



LEGISLATIVE COUNCIL

REGULATION COMMITTEE

Delegated Legislation Monitor No. 1 of 2024

14 March 2024



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Regulation Committee

Delegated Legislation Monitor No. 1 of 2024

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Delegated Legislation Monitor No. 1 of 2024

'March 2024'

Chair: Hon Natasha Maclaren-Jones MLC

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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 Tania Mihailuk MLC	Pauline Hanson's One Nation	
Hon Greg Donnelly MLC	Australian Labor Party	
Hon Dr Sarah Kaine MLC	Australian Labor Party	
Hon Cameron Murphy MLC	Australian Labor Party	
Hon Bob Nanva MLC	Australian Labor Party	

Contact details

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Hon Natasha Maclaren-Jones MLC
Committee Chair

Secretariat

Dom Bowes, Principal Council Officer
 Bethanie Patch, Senior Council Officer
 Robin Howlett, Administration 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 the committee to scrutinise delegated legislation that is subject to disallowance.³
- 1.3** Paragraph (3) of the amended resolution requires that:
- The committee, from the first sitting day in 2024:
- (a) is to consider all instruments of a legislative nature that are subject to disallowance while they are so subject, against the scrutiny principles set out in section 9(1)(b) of the *Legislation Review Act 1987*,
 - (b) may report on such instruments as it thinks necessary, including setting out its opinion that an instrument or portion of an instrument ought to be disallowed and the grounds on which it has formed that opinion, and
 - (c) may consider and report on an instrument after it has ceased to be subject to disallowance if the committee resolves to do so while the instrument is subject to disallowance.
- 1.4** In accordance with paragraph (3), the committee will consider any instrument that is disallowable, during the period in which it may be disallowed. That includes 'statutory rules', within the meaning of the *Interpretation Act 1987*, that are disallowable by virtue of section 41 of that Act. It also includes other instruments to which section 41 applies indirectly, i.e., where the Act under which an instrument is made provides it is to be treated as if it were a statutory rule for the purposes of section 41.
- 1.5** A list of instruments that are subject to disallowance is published on the Parliament's website on the first Tuesday of each month and each Tuesday when the Legislative Council is sitting.
- 1.6** With regard to the scrutiny principles the committee is required to assess instruments against, the *Legislation Review Act 1987*, section 9(1)(b) sets out 8 grounds of scrutiny as follows:
- (i) that the regulation trespasses unduly on personal rights and liberties
 - (ii) that the regulation may have an adverse impact on the business community

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

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

³ *Minutes*, NSW Legislative Council 19 October 2023, pp 643-644.

- (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.⁴

1.7 The committee has published guidelines on its webpage which provide an overview of its intended approach to its technical scrutiny functions and specific guidance in respect of each of these eight grounds.

1.8 Each sitting week, the committee will publish a monitor setting out its progress and conclusions relating to technical scrutiny of regulations. The monitor will set out matters where the committee has sought further information from the responsible Minister or Department, the committee's conclusions in relation to instruments where concerns have been raised and a list of those regulations the committee has reviewed which have not raised scrutiny concerns.

1.9 In addition to the regular publication of monitors the committee may, from time to time and under paragraph (2) of the resolution establishing it, inquire and report on:

- (a) any instrument of a legislative nature regardless of its form, including the policy or substantive content of the instrument,
- (b) draft delegated legislation, and
- (c) trends or issues in relation to delegated legislation.

Conclusions and structure of Monitor No. 1 of 2024

1.10 In this Monitor, the committee has reviewed nine instruments notified on the NSW Legislation Website since 6 February 2024. The committee has:

- raised scrutiny concerns and sought further information in respect of two instruments, as set out in Chapter 1,

⁴ *Legislation Review Act 1987*, section 9(1)(b).

- raised scrutiny concerns for information of the Minister and concluded its review in respect of two instruments, as set out in Chapter 2, and
- concluded that five instruments raise no scrutiny concerns, as set out in the list of instruments in Appendix 1.

1.11 In future editions of the Delegated Legislation Monitor, the committee will set out its conclusions as a result of engagement with the responsible Minister or Department. That may include, if necessary, any recommendations that an instrument, or a part of an instrument, ought to be disallowed.

Chapter 1 New scrutiny matters for engagement

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

NSW Admission Board Second Amendment Rule

S.I Number	2024 No 22
Notified on Legislation Website (LW)	9/2/24
Tabled in Legislative Council (L.C)	12/3/24
Last date of notice for disallowance motion	18/06/24

Overview

- 1.1 The *NSW Admission Board Second Amendment Rule* amends the *NSW Admission Board Rules 2015* to, as the explanatory note sets out:

provide for decisions on the relaxation of the rules applicable to the order in which students-at-law must progress through the Board's examinations, and decisions permitting students-at-law to sit at alternative examination venues, to be made by the Executive Officer in addition to the Examination Committee.

- 1.2 This rule was made by the Legal Profession Admission Board under the *Legal Profession Uniform Law Application Act 2014*, section 21A.

Scrutiny concerns

Form or intention of the rule calls for elucidation

- 1.3 The committee is required to consider whether the form or intention of a rule calls for elucidation. In considering the *NSW Admission Board Second Amendment Rule* in the context of this scrutiny principle, the committee identified a number of matters that may require elucidation.
- 1.4 Specifically, the committee has identified that additional information or clarification is needed from the Legal Professional Admission Board to resolve the following scrutiny concerns:
- consistency of use of terms, including defined terms, in rules 59 and 61,
 - the purpose and effect of the inclusion of a reference to undefined non-legislative publication in rule 61, and

- the relationship between rule 61, as inserted by the *NSW Admission Board Second Amendment Rule*, and rule 46.

1.5 The committee will set out a further or concluding view relating to these scrutiny concerns in a future monitor, having regard to its engagement with the Legal Profession Admission Board.

Committee conclusion

1.6 In light of the above, the committee requests the advice of the Legal Profession Admission Board in regard to the scrutiny concerns identified under section 9(1)(b) of the *Legislation Review Act 1987*.

NSW Admission Board Third Amendment Rule

S.I Number	2024 No 23
Notified on LW	9/2/24
Tabled in LC	12/3/24
Last date of notice for disallowance motion	18/06/24

Overview

1.7 The *NSW Admission Board Third Amendment Rule* amends the *NSW Admission Board Rules 2015* to, as the explanatory note sets out:

provide for the Executive Officer to permit, under Rule 97, a person given a direction under rule 11 of the Legal Profession Uniform Admission Rules 2015 to sit or be exempted from having to sit the Board's examinations that equate to that direction, and for the Practical Training Exemptions Sub Committee, under Rule 98, to be allowed to grant, at first instance, exemptions from practical legal training competencies with a right of review to the Legal Qualifications Committee.

1.8 This rule was made by the Legal Profession Admission Board under the *Legal Profession Uniform Law Application Act 2014*, section 21A.

Scrutiny concerns

Form or intention of the rule calls for elucidation

1.9 As with the Second Amendment rule, the committee's preliminary view is that the form or intention of Rule 97, as inserted by the rule, calls for elucidation in a number of respects.

1.10 Specifically, the committee has determined there is a need for further information with regard to:

- potential issues with cross-references and repetition,

- uncertainty regarding the relationship between instrument and the *Legal Profession Uniform Admission Rules 2015* in one respect, and
- clarity regarding the effect of subrules (4)-(6) after the amendments.

1.11 The committee will set out a further or concluding view relating to these scrutiny concerns in a future monitor, having regard to its engagement with the Legal Profession Admission Board.

Committee conclusion

1.12 In light of the above, the committee requests the advice of the Legal Profession Admission Board in regard to the scrutiny concerns identified under section 9(1)(b)(vii) of the *Legislation Review Act 1987*.

Chapter 2 Concluded scrutiny matters

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

Water Management (General) Amendment (Joint Private Works) Regulation 2024

S.I Number	2024 No 24
Notified on Legislation Website (LW)	9/2/24
Tabled in Legislative Council (L.C)	12/3/24
Last date of notice for disallowance motion	18/06/24

Overview

- 2.1** The *Water Management (General) Amendment (Joint Private Works) Regulation 2024* (the amending regulation) amends the *Water Management (General) Regulation 2018*.
- 2.2** The explanatory note provides the objects of the amending regulation are, consequent on the commencement of certain provisions of the *Water Management Amendment Act 2010*, to:
- (a) provide for matters relating to private water corporations and private water trusts, including requirements for their governance, and
 - (b) make savings and transitional provisions in connection with—
 - (i) the automatic conversion of private irrigation boards and private drainage boards to private water corporations on 1 March 2024, and
 - (ii) the optional conversion of private water trusts to private water corporations between 1 March 2024 and 1 March 2026.
- 2.3** The amending regulation, which commenced on 1 March 2024, was made under the *Water Management Act 2000*.

Scrutiny concerns

- 2.4** The committee has identified concerns relating to the scrutiny principles set out in sections 9(1)(b)(v) and (vii) of the *Legislation Review Act 1987*.
- 2.5** The committee's concerns relate to Schedule 1[7] of the amending regulation insofar as it inserts Schedule 10, Part 2, clause 12 into the *Water Management (General) Regulation 2018*, and the explanatory note to the regulation.

Objective could have been achieved by alternative and more effective means

- 2.6** Schedule 10, Part 2, clause 12 has the effect of amending the operation of the *Water Management Act 2000* to allow for certain provisions of the *Water Management (General) Regulation 2018*, as in force immediately before 1 March 2024, to be taken to be rules of a private water trust.
- 2.7** This amendment is made way of by a Henry VIII clause set out in the *Water Management Act 2000*, Schedule 9, clause 81(2). Schedule 9, clause 81 was inserted into the 2000 Act on 1 March 2024 by the commencement of amendments contained in an Act that received assent in 2010.
- 2.8** Although the provision does not enable the amending regulation to directly amend the 2000 Act, it makes that Act subordinate to the amending regulation, reversing the ordinary position.
- 2.9** The committee notes the use of the Henry VIII power avoids any issues arising from cross-references to the long-repealed *Water Management (General) Regulation 2004* in the Act, Schedule 9, clause 81(1). The amendment seeks to ensure the correct (and in force) provisions are taken to apply at the concurrent commencement of the *Water Management (General) Amendment (Joint Private Works) Regulation 2024* and the relevant provisions of *Water Management Amendment Act 2010*.
- 2.10** However, given the amending Bill was assented to on 7 December 2010 it appears that the objective of Schedule 10, Part 2, clause 12 might have been achieved by alternative means, such as an amendment to the 2010 amending Act, rather than by subordinate legislation.
- 2.11** The committee generally prefers amendments to an Act to be made by an amending bill rather than by delegated legislation. As addressed in the committee's 2020 report entitled *Making of delegated legislation in New South Wales*, one of the main concerns with regard to Henry VIII provisions is that they may undermine the separation of powers and enable policy to be made without appropriate parliamentary scrutiny and debate.⁵

Form or intention of the explanatory note calls for elucidation

- 2.12** The committee has also identified a scrutiny concern regarding the explanatory note to the regulation.
- 2.13** The relevant explanatory note to the amending regulation does not identify that the clause has been made under a Henry VIII provision. Given the concerns regarding the use of this type of provision, the committee is of the view that any relevant accompanying explanatory note should clearly state that a regulation has been made under a Henry VIII provision.

Committee conclusion

- 2.14** The committee notes that while the amending regulation serves an important purpose in ensuring the correct provisions of the *Water Management (General) Regulation 2018* are taken to

⁵ Regulation Committee, *Making of delegated legislation in New South Wales*, Report 7, October 2020, pp 27-29.

be the rules of a private water trust, this objective could have been achieved by alternative and more effective means.

- 2.15** Specifically, this could have been achieved by amending the *Water Management Amendment Act 2010* prior to commencement of the relevant provisions. The committee notes it generally prefers amendments to an Act to be made by an amending bill rather than delegated legislation to avoid any potential legislative overreach by the executive.
- 2.16** Further, the committee is of the view that given the effect was achieved by subordinate legislation, the explanatory note to the amending regulation should have identified that the clause was made under a Henry VIII provision.
- 2.17** While the committee does not consider that these issues warrant further engagement with the responsible Minister, and therefore, concludes its scrutiny of the instrument, it does seek to draw the relevant issues to the attention of the Minister.

Justice Legislation Amendment (Penalty Notices) Regulation 2024

S.I Number	2024 No 30
Notified on LW	16/2/24
Tabled in LC	12/3/24
Last date of notice for disallowance motion	18/06/24

Overview

- 2.18** The *Justice Legislation Amendment (Penalty Notices) Regulation 2024* (the amending regulation) amends two regulations in relation to penalty notice offences. The explanatory note provides the objects of the regulation are to:
- (a) amend the *Criminal Procedure Regulation 2017* to prescribe certain offences under the *Drug Misuse and Trafficking Act 1985* as penalty notice offences, and
 - (b) amend the *Fines Regulation 2020* to provide that certain penalty notices issued under the *Drug Misuse and Trafficking Act 1985* are taken to be paid if the person to whom the notice is issued completes the drug health intervention under the Early Drug Diversion Initiative provided by, or on behalf of, NSW Health.
- 2.19** The amending regulation, which commenced on 29 February 2024, was made under the *Criminal Procedure Act 1986* and the *Fines Act 1996*.

Scrutiny concerns***Form or intention of the explanatory note calls for elucidation***

- 2.20** The committee's concerns are limited to paragraph (a) above and Schedule 1 to the amending regulation and relate to the scrutiny principles set out in section 9(1)(b)(vii) of the *Legislation Review Act 1987*.
- 2.21** The *Drug Misuse and Trafficking Act 1985*, section 10(1) (possession of prohibited drugs) was prescribed as a penalty notice offence prior to amendment made by Schedule 1[3].
- 2.22** The amendment, in addition to newly prescribing sections 11(1) and 12(1) of the 1985 Act as penalty notice offences, alters the circumstances in which a penalty notice may be issued to an individual in possession of 3,4-Methylenedioxymethylamphetamine (commonly known as MDMA) in certain forms and quantities.
- 2.23** Prior to the amendment being made, a penalty notice could be issued for possession of the drug in 'capsule form' not exceeding 'a small quantity' and in any other form 'less than a traffickable quantity'. Under the *Criminal Procedure Regulation 2017*, as amended, a penalty notice may be issued for possession of the drug in 'tablet form' that is 'less than a traffickable quantity' and in another form not exceeding 'a small quantity'.
- 2.24** The effect of the change is to lower the maximum quantity for which a penalty notice may be issued for possession of MDMA in any form other than capsule or tablet form.
- 2.25** The committee's view is that paragraph (a) of the explanatory note, by referring simply to 'prescribing certain offences', inadequately explained the legal effect of the amending regulation in respect of the section 10(1) offence as it applies to possession of MDMA.

Committee conclusion

- 2.26** The committee does not consider the issue warrants further engagement with the responsible Minister, and therefore, concludes its scrutiny of the instrument. The committee does, however, note that the form or intention of the regulation, in this case the explanatory note, calls for elucidation in terms of the legal effect of the amending regulation, and draws this to the attention of the Minister.

Appendix 1 Instruments with no scrutiny concerns

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

Instrument	SI Number/ Government Gazette
NSW Admission Board First Amendment Rule 2024	2024 No 21
Crown Land Management Amendment (Reserve Trusts) Regulation 2024	2024 No 36
Motor Accident Guidelines: CTP Care (version 1.1)	2024 No 37
Protection of the Environment Operations (Waste) Amendment (Waste Facility Contributions) Regulation 2024	2024 No 38
Mining Act 1992 and Petroleum (Onshore) Act 1991 Approved Arbitration Procedures Order 2024	GG n2024-0320

Appendix 2 Minutes

Minutes no. 1

Friday 9 June 2023

Regulation Committee

Room 1136, Parliament House, Sydney, 11.01 am

1. Members present

Ms Boyd (via videoconference)

Mr Donnelly

Mr Farlow (substituting for Mrs Carter)

Dr Kaine (via videoconference)

Mrs Maclaren-Jones

Mr Murphy

Mr Nanva

2. Apologies

Ms Mihailuk

3. Tabling of resolution establishing the committee

The Clerk tabled the resolution of the House of 10 May 2023 establishing the committee, which reads as follows:

That, notwithstanding anything to the contrary contained in the standing orders:

Appointment

(1) A Regulation Committee be appointed.

Functions

(2) The committee may 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.

Referral of inquiries

(3) The committee:

- (a) is to inquire into and report on any matter relevant to the functions of the committee which is referred to the committee by resolution of the House, and
- (b) may self-refer an inquiry into any matter relevant to the functions of the committee.

(4) A committee meeting to consider a self-reference under paragraph (3)(b) must be convened at the request of any three committee members in writing to the Committee Clerk.

(5) The Committee Clerk must convene a meeting within seven calendar days of receipt of the request providing that members are given at least 24 hours' notice.

(6) A majority of committee members is required to adopt the self-reference.

- (7) Whenever a committee resolves to self-refer a matter, the terms of reference are to be reported to the House on the next sitting day.
- (8) Where a regulation referred to the committee is the subject of a notice of motion or order of the day for the disallowance of the regulation:
 - (a) the notice or order shall stand postponed until the tabling of the committee report,
 - (b) unless otherwise ordered, the committee must table its report within six weeks, and
 - (c) on tabling of the committee report, the Clerk is to place the notice of motion or order of the day on the Notice Paper at the stage it had reached prior to the regulation being referred.

Membership

- (9) The committee is to consist of eight members, comprising:
 - (a) four government members,
 - (b) two opposition members, and
 - (c) two crossbench members.

Chair and Deputy Chair

- (10) The committee is to elect the Chair and Deputy Chair in accordance with the standing orders.
- (11) The Chair of the committee is to be a non-government member.

Quorum

- (12) The quorum of the committee is three members, of whom two must be government members and one a non-government member.

Sub-committees

- (13) The committee has the power to appoint sub-committees.

Conduct of committee proceedings

- (14) Unless the committee decides otherwise:
 - (a) all inquiries are to be advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales,
 - (b) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
 - (c) attachments to submissions are to remain confidential,
 - (d) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
 - (e) the sequence of questions to be asked at hearings is to alternate between government, opposition and crossbench members, in order determined by the committee, with equal time allocated to each,
 - (f) transcripts of evidence taken at public hearings are to be published,
 - (g) supplementary questions are to be lodged with the Committee Clerk within two business days, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness,

- (h) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration, and
- (i) media statements on behalf of the committee are to be made only by the Chair.

4. Election of Chair

The Committee Clerk called for nominations for the Chair.

Mr Farlow moved: That Mrs Maclaren-Jones be elected Chair of the committee.

There being no further nominations, the Clerk declared Mrs Maclaren-Jones elected Chair.

5. Election of Deputy Chair

Mrs Maclaren-Jones took the Chair.

The Chair called for nominations for Deputy Chair.

Mr Nanva moved: That Ms Boyd be elected Deputy Chair of the committee.

There being no further nominations, the Chair declared Ms Boyd elected Deputy Chair.

6. Briefing on the resolution establishing the committee and conduct of committee proceedings

The secretariat provided a briefing to committee members on the resolution establishing the committee and conduct of committee proceedings.

7. Conduct of committee proceedings

7.1 Media

The Committee noted the Broadcast of Proceedings resolution (as amended by the Legislative Council on 19 October 2022), in particular the provisions relating to the filming, broadcasting, rebroadcasting and photography of committee proceedings, including:

- (4) That unless resolved otherwise by a committee, this House authorises:
 - (a) the filming, broadcasting and photography of members and witnesses in committee proceedings:
 - (i) by representatives of media organisations, including from around the committee meeting table,
 - (ii) by any member of the public, from the position of the audience, and
 - (b) the rebroadcasting of committee proceedings on the Legislative Council and Parliament's social media channels.

8. Publication of minutes of the first meeting

Resolved, on the motion of Mr Murphy: That the committee publish the minutes of the first meeting on the committee's webpage, subject to the draft minutes being circulated to members.

9. Adjournment

The committee adjourned at 11.03 am, *sine die*.

Shaza Barbar
Committee Clerk

Wednesday 11 October 2023
Regulation Committee
Room 1136, Parliament House, Sydney, 12.40 pm

1. Members present

Mrs Maclaren-Jones, *Chair*
Ms Boyd, *Deputy Chair*
Mrs Carter (from 12.46 pm)
Mr Donnelly
Ms Mihailuk
Mr Murphy
Mr Nanva
Mr Primrose (substituting for Dr Kaine)

2. Previous minutes

The committee noted that draft minutes no. 1 were confirmed via email on Tuesday 13 June 2023, as per a previous resolution of the committee.

3. Correspondence

The committee noted the following item of correspondence:

Received

- Letter from Gary Maas MP, Chair, Scrutiny of Acts and Regulation Committee, Parliament of Victoria to the Chair, advising that the next Scrutiny of Legislation Conference will tentatively be held in December 2024.

4. Briefing on meeting with secretariat of the Senate Standing Committee for the Scrutiny of Delegated Legislation

The Chair briefed committee members on her and Mr Murphy's meeting with the secretariat of the Senate Standing Committee for the Scrutiny of Delegated Legislation on Wednesday 27 September 2023.

5. Implementation of recommendations 7-9 of the committee's report 'Options for reform of the management of delegated legislation in New South Wales'

The Chair tabled a draft notice of motion seeking to amend the resolution establishing the Regulation Committee so as to implement recommendations 7-9 of the committee's report "Options for reform of the management of delegated legislation in New South Wales" on a trial basis:

Draft notice of motion

- (1) That this House notes that on 21 September 2022, the Regulation Committee tabled its report entitled "Options for reform of the management of delegated legislation in New South Wales", which recommended:
 - (a) that the Legislative Council amend the resolution establishing the Regulation Committee to expand the committee's functions to include inquiring into and reporting on instruments of a legislative nature that are subject to disallowance against the scrutiny principles set out in section 9(1)(b) of the Legislation Review Act 1987 (recommendation 7),
 - (b) that the Regulation Committee's secretariat be increased to support the additional work that will be required as a result of the committee's technical scrutiny function (recommendation 8), and
 - (c) that a dedicated legal adviser be appointed to support the Regulation Committee in the performance of its technical scrutiny function (recommendation 9).

- (2) That this House further notes:
- (a) the committee's conclusion that the function of scrutinising delegated legislation against accountability criteria aligns with the constitutional role of the Upper House in maintaining democratic oversight to support responsible and accountable government, and
 - (b) the Government's response to the report dated 12 December 2022, which noted that recommendations 7, 8 and 9 were not directed to the Government.
- (3) That, in accordance with the Regulation Committee's recommendations 7, 8 and 9, the resolution of the House of 10 May 2023 appointing the Regulation Committee be amended as follows:
- (1) Insert after paragraph (2):
 - "(3) The committee, from the first sitting day in 2024:
 - (a) is to consider all instruments of a legislative nature that are subject to disallowance while they are so subject, against the scrutiny principles set out in section 9(1)(b) of the Legislation Review Act 1987,
 - (b) may report on such instruments as it thinks necessary, including setting out its opinion that an instrument or portion of an instrument ought to be disallowed and the grounds on which it has formed that opinion, and
 - (c) may consider and report on an instrument after it has ceased to be subject to disallowance if the committee resolves to do so while the instrument is subject to disallowance."
 - (2) Insert at the beginning of paragraph (3) "In exercising its function under paragraph (2),"
 - (3) Insert at the beginning of paragraph (14) "In exercising its function under paragraph (2),"
 - (4) Insert after paragraph (14):
 - "(15) In relation to its functions under paragraph (3):
 - (a) the committee may appoint a legal advisor to support it in the performance of these functions, and
 - (b) standing order 240 relating to government responses does not apply.
 - (4) That the Regulation Committee table an evaluation of the arrangements under paragraph (3) of the amended resolution of the House appointing the Regulation Committee by the conclusion of the first sitting week in 2025.
 - (5) That following the tabling of the evaluation, the House consider further whether to continue the Regulation Committee's function of considering and reporting on instruments of a legislative nature that are subject to disallowance against the scrutiny principles set out in section 9(1)(b) of the Legislation Review Act 1987.

Resolved, on the motion of Ms Mihailuk: That the Chair move a motion in the House to amend the resolution establishing the Regulation Committee to implement recommendations 7-9 of the committee's report entitled 'Options for reform of the management of delegated legislation in New South Wales', on a trial basis.

Resolved, on the motion of Mrs Carter: That the Clerk Assistant – Procedure brief committee members on the committee's report entitled 'Options for reform of the management of delegated legislation in New South Wales' in the next sitting week.

6. Adjournment

The committee adjourned at 1.05 pm, *sine die*.

Sharon Ohnesorge
Committee Clerk

Minutes no. 3

Wednesday 22 November 2023

Regulation Committee

Room 1136, Parliament House, Sydney, 12.45 pm

1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Boyd, *Deputy Chair*

Mrs Carter (from 12.46 pm)

Mr Donnelly (until 1.02 pm)

Dr Kaine

Mr Murphy (from 12.47 pm until 1.02 pm)

Mr Primrose (substituting for Mr Nanva)

2. Apologies

Ms Mihailuk

3. Previous minutes

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

4. Briefing on expanded function of the Regulation Committee

The Clerk Assistant – Procedure provided a briefing on the Committee's expanded remit for the scrutiny of delegated legislation following the adoption by the House on 19 October 2023 of the motion amending the resolution appointing the Committee.

5. Adjournment

The committee adjourned at 1.15 pm, *sine die*.

Madeleine Dowd
Committee Clerk

Minutes no. 4

Monday 26 February 2024

Regulation Committee

Room 1254, Parliament House, Sydney, 2.32 pm

1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Boyd, *Deputy Chair*

Mrs Carter

Mr Donnelly

Dr Kaine (*via videoconference*)
Mr Murphy
Mr Nanva (*via videoconference*)

2. Apologies

Ms Mihailuk

3. Previous minutes

Resolved, on the motion of Mrs Carter: That draft minutes no. 3 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Sent:

- 18 January 2024 - Letter from the Chair to Ms Brenda Tronson, Barrister, Level 22 Chambers regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Ms Anna Garsia, Barrister, Twelfth Floor, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Ms Rachel Francois, Barrister, 11 St James, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Ms Sarah Woodland, Barrister, 11 St James, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Dr Lynsey Blayden, University of Sydney, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Dr Emily Hammond, University of Sydney, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Dr Ellen Rock, University of Technology Sydney, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Mr Jonathan Kay Hoyle SC, 11 St James, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Mr Perry Herzfeld SC, Eleven Wentworth, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Mr Stephen Free SC, Eleven Wentworth, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Mr Patrick Knowles SC, Tenth Floor Chambers, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Mr Gerald Ng SC, 7 Wentworth Selborne, regarding an expression of interest process for an external legal adviser to the committee.
- 18 January 2024 - Letter from the Chair to Ms Reg Graycar, 11 St James, regarding an expression of interest process for an external legal adviser to the committee.

Received:

- 12 December 2023 - Letter from Mr Gary Maas MP, Chair of the Scrutiny of Acts and Regulations Committee to the Chair in relation to the Australia-New Zealand Scrutiny of Legislation Conference to be held at the Victorian Parliament in December 2024
- 18 January 2024 - Email from Ms Brenda Tronson to the secretariat declining to submit an expression of interest process to the position of external legal adviser to the committee.
- 22 January 2024 - Email from Mr Patrick Knowles SC to the secretariat declining to submit an expression of interest process to the position of external legal adviser to the committee.
- 23 January 2024 - Email from Mr Stephen Free SC to the secretariat declining to submit an expression of interest process to the position of external legal adviser to the committee.

- 29 January 2024 - Email from Mr Perry Herzfeld SC to the secretariat declining to submit an expression of interest process to the position of external legal adviser to the committee.
- 1 February 2024 - Email from Dr Lynsey Blayden to the secretariat declining to submit an expression of interest process to the position of external legal adviser to the committee.
- 1 February 2024 - Email from Mr Gerald Ng SC to the secretariat declining to submit an expression of interest process to the position of external legal adviser to the committee.
- 1 February 2024 - Letter from Mr Jonathan Kay Hoyle to the Chair submitting an expression of interest for the position of external legal adviser to the committee.
- 5 February 2024 - Letter from Dr Ellen Rock to the Chair submitting an expression of interest for the position of external legal adviser to the committee.
- 9 February 2024 - Letter from Ms Rachel Francois to the Chair submitting an expression of interest for the position of external legal adviser to the committee.

5. Expression of interest for the appointment of external legal adviser

Resolved, on the motion of Ms Boyd: That the committee confirm the appointment of Dr Ellen Rock, Senior Lecturer, Faculty of Law, University of Technology Sydney to the position of external legal adviser and that the Clerk enter into a 12-month contract with Dr Rock on behalf of the committee.

Resolved, on the motion of Ms Boyd: That the secretariat draft a protocol that outlines the process of advertising for and the selection of the external legal adviser with a view to ensuring the position is advertised to, and applications are encouraged from, candidates of diverse backgrounds, including culturally and linguistically diverse candidates, candidates based outside of Sydney and candidates with diverse educational backgrounds.

Resolved, on the motion of Ms Boyd: That the Chair write to the President regarding the Legislative Council's approach to the seeking of external advice with specific reference to any potential steps that could be taken to ensure people of more diverse backgrounds apply and be considered for relevant advisory roles.

6. Schedule of meetings and statutory instrument email notifications

Resolved, on the motion of Mrs Carter: That:

The committee receive a weekly email notification of the statutory instruments required to be tabled in the Council that were made in the week prior.

The committee hold deliberative meetings to adopt its regular reports on delegated legislation on the Wednesday of each sitting week at the commencement of the lunch break (i.e., 12.30 pm or when the House rises for lunch), unless otherwise agreed.

The regular reports on delegated legislation be circulated to the committee on the Monday before the Wednesday meeting.

7. Adjournment

The committee adjourned at 3.06 pm, *sine die*.

Madeleine Dowd
Committee Clerk

Draft minutes no. 5

Wednesday 13 March 2024

Regulation Committee

Room 1136, Parliament House, Sydney, 6.37 pm

8. Members present

Mrs Maclaren-Jones, *Chair*

Ms Boyd, *Deputy Chair*

Mr Donnelly

Dr Kaine

Mr Murphy

Mr Nanva (*via telephone*)

9. Previous minutes

Resolved, on the motion of Mr Murphy: That draft minutes no. 4 be confirmed.

10. Attendance of Dr Ellen Rock, Senior Law Lecturer, University of Technology Sydney and external legal adviser to the Regulation Committee

Resolved, on the motion of Ms Boyd: That Dr Ellen Rock, Senior Law Lecturer, University of Technology Sydney and external legal adviser to the Regulation Committee, be authorised to attend future private deliberative meetings of the Regulation Committee where necessary.

11. Draft guidelines relating to the committee's additional scrutiny functions

Resolved, on the motion of Ms Boyd: That the guidelines be adopted by the committee and published on the committee webpage.

Resolved, on the motion of Ms Boyd: That the committee undertake a review of the guidelines in six months to incorporate any necessary updates.

Resolved, on the motion of Mr Donnelly: That the Chair write to The Cabinet Office and Parliamentary Counsel's Office outlining the additional scrutiny functions of the committee and providing the committee's guidelines for information.

12. Consideration of Chair's draft report

The Chair submitted her draft report entitled *Delegated Legislation Monitor No. 1 of 2024*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Ms Boyd: 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;

The report be tabled in the House on Thursday 14 March 2024.

13. Ministerial correspondence arising from the adopted report

Resolved, on the motion of Ms Boyd: That the Chair write to relevant Ministers or bodies reflecting the concerns identified in the monitor and seeking a response, where required, within 2 weeks of the correspondence being sent.

14. Adjournment

The committee adjourned at 6.53 pm until Wednesday 20 March 2024, 12.30 pm (or when the House rises for lunch), Room 1136 (consideration of committee report entitled 'Scrutiny of Delegated Legislation Monitor No. 2 of 2024'.)

Madeleine Dowd
Committee Clerk

