

NSW Legislative Council

Delegated Legislation Committee



D26/008149

23 February 2026

To:

Ms Laurie Zio MLA
Chair
Legal and Constitutional Affairs Committee
Legislative Assembly of the Northern Territory

By email: LA.Committees@nt.gov.au.

Dear Ms Zio

Submission to Inquiry into Review of Historical Regulations

Thank you for inviting the NSW Legislative Council's Delegated Legislation Committee (the Committee) to make a submission to the inquiry into the Review of Historical Regulations being conducted by the Legal and Constitutional Affairs Committee.

This letter provides an overview of the functions of the Delegated Legislation Committee as well as information regarding the staged repeal of statutory rules process in New South Wales. Additionally, this submission refers to previous reports published as part of inquiries undertaken by the Committee which may be relevant to the inquiry terms of reference.

Functions of the Delegated Legislation Committee

The Committee's establishing resolution sets out its two primary functions, being its general inquiry function and its ongoing role in the scrutiny of delegated legislation. In relation to the general inquiry power, the Committee is empowered to inquire and report into:

- (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.¹

The Committee is also required 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 1987² and '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'.³ To discharge its responsibilities in relation to this function, the Committee tables reports entitled [Delegated Legislation Monitors](#) every sitting week which set out its conclusions relating to all disallowable instruments it has reviewed.

¹ Delegated Legislation Committee's establishing resolution, paragraph (2).

² Delegated Legislation Committee's establishing resolution, paragraph (3)(a).

³ Delegated Legislation Committee's establishing resolution, paragraph (3)(b).

This technical scrutiny function was established during the current 58th Parliament and commenced from the first sitting week in 2024 on a 12-month trial basis. Following the completion of that trial, the Committee tabled an [evaluation report](#) and ultimately recommended that the additional function be adopted on a permanent basis. The House resolved to implement this recommendation in February 2025, meaning the technical scrutiny function is now a core and ongoing part of the work of the Committee.

For a detailed examination of the history of the Committee and the establishment of its technical scrutiny function, please refer to the paper entitled [Breaking new ground: Expanding the scrutiny function of the New South Wales Legislative Council's Regulation Committee](#) , presented at the Australia-New Zealand Scrutiny of Legislation Conference in December 2024.

Staged repeal of statutory rules in New South Wales

Under the *Subordinate Legislation Act 1989* (NSW), section 10(2) a statutory rule officially published on or after 1 September 1990 is repealed on the fifth anniversary of the date on which it was published (in the case of a statutory rule published on 1 September in any year), or on 1 September following the fifth anniversary of the date on which it was published (in any other case).

This means that statutory rules are effectively repealed after being in force for five years, unless their repeal has been postponed under section 11 of the *Subordinate Legislation Act 1989* (NSW). An instrument that has been repealed may be re-made, and is then subject to the Committee's scrutiny process (and the staged repeal process after another five years).⁴

Current and previous inquiries conducted by the Committee regarding delegated legislation

The Committee is currently conducting an inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, *Subordinate Legislation Act 1989* and *Legislation Review Act 1987* relating to delegated legislation. As part of this inquiry, the Committee published a [discussion paper](#) which may be a useful resource to the Legal and Constitutional Affairs Committee in setting out the legislative scheme relating to delegated legislation in New South Wales and potential areas for reform.

Additionally, the Committee (then named the Regulation Committee), published two significant reports in the previous parliament, entitled [Making of delegated legislation in New South Wales](#) (October 2020) and [Options for reform of the management of delegated legislation in New South Wales](#) (September 2022). These two reports provide detailed analysis on the operation of delegated legislation in New South Wales and include recommendations regarding best practice in this area. These reports may be relevant to the Inquiry into Review of Historical Regulations, specifically in relation to existing frameworks regarding subordinate legislation and parliamentary oversight mechanisms.

Should you wish to discuss this submission further, please contact Madeleine Dowd, Director – Delegated Legislation Committee on 02 9230 3050 or at dlc@parliament.nsw.gov.au.

Kind regards



The Hon Natasha Maclaren-Jones MLC

Committee Chair

⁴ More information regarding the staged repeal process in New South Wales can be found at page 21 of the Committee's [Discussion Paper](#) published as part of its inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, *Subordinate Legislation Act 1989* and *Legislation Review Act 1987* relating to delegated legislation. The staged repeal process is also subject to [Premier's Memorandum M2008-01 Staged Repeal of Statutory Rules](#).