



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

Delegated Legislation Monitor No. 2 of 2025



18 February 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. 2 of 2025

'February 2025'

Chair: Hon Natasha Maclaren-Jones MLC

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Table of contents

	Committee details	iv
	Overview of the Delegated Legislation Monitor	v
	Operation of the Committee's technical scrutiny function	v
	Conclusions and structure of Monitor No. 2 of 2025	vi
Chapter 1	Instruments with no scrutiny concerns	9
Appendix 1	Minutes	10

Committee details

Committee members

Hon Natasha Maclaren-Jones MLC	Liberal Party	<i>Chair</i>
Ms Abigail Boyd MLC	The Greens	<i>Deputy Chair</i>
Hon Susan Carter MLC	Liberal Party	
Hon Greg Donnelly MLC	Australian Labor Party	
Hon Dr Sarah Kaine MLC	Australian Labor Party	
Hon Tania Mihailuk MLC	Independent	
Hon Cameron Murphy MLC	Australian Labor Party	
Hon Bob Nanva MLC	Australian Labor Party	

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Committee Chair

Secretariat

Bethanie Patch, A/Principal Council Officer
Noora Hijazi, Principal Council Officer
Robin Howlett, A/Council Officer
Madeleine Dowd, Director

Overview of the Delegated Legislation Monitor

Operation of the Committee's technical scrutiny function

- 1.1 The Regulation Committee was first established on a trial basis on 23 November 2017 in the 56th Parliament.¹ The Committee was reappointed in the 57th Parliament on 8 May 2019 and in the 58th Parliament on 10 May 2023.²
- 1.2 On 19 October 2023, the Legislative Council amended the resolution of the House establishing the Regulation Committee to require it 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 Following the trial, the Committee tabled its report entitled "Evaluation of the Regulation Committee's technical scrutiny function" on 10 February 2025. On 12 February 2025, the Legislative Council resolved to amend the resolution establishing the Regulation Committee to permanently expand the functions of 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 *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.

- 1.6** 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.
- 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. 2 of 2025

- 1.11** For this monitor, the Committee has reviewed six instruments published on the NSW legislation website or in the NSW Government Gazette between 12 December 2024 and 31 January 2025. The Committee has concluded that four instruments raise no scrutiny concerns, as set out in Chapter 1.

- 1.12** A further three instruments notified between 6 December 2025 and 7 February 2025 remain under review, for consideration in a future monitor.

Chapter 1 Instruments with no scrutiny concerns

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

Instrument	SI number/ GG reference
Duties Amendment (Qualified Investors) Regulation 2025	2025 No 16
Environmental Planning and Assessment (Development Certification and Fire Safety) Amendment Regulation 2025	2025 No 17
Uniform Civil Procedure (Amendment No 104) Rule 2025	2025 No 27
Supreme Court Practice Note SC Gen 23	NSWGG-2025-38-1

Appendix 1 Minutes

Draft minutes no. 22

Monday 17 February 2025

Regulation Committee

Room 1254, Parliament House, Sydney, 11.02 am

1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Boyd, *Deputy Chair (via teleconference)*

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 Murphy: That draft minutes no. 21 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Sent:

- 10 February 2025 – Letter from Chair to Clerk of the Parliaments, Mr David Blunt AM regarding tabling of the report entitled *Evaluation of the Regulation Committee's technical scrutiny function*.
- 12 February 2025 – Letter from Clerk of the Parliaments to the Leader of the Government of the Legislative Council requesting a government response to the Committee's report entitled *Evaluation of the Regulation Committee's technical scrutiny function*
- 13 February 2025 – Letter from Chair to the Minister for Police and Counter-terrorism, the Hon Yasmin Catley MP regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 1 of 2025.
- 13 February 2025 – Letter from Chair to the Minister for Music and the Night-time Economy, the Hon John Graham MLC regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 1 of 2025.
- 13 February 2025 – Letter from Chair to the Minister for Climate Change, the Hon Penny Sharpe MLC regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 1 of 2025.
- 13 February 2025 – Letter from Chair to the Chief Justice of New South Wales, the Hon A.S Bell regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 1 of 2025.

Received:

- 12 February 2025 – Letter from the Presiding Member, Legal Profession Admissions Board, Hon Anthony Payne regarding the Public Notaries Appointment (Amendment) Fees Rule 2024.

4. Consideration of Chair's draft report

The Chair submitted her draft report entitled *Delegated Legislation Monitor No. 2 of 2025*, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Donnelly: 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 18 February 2025.

5. Role and appointment of the Legal Adviser

The Committee considered the role of the legal adviser of the Committee moving forward.

Resolved, on the motion of Ms Boyd: That the Committee approve a recommendation for the Clerk to appoint Dr Ellen Rock as Legal Adviser to the Committee until the end of the 58th Parliament.

Resolved, on the motion of Mr Murphy: That a draft protocol to be used to appoint any future independent legal adviser be prepared by the secretariat and circulated for consideration at the Committee's next meeting on 17 March 2025.

6. Amendment to the name of the Regulation Committee

The Committee noted that, following resolution of the House of Wednesday 12 February 2025 amending the name of the 'Regulation Committee' to the 'Delegated Legislation Committee', the committee secretariat updated the name of the Committee online and in all relevant papers.

7. Adjournment

The Committee adjourned at 11.17 am.

8. Next Meeting

Monday 17 March 2025, 12.30 pm, Room 1254 (consideration of the Committee report entitled 'Delegated Legislation Monitor No. 3 of 2025').

Madeleine Dowd
Committee Clerk

