L	In your response, you confirm that the obligation to provide information to the Secretary under clause 23L is: '…intended to fall on the party that makes the claim or alternatively that receives the notification that a claim has been made. Either the landlord or the landlord's agent may be liable, depending on who completed the claim process without giving the information, or alternatively whoever received notification of a claim process without giving the information, or alternatively whoever received notification of a clam being made by a tenant and then did not provide the prescribed information within 14 days.'

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

	The Committee would like to confirm whether a defence of reasonable excuse would be available to a landlord or the landlord's agent should either party fail to give the prescribed information to the Secretary, noting that such defence has not been expressly provided for in proposed clause 23L or the relevant regulation-making power, proposed section 222A(2), as inserted by the Residential Tenancies Bill 2024, Schedule 1[22]. The Committee notes that the *Residential Tenancies Act 2010*, section 165, which similarly requires the giving of certain documents, expressly provides a defence of reasonable excuse. For example, in a circumstance that a landlord is notified of a claim under proposed clause 23L(1)(b), would the landlord still be liable if they had tasked their agent with giving the prescribed information on their behalf, and the agent failed to do so within 14 days?

Please provide a response to the issue identified by **15 July 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

If you have any questions about this correspondence, please contact Madeleine Dowd, Director – Delegated Legislation Committee, on 9230 3050 or dlc@parliament.nsw.gov.au.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

8 July 2025

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

D25/037611

By email:

Dear Minister

Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025

Thank you for your correspondence dated 20 June 2025 relating to the *Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025*.

The Committee appreciates the additional information provided in this correspondence. Based on this additional information, the Committee queries whether clause 6.3A of the *Biodiversity Conservation Regulation 2017* is intended to give effect to section 6.29A of the *Biodiversity Conservation Act 2016*, which specifically contemplates that the regulations may prescribe alternative measures for the retirement of biodiversity credits to those required under an approval. If so, the Committee suggests that this could be made clear by amending clause 6.3A to refer to section 6.29A of the Act.

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 Delegated Legislation Committee's technical scrutiny function,* on the NSW Parliament website.

Please provide a response by **22 July 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

If you have any questions about this correspondence, please contact Madeleine Dowd, Director – Delegated Legislation Committee, on 9230 3050 or dlc@parliament.nsw.gov.au.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

8 July 2025

The Hon Rose Jackson MLC
Minister for Water
Minister for Housing
Minister for Homelessness
Minister for Mental Health
Minister for Youth

D25/037569

By email:

Dear Minister

Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025

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). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instrument, notice of the making of which was tabled in Parliament on 24 June 2025:

- *Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025*

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 Delegated Legislation Committee's technical scrutiny function,* on the NSW Parliament website.

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

Scrutiny concerns

	Provision	Issue
1	Schedule 1, section 247C(2)(b)	Schedule 1 inserts a new Part 10A into the W*ater Management (General) Regulation 2018* (the ***Regulation***). Part 10A establishes a scheme to facilitate negotiations between the Water Administration Ministerial Corporation and affected landholders in relation to proposed releases of water for environmental purposes. Section 247C is contained in the new Part 10A. Section 247C(1) provides that the Minister may, by order published in the Gazette, declare that a proposed environmental water release is a release to which the part applies. Section 247C(2) provides that the declaration must describe— (a) the proposed environmental water release, and (b) ***an*** area of land likely to be affected by the release. The Committee assumes that section 247C(2)(b) is intended to require a Ministerial declaration to describe *all* of the land likely to be affected by the environmental water release. The Committee therefore: • seeks confirmation of the intended effect of section 247C(2)(b), and • if the intended effect is to require all land likely to be affected to be described, queries why section 247C(2)(b) uses the indefinite article "an" in relation to the area of land that must be described ("an area"), rather than the definite article "the" ("the area" or "the areas").

Please provide a response to the issue identified as no 1 by **22 July 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

If you have any questions about this correspondence, please contact Madeleine Dowd, Director – Delegated Legislation Committee, on 9230 3050 or dlc@parliament.nsw.gov.au.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

25 July 2025

The Hon Rose Jackson MLC
Minister for Water
Minister for Housing
Minister for Homelessness
Minister for Mental Health
Minister for Youth

D25/042329

By email:

Dear Minister

Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025

Thank you for your correspondence dated 17 July 2025 relating to the *Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025*.

The Committee appreciates the additional information provided, particularly that:

- '[t]he intent of section 247C(2)(b) of the Regulation is to enable a staged approach to landholder negotiations', and
- '[t]he intent is that all affected landholders will be invited to negotiate before the Minister declares an end to negotiations under section 247F(6)'.

The Committee notes that, while section 247C(6) provides that '[t]he Minister may, by order published in the Gazette, amend the declaration from time to time to describe an additional area of land likely to be affected by the release', it does not require the Minister to do so. As a result, this could mean that only some of the affected landholders will be invited to negotiate in relation to a declared proposed environmental water release, those being the holders of land in the area the Minister chooses to describe in the declaration relating to that release.

The Committee suggests that the Minister considers amending section 247C in order to explicitly reflect the intention that all affected landholders will eventually be invited to participate in the scheme.

This letter is for information and noting only and does not require a response. The instrument, together with all the related correspondence, will be annexed to a future Delegated Legislation Monitor.

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

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

If you have any questions about this correspondence, please contact Madeleine Dowd, Director – Delegated Legislation Committee, on 9230 3050 or dlc@parliament.nsw.gov.au.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair

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

Ref: COR-02501-2025

The Hon Natasha Maclaren-Jones
Committee Chair
Delegated Legislation Committee
By email: dlc@parliament.nsw.gov.au

Dear Ms Maclaren-Jones, Natasha

Thank you for your correspondence about provisions in the *Residential Tenancies Amendment Regulation 2025* (the Amendment Regulation).

The Amendment Regulation supports reforms to rental laws that were enacted through the *Residential Tenancies Amendment Act 2024* (the Amendment Act). These reforms included changes to require a reason for a landlord to end a lease, make it easier for tenants to have pets, and set prescribed methods of payment for rent. The majority of provisions in the Amendment Act and Amendment Regulation commenced on 19 May 2025.

I write to respond to the issues within the Amendment Regulation identified by the Delegated Legislation Committee (the Committee).

Either the landlord or agent may bear liability for a failure to give information

Schedule 1 [7], proposed section 23L of the Amendment Regulation requires that the landlord or the landlord's agent provide certain information to the Secretary either when making a claim for the rental bond or within 14 days of being notified that a claim for the bond was made by a tenant. This regulation will commence on 1 July 2025.

I am advised that the obligation to provide the information is intended to fall on the party that makes the claim or alternatively that receives the notification that a claim has been made. Either the landlord or the landlord's agent may be liable, depending on who completed the claim process without giving the information, or alternatively whoever received notification of a claim being made by a tenant and then did not provide the prescribed information within 14 days.

High penalty notices for unlawful terminations are in the public interest

Sections 86(1) and 87(1) of the *Residential Tenancies Act 2010* (the Act) respectively set out the offences for giving a termination notice on a ground that is not genuine and re-letting a rental property during a tenancy exclusion period.

These are offences that incur the maximum penalties under the Act. These penalties reflect the significant impact caused to tenants by the offences, as they either lead to or follow a tenant losing their home without lawful grounds.

I am advised that Penalty Infringement Notice (PIN) amounts should be proportionate to the nature and seriousness of the offence. In some situations where there are exceptional circumstances, such as a demonstrated public interest or impacts on vulnerable people, it may be appropriate to set a PIN at 50 per cent of the maximum penalty amount.

This principle is demonstrated in the penalty notice amounts for breach of some existing sections of the Act, including sections:

- 64A(1) – landlord must comply with smoke alarm regulations
- 105C(3) – a person must not disclose information relating to a domestic violence termination notice
- 160(1) – landlord, agent or person must not require or receive security from a tenant other than a rental bond.

The PIN amounts for sections 86(1) and 87(1) reflect the serious impacts of an unlawful termination on the tenant, including possible homelessness.

There is also a strong public interest in ensuring compliance with these provisions. A third of the NSW population are tenants, and allowing unlawful terminations would result in tenants being fearful of enforcing their other rights due to fear of an unlawful termination.

These offences therefore were found to warrant significant PINs that can operate as a genuine and effective deterrent against unlawful terminations, and to prevent the PINs from being simply absorbed as a cost of business.

I note that the other PIN offences introduced in the Amendment Regulation under sections 35(2)–(5), 73H, 85(2) and 87(2) incur a PIN proportionate to 20 per cent of the maximum penalty.

There will be future updates to the standard form agreement

I note the Committee's suggestion to update the standard form tenancy agreement to remove references to the publication of a notice in the Gazette that effectively commences the requirement to offer Centrepay as a prescribed payment method.

I am advised that, following the publication of a notice in the Gazette, there will be opportunities to align with updates to the standard form agreement as further tenancy reforms progress. Through these updates, notes relating to the Gazettal of the notice may be removed.

I appreciate the Committee's interest in these matters and trust these responses are of use to the Committee.

Sincerely,

12-6-25

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

The Hon Penny Sharpe MLC
Minister for Climate Change, Minister for Energy,
Minister for the Environment, Minister for Heritage,
Leader of the Government in the Legislative Council

NSW GOVERNMENT

Your ref: D25/027547
Our ref: MD25/3154

The Hon Natasha Maclaren-Jones MLC
Chair Delegated Legislation Committee

Email: dlc@parliament.nsw.gov.au

Dear Ms Maclaren-Jones

Thank you for your letter regarding the Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025. I appreciate you bringing this matter to my attention.

The Biodiversity Offsets Scheme requires developers to avoid, minimise and then offset biodiversity impacts. Biodiversity offsets for each project are set in the conditions of planning approval. The Regulation is a mechanism of offset *delivery*. The Regulation does not reduce or change conditions of a planning approval but instead enables the Environment Agency Head to deliver offset obligations on behalf of the proponent through a Strategic Offset Delivery Agreement (SODA).

Under the Regulation, offsets will be delivered using methods already established under the Biodiversity Offsets Scheme, including purchasing and retiring like-for-like credits or funding conservation actions targeted at threatened species or ecological communities impacted by the project.

A SODA must specify the same number and type of credits that were required by the planning approval. A SODA must not be entered into unless the benefit to biodiversity matches or exceeds the benefits that would have otherwise resulted from retiring the required credits.

The Regulation requires the preparation of a Conservation Investment Strategy which outlines how the offsets will be identified and prioritises:

- protecting and restoring biodiversity values
- improving habitat connectivity
- supporting resilience to climate change
- delivering in-perpetuity conservation outcomes, and
- benefiting landholders in the specified region (the region impacted by the development).

The proponent funds this work, as they would if meeting offset obligations through other methods.

52 Martin Place Sydney NSW 2000
GPO Box 5341 Sydney NSW 2001

02 7225 6020
nsw.gov.au/ministers

Information detailing progress and expenditure under a SODA will be published quarterly in the public register.

If the Committee requires further clarification, please do not hesitate to reach out again.

Sincerely

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

20/6/25

The Hon Jihad Dib MP
Acting Minister for Better Regulation and Fair Trading
Acting Minister for Industry and Trade
Acting Minister for Innovation, Science and Technology
Acting Minister for Building
Acting Minister for Corrections

NSW GOVERNMENT

Ref: COR-02956-2025
Your Ref: D25/030288

The Hon. Natasha Maclaren-Jones MLC
Chair
Delegated Legislation Committee
By email: dlc@parliament.nsw.gov.au

Dear Ms Maclaren-Jones, Natasha,

Thank you for your correspondence to the Hon Anoulack Chanthivong MP, Minister for Better Regulation and Fair Trading, regarding the Delegated Legislation Committee's consideration of the Uncollected Goods Regulation 2025. I am responding on Minister Chanthivong's behalf.

The Uncollected Goods Regulation 2025 (the Regulation) was remade under the requirements of the *Subordinate Legislation Act 1989*, with minimal amendments to the previous Uncollected Goods Regulation 2020. The amendments to the Regulation reflect recent amendments to the *Uncollected Goods Act 1995* (the Act).

In response to your queries, it is clarified:

a. The scenario to which the regulation, section 4(1)(b)(i) is intended to apply

Section 4(1)(b)(i) of the Regulation is intended to apply to situations where goods have been abandoned by an unrelated third-party on properties that form part of a lot, such as car parks and storage spaces, in a community land scheme. In such a situation, an owners corporation would be able to access procedures under the Act to commence the process of removal of goods from a lot, only after obtaining consent of the lot owner to do so.

I am advised that this provision was included in response to difficulties faced by some owners corporations in dealing with such goods, and to align community land laws with strata laws.

The *Strata Schemes Legislation Amendment Act 2025* amended the *Uncollected Goods Act 1995* by adding a new definition of uncollected goods - an owners corporation reasonably believes the goods have been abandoned or left behind on the lot of an owner in a strata scheme, within the meaning of the *Strata Schemes Management Act 2015* and acts with the consent of the owner. These changes commenced on 1 July 2025.

b. Whether a development lot or neighbourhood lot could contain private residential property

Neighbourhood lots can include privately owned residential property. A development lot does not include residential property – this is land that has been retained by the developer for further subdivision (into a precinct of neighbourhood scheme, or to create association property). The association would need the consent of the lot owner before commencing any procedures in the Act.

I trust the Committee finds this information of assistance. For further clarification, you may contact Maggie Phang, Director Policy, NSW Fair Trading on or

Sincerely,

The Hon Jihad Dib MP
Acting Minister for Better Regulation and Fair Trading
Acting Minister for Industry and Trade
Acting Minister for Innovation, Science and Technology
Acting Minister for Building
Acting Minister for Corrections

07/07/2025

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

Ref: COR-03158-2025
Your Ref: D25/033168

The Hon. Natasha Maclaren-Jones MLC
Chair
Delegated Legislation Committee
By email: dlc@parliament.nsw.gov.au

Dear Ms Maclaren-Jones Natasha

Thank you for your further correspondence about clause 23L of the *Residential Tenancies Amendment Regulation 2025* (the Amendment Regulation).

Clause 23L requires a landlord or landlord's agent to provide certain data to the Secretary when either making a claim for the rental bond or within 14 days of being notified that a claim for the bond was made by a tenant. This requirement commenced on 1 July 2025.

I understand your query is about whether a defence is available to a landlord or agent if there are extenuating circumstances where required information has not been provided.

I am advised that clause 23L is a strict liability offence and does not include a legislated defence of reasonable excuse. It is not uncommon for the *Residential Tenancies Act 2010* (the Act) to have a strict liability offence where a person is required to provide information. For example:

- Section 26 requires the landlord or agent to give tenants information about material facts for a property, sale or mortgagee actions, strata by-laws and strata renewal, as well as a copy of the Tenant Information Statement. There is a maximum penalty of 20 penalty units.
- Section 29(2) requires the landlord or agent to give the tenant the completed condition report at the start of the tenancy, with a maximum penalty of 20 penalty units.
- Section 36 requires a person receiving a rental payment in-person to provide a rent receipt, with a maximum penalty of 10 penalty units.

These sections do not include a legislated defence of reasonable excuse, and clause 23L aligns with this existing approach. However, in NSW, common law defences such as an honest and reasonable mistake of fact can apply to a strict liability offence.

Additionally, NSW Fair Trading enforcement officers have a range of enforcement tools that they use to support the operation of tenancy laws. When assessing conduct, officers may take into account mitigating factors, for example if the offence has occurred for the first time. Alternative means of engagement include education or guidance.

The process to report the information has also been designed to make it as simple and seamless as possible, as it is integrated with the ordinary bond claim process in Rental Bonds Online.

I am advised that the system can distinguish between a bond where the landlord uses an agent, compared to one where the landlord self-manages the property. This enables correct identification of the users involved in the bond claim process.

The system sends notifications to agents and landlords to remind them to provide the data - this includes both emails and text messages at both 7 and 14 days. The agent and landlord portal also has an 'actions centre' which provides a 'to do' item for the agent or landlord to complete.

In practice, there is no separate reporting process that a landlord or agent must seek out, but rather the data collection occurs as the landlord or agent completes the finalisation and release of the rental bond as they would normally do. This reduces the burden of reporting for landlords and agents and minimises inadvertent non-reporting.

I trust this information is of assistance in responding to your concerns.

Sincerely,

14-7-25

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

The Hon Rose Jackson MLC
Minister for Water, Minister for Housing,
Minister for Homelessness
Minister for Mental Health, Minister for Youth

NSW GOVERNMENT

Our ref: MF25/1497
Your Ref: D25/037569

The Hon. Natasha Maclaren-Jones MLC
Member of the Legislative Council
Committee Chair
Delegated Legislation Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: dlc@parliament.nsw.gov.au

Dear Mrs Maclaren-Jones Natasha

Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025.

Thank you for your letter about the Delegated Legislation Committee's review of the *Water Management (General) Amendment (Landholder Negotiation Scheme) Regulation 2025* (the Regulation).

The intent of section 247C(2)(b) of the Regulation is to enable a staged approach to landholder negotiations. This is particularly important where the proposed environmental water release, as outlined in the Minister's declaration, affects a large number of landholders. This provision recognises the practical need to manage negotiations over time and allows for flexibility in project delivery. It also accommodates projects that may require staged implementation to achieve full delivery, especially where thousands of landholders are involved.

Section 247C(6) of the Regulation allows the Minister to amend and update the declaration to describe an additional area of land likely to be affected by the release. This ensures negotiations can be rolled out progressively. The intent is that all affected landholders will be invited to negotiate before the Minister declares and end to negotiations under section 247F(6).

I trust that this clarifies the issue raised by the Committee. If you have any further questions, please do not hesitate to contact my office.

Yours sincerely

Rose Jackson MLC
Minister for Water, Minister for Housing, Minister for Homelessness,
Minister for Mental Health, Minister for Youth

Date: 17.7.25

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The Hon Penny Sharpe MLC
Minister for Climate Change, Minister for Energy,
Minister for the Environment, Minister for Heritage,
Leader of the Government in the Legislative Council

NSW GOVERNMENT

Your ref: D25/037611
Our ref: MD25/4089

The Hon Natasha Maclaren-Jones MLC
Chair
Delegated Legislation Committee

By email: dlc@parliament.nsw.gov.au

Dear Ms Maclaren-Jones

Thank you for your follow up letter regarding the Biodiversity Conservation Amendment (Strategic Offset Delivery Agreements) Regulation 2025. I appreciate you bringing this matter to my attention.

All measures listed in clause 6.2 of the Biodiversity Conservation Regulation 2017 (the Regulation), including Strategic Offset Delivery Agreements (SODAs), are prescribed biodiversity conservation measures under section 6.29A of the *Biodiversity Conservation Act 2016* (the Act). Section 1.6(1) of the Act defines 'prescribed biodiversity conservation measures' by referring to the biodiversity conservation measures prescribed under section 6.4(2)(b) of the Act.

I note the Committee's suggestion to amend clause 6.3A of the Regulation to refer to section 6.29A of the Act. Both the biodiversity conservation measures in clause 6.2 of the Regulation and the SODA provisions in clause 6.3A of the Regulation reference the section of the Act that contains the relevant regulation-making power (section 6.4) for prescribing actions that do or do not qualify as biodiversity conservation measures.

References to the Act in the Regulation are a matter determined by the Parliamentary Counsel.

If the Committee requires further clarification, please do not hesitate to reach out again.

Sincerely

Penny Sharpe MLC
Minister for Climate Change, Minister for Energy,
Minister for the Environment, Minister for Heritage
23/7/25

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