



**PROVING ITS WORTH: REFLECTING ON THE DELEGATED LEGISLATION
COMMITTEE'S SCRUTINY FUNCTION, FOUR YEARS ON**

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PROVING ITS WORTH: REFLECTING ON THE DELEGATED LEGISLATION COMMITTEE'S SCRUTINY FUNCTION, FOUR YEARS ON

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Introduction

This paper reflects on the successful operation of the NSW Legislative Council Delegated Legislation Committee's technical scrutiny function during the 58th Parliament. It is the third in a series of papers charting the evolution of the role of the Legislative Council in undertaking scrutiny of delegated legislation.

The first paper, entitled *Back to the Future: Charting the evolution of the NSW Legislative Council Regulation Committee*, was presented at the January 2023 ANZACATT Conference by Mr Stephen Frappell, then Acting Deputy Clerk of the Legislative Council and Ms Sharon Ohnesorge, then Acting Clerk Assistant – Procedure, Legislative Council. The paper told the story of the Legislative Council Regulation Committee from its inception in 2016 and examined the Committee's 2020 and 2022 landmark reports regarding how delegated legislation should be managed in New South Wales. The second paper, entitled *Breaking New Ground: Expanding the scrutiny function of the New South Wales Legislative Council's Regulation Committee*, was presented by me as Chair of the Committee at the Scrutiny of Delegated Legislation Conference held in Melbourne, Victoria in December 2024. The 2024 paper set out how the technical scrutiny function was established and operationalised during the initial 12-month trial in 2024.

This paper builds on the 2023 and 2024 papers by reflecting on the maturation of the Committee's technical scrutiny function after being permanently incorporated into the Committee's establishing resolution in February 2025, following the successful 12-month trial. In particular, this paper focuses on how the Committee has engaged with ministers, departments and other bodies in relation to identified scrutiny concerns in a meaningful way, and the positive legislative change that has occurred in response to this work. Additionally, this paper will also explore how the Committee's scrutiny function has become embedded in government processes relating to delegated legislation more broadly.

While reflecting on the successful implementation of its technical scrutiny function, this paper will also consider what the priorities of the Committee in the next parliament might be and how it might continue implementing or advocating for other recommendations set out in the Committee's 2026 report entitled *Consolidation of the provisions of the Interpretation Act 1987, Subordinate Legislation Act 1989 and Legislation Review Act 1987 relating to delegated legislation*.

¹ Chair, New South Wales Legislative Council Delegated Legislation Committee. The Chair acknowledges the assistance of Ms Madeleine Dowd, Committee Clerk and Director – Procedure in the preparation of this paper.

Finally, the paper will conclude by reflecting on how the Committee's scrutiny work fits within the Council's role as a House of Review, and has been a positive addition to the way in which the Council oversees delegations of legislative power in New South Wales, and the executive government more broadly.

History of the Delegated Legislation Committee's technical scrutiny function

This section of the paper provides an overview of how the technical scrutiny function of the Delegated Legislation Committee, initially named the Regulation Committee, was first established in 2024. For a more detailed examination of how delegated legislation has historically been scrutinised by parliamentary committees in New South Wales, as well as the background to the establishment of the Regulation Committee, see the Committee's 2025 report entitled '*Evaluation of the Regulation Committee's technical scrutiny function*'.

2022 report into Options for reform of the management of delegated legislation in New South Wales

In 2022 the Regulation Committee, chaired by the Hon Mick Veitch MLC, tabled its landmark report entitled *Options for reform of the management of delegated legislation in New South Wales*. This report made a number of significant recommendations to the regulatory and scrutiny framework for delegated legislation in New South Wales, including three recommendations for reform of the Regulation Committee's role and remit:

Recommendation 7

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 8

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 9

That a dedicated legal adviser be appointed to support the Regulation Committee in the performance of its technical scrutiny function.

Expansion of the Regulation Committee's functions in the 58th Parliament

The Regulation Committee was reestablished in the 58th Parliament on 10 May 2023, with the Committee's remit under its establishing resolution being substantially the same as that of the 57th Parliament, in that it did not include a dedicated technical scrutiny function. However, the Committee remained committed to the reforms proposed in the 2022 report.

On 11 October 2023, the Committee resolved that the Chair of the Committee move a motion in the House to amend the establishing resolution of the Committee to implement recommendations 7-9 of its 2022 report, on a trial basis for 12 months, starting in 2024. That

motion was moved by the Chair and ultimately agreed to as formal business on 19 October 2023, indicating the unanimous support of the House.

2024 amended establishing resolution

The amended establishing resolution of the Regulation Committee effectively expanded the Committee's functions to include inquiring into and reporting on instruments of a legislative nature that are subject to disallowance against the scrutiny grounds set out in the *Legislation Review Act 1987*, section 9(1)(b).

Specifically, paragraph (3) of the amended resolution required 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.

Additionally, the amended resolution required the Committee to table an evaluation of the 12-month trial arrangements by the conclusion of the first sitting week of 2025.

Finally, and consistent with this resolution, recruitment commenced in December 2023 to establish a dedicated secretariat to support the Committee's scrutiny function and in February 2024, the inaugural independent legal adviser, Dr Ellen Rock, Associate Professor, Law and Justice Faculty, University of New South Wales, was appointed for a period of 12 months.

2025 report entitled 'Evaluation of the Regulation Committee's technical scrutiny function'

In February 2025, the Committee tabled a report that evaluated the exercise of its additional scrutiny function over the 12-month trial period, as required by resolution of the House on 19 October 2023. In its report, the Committee found that the 12-month trial had proven the advantages of having an Upper House committee dedicated to the review and scrutiny of delegated legislation alone. It found that throughout 2024, the Committee provided an additional level of oversight to the delegation of legislative power in New South Wales by reviewing all instruments of a legislative nature that are subject to disallowance and drawing to the attention of Parliament instruments which engaged the scrutiny grounds in the *Legislation Review Act 1987*.

The evaluation report concluded that the Committee's interactions with responsible ministers and bodies, undertakings made in response to scrutiny concerns identified by the Committee, and subsequent amendments to both primary and subordinate legislation, was evidence of the Committee's capacity to effect positive change and to play an educative role on the best practice in the making of delegated legislation in New South Wales.

In its report, the Committee also reflected on the multipartisan, consensus approach that all members brought to the Committee's technical scrutiny role. The report noted that all members adopted a collaborative and apolitical manner throughout the trial, approaching the new function with the primary intent of improving delegated legislation in the state.

Ultimately, the report found the trial had been an undoubted success and recommended that the Legislative Council amend the resolution establishing the Regulation Committee to permanently expand the Committee's functions to include the technical review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b). It also recommended that if the House resolved to amend the establishing resolution, it should continue to be supported by a dedicated secretariat and a part-time independent legal adviser in order for the Committee to effectively discharge its function in scrutinising delegated legislation. Finally, the report recommended that the Committee be renamed the 'Delegated Legislation Committee' to more accurately reflect its remit.

2025 amended establishing resolution

On 12 February 2025, the House agreed to a motion moved by the Chair to permanently establish the Committee's technical scrutiny function and to rename the Committee the Delegated Legislation Committee, consistent with the recommendations of the evaluation report. Like the motion establishing the initial 12-month trial, this motion was agreed to as formal business.

Maturation of the Committee's technical scrutiny function

This section provides a brief overview of how the Committee's technical scrutiny function operates. It then explores how this function has matured since the 12-month trial in 2024, with a specific focus on how the Committee has fostered positive engagement with ministers, departments and bodies which has ultimately resulted in legislative change in response to scrutiny concerns identified by the Committee.

How does the Committee perform its technical scrutiny function?

As required by its establishing resolution, the Committee scrutinises all statutory instruments subject to disallowance while they are so subject against the principles set out in the *Legislation Review Act*, section 9(1)(b).

Where an instrument raises a concern referable to the Committee's scrutiny principles, the Committee will write to the responsible minister or body to request information regarding the instrument or its effects. Typically, the minister or body will have two weeks in which to respond. If the information provided is not sufficient to resolve the Committee's concerns, the Committee may raise again its concerns with the relevant minister or body or draw the instrument to the attention of the Legislative Council.

As a result of raising scrutiny concerns with the responsible minister or body, the Committee may, if it has ongoing concerns, seek an undertaking for specific action to address its scrutiny concerns. Relevant undertakings are recorded on the Index of Undertakings on the Committee's website. The Committee may also recommend to the House that an instrument, or part of an instrument, be disallowed. To date, the Committee has only recommended the disallowance of two instruments, one of which was ultimately disallowed with the support of the Government.

On occasion, where an instrument raises minor issues that do not rise to the level of engaging a scrutiny concern under the *Legislation Review Act 1987*, the Committee will write to the responsible minister to bring such issues to the minister's attention for consideration and potential revision. Minor issues include typographical and cross-referencing errors that have the potential to affect the operation of the relevant provision.

The Committee then publishes its conclusions in a report, the Delegated Legislation Monitor (the monitor), tabled in session by the Chair on the Tuesday of each sitting week. The monitor has generally comprised three main chapters:

1. Concluded scrutiny matters, which 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).
2. Instruments with no scrutiny concerns, which lists the instruments that the Committee has reviewed and in respect of which it has identified no scrutiny concerns.
3. Instruments raising scrutiny concerns, which lists the instruments in respect of which the Committee has identified scrutiny concerns and is engaging with the responsible minister or body.

On 3 August 2026, the Committee resolved that an additional chapter be added to the monitor which draws the attention of the House to outstanding undertakings, being undertakings that were made over six months ago and have not yet been implemented. This additional chapter appeared for the first time in Delegated Legislation Monitor No. 10 of 2026, tabled on 15 September 2026.

To ensure the transparency of communications regarding the scrutiny functions of the Committee, all correspondence sent to, and received from, responsible ministers or bodies relating to identified scrutiny concerns, as referred to in the monitors, are attached as an appendix to the monitors.

Another important factor in how the technical scrutiny function is performed is the unique staffing model supporting the Committee that has been in place since the beginning of the 12 month trial. The Committee is supported by a dedicated secretariat, which is in contrast to the pooled staffing model utilised by all other Council committees. Given the specialised nature of the work required, secretariat staff undertaking research roles are required to have a legal background and experience with statutory review and interpretation. Newly developed position descriptions were developed prior to commencing recruitment in December 2023 to reflect these unique roles. The Committee has also been fortunate to have a drafter from the NSW Parliamentary Counsel's Office seconded to the Committee secretariat each year that the technical scrutiny function has been operating. This secondment arrangement has facilitated extensive training and knowledge sharing between parliamentary staff and experienced drafters, which has been pivotal in ensuring the legislative scrutiny can be undertaken is of the highest standard possible.

Finally, consistent with its establishing resolution, the Committee has appointed a part-time independent legal adviser to support the performance of its technical scrutiny function. In February 2024, the Committee approved the recommendation of the secretariat for the Clerk to

appoint Dr Ellen Rock, Associate Professor, Law and Justice Faculty, University of New South Wales for a period of 12 months. In February 2025, the Committee resolved to approve a further recommendation for the Clerk to appoint Dr Rock as legal adviser until the end of the 58th Parliament. The Committee is grateful to Dr Rock for her legal expertise, which has been critical to the Committee's success in discharging its responsibilities.

How has the Committee's engagement with ministers, departments and other bodies developed since 2024?

In the 2024 paper presented at the Scrutiny of Delegated Legislation conference, engagement with ministers and departments was described in the following way:

The meaningful and responsive engagement of many ministers and bodies has been heartening and demonstrates how a scrutiny function of this kind can operate effectively and ultimately improve the quality of delegated legislation in New South Wales.

This being said, the Committee does note that a small number of ministerial responses have been delayed or have not engaged substantively with the Committee's concerns. In the future, the Committee may request responsible ministers and bodies to respond to letters identifying scrutiny concerns within seven days, rather than the current 14 days, in order to avoid some of the more significant delays which could ultimately impact the ability of the Committee to conclude its scrutiny while an instrument is disallowable.²

To give a sense of the volume of work undertaken by the Committee since that time, in 2025 and 2026, the Committee scrutinised 459 statutory instruments, identifying scrutiny concerns in 43 instruments.

Since this time, and with the technical scrutiny function having been in operation for over two and a half years, the quality of engagement with ministers, departments and other bodies has consistently improved and can be described as broadly positive, meaningful and timely. The Committee has not had to explore shortening the time ministers and bodies have to respond to letters identifying scrutiny concerns, which as set out above, was considered as an option in response to overdue responses. Generally speaking, responses to the Committee's correspondence have been on time, or if unable to be responded to in the specified timeframe, have been subject to a request for an extension, which is most often granted by the Committee.

As well as responses to Committee correspondence broadly being timely, it is notable that most identified scrutiny concerns are resolved by only one round of correspondence. Of the 43 scrutiny issues identified in 2025 and 2026 to date, only three have required follow-up correspondence in order to be resolved. This means that the initial response from the relevant minister or body addresses the identified scrutiny concerns by either making an undertaking to amend the relevant instrument or providing a sufficient explanation that adequately addresses the Committee's concerns. While this is not always the case, and in some circumstances, it is necessary for the Committee to write follow-up correspondence, the fact that most scrutiny

² The Hon Natasha Maclaren-Jones MLC, 'Breaking New Ground: Expanding the scrutiny function of the New South Wales Legislative Council's Regulation Committee' (Paper presented at the Australia-New Zealand Scrutiny of Legislation Conference, Melbourne, Victoria, 4 December 2024), p. 10.

issues are resolved by initial correspondence demonstrates the meaningful way in which ministers and departments engage with the Committee.

Additionally, the fact that the Committee has only recommended disallowance on two occasions demonstrates the overall quality of the responses the Committee receives when scrutiny issues are identified, in that it does not routinely have to make recommendations of disallowance because issues are almost always able to be resolved via an undertaking or a detailed explanation of why an instrument may have a certain effect. Indeed, in both cases, the Committee was ultimately able to work with the Government to effectively resolve the scrutiny issue.

The Committee's first recommendation of disallowance was set out in Delegated Legislation Monitor No. 11 of 2024, tabled on 15 October 2024. In this instance, the Committee recommended that the Liquor Amendment (Vibrancy Reforms) Regulation 2024, Schedule 1[12], be disallowed on the basis that it engaged two of the Committee's scrutiny grounds, being that the regulation may not have been within the general objects of, or may not accord with the spirit of the legislation under which it was made, and that the form or intention of the regulation calls for elucidation. Pursuant to that recommendation, notice of disallowance was given on 15 October 2024. However, on that same day, the Government introduced the 24-Hour Legislation Amendment (Vibrancy Reforms) Bill 2024 which proposed omitting the Liquor Amendment (Vibrancy Reforms) Regulation 2024, clause 44C, being the clause containing the identified scrutiny issue. On that basis, the notice of disallowance was withdrawn as the relevant issue was being addressed by the Government.³

The second recommendation that an instrument be disallowed is set out in Delegated Legislation Monitor No. 12 of 2025, which recommended that the National Parks and Wildlife Act 1974—Erratum be disallowed on the basis that it engaged two of the Committee's scrutiny grounds, being that the objective of the instrument could have been achieved by alternative and more effective means, and that the form or intention of the instrument called for elucidation. When the issue was raised with the responsible Minister, being the Minister for the Environment, the Minister acknowledged the identified scrutiny concerns and put the view that revoking the erratum would be an appropriate way to address the issue. Consistent with the recommendation made in the report, notice of disallowance was given on 14 October 2025. The disallowance was debated on 23 October 2025 and agreed to on the voices.⁴

In the view of the Committee, this kind of consistently meaningful engagement shows that its scrutiny function is now well understood across government as being focused on technical matters, not policy matters, and is therefore ultimately operating with the goal of improving the quality of delegated legislation in New South Wales.

³ For further information, see Delegated Legislation Monitor No. 11 of 2024. A case study relating to this regulation is also available in the paper by the Hon Natasha Maclaren-Jones MLC, 'Breaking New Ground: Expanding the scrutiny function of the New South Wales Legislative Council's Regulation Committee' (Paper presented at the Australia-New Zealand Scrutiny of Legislation Conference, Melbourne, Victoria, 4 December 2024), p. 10.

⁴ For further information, see Delegated Legislation Monitor No. 12 of 2025.

In addition to the positive, ongoing engagement with ministers and departments, the Committee also notes a circular issued by The Cabinet Office entitled 'Notifying the Delegated Legislation Committee about implementing undertakings', dated 9 June 2026. The circular sets out that government agencies who have made an undertaking to the Committee in response to a scrutiny concern are required to inform the Committee of the undertaking being implemented within five days of its implementation. This circular demonstrates that the processes of the Committee are being successfully embedded into the broader framework of the making and scrutiny of delegated legislation in New South Wales.

The Committee reiterates its thanks to the Leader of the Government in the Legislative Council, the Hon Penny Sharpe MLC, for facilitating engagement across government when the Committee's scrutiny function commenced, as well as ministers and departments more broadly for engaging with the Committee in a productive way. It is clear that the nature of this engagement has been critical to a successful scrutiny function and it is of paramount importance to the Committee that these relationships continue to develop in a positive and meaningful way.

What has the Committee done differently to foster meaningful engagement across government?

As set out above, the Committee is of the view that broadly speaking, engagement with ministers and departments in relation to identified scrutiny concerns has been positive, timely and productive. Since the conclusion of the 2024 trial and the technical scrutiny function being established on an ongoing basis, the Committee and its secretariat have been focused on strengthening the quality of this relationship by improving the understanding of the Committee's role across government. One important way that this has been done is by conducting a number of training and education sessions with departmental officials about the work of the committee.

During 2025 and 2026, the Committee, through its secretariat and independent legal adviser, has supported the delivery of a number of sessions with legal and policy teams within departments across the NSW Government. These sessions have focused on the role of the Committee, commonly identified scrutiny concerns, how to best engage with the Committee and its overall processes. Feedback on each of these sessions has been overwhelmingly positive, with attendees stating that the information has improved their understanding of how the Committee operates and how to better respond to scrutiny letters when they are received.

While the impact of these sessions is largely anecdotal, when the relevant department has next engaged with the Committee after an information session, the written response to scrutiny issues identified by the Committee have generally been timely, detailed and engage with the identified issues in a meaningful way. In the view of the Committee, the high quality of the written responses received after a session been conducted, as well as positive participant feedback, demonstrates that this kind of outreach is a helpful way of improving the understanding of the Committee's role and facilitating a better relationship between the Committee and the executive government. The Committee will continue supporting these sessions and will consider more proactively reaching out to departments to offer training and education where appropriate.

Reflections on the maturation of the Committee's technical scrutiny function

It is evident that since its inception, and following its successful 12-month trial, the Committee's technical scrutiny function has continued to evolve in its success. This has been shown by the

Committee's processes being increasingly well understood and taken seriously across government, as evidenced by responses to the Committee's scrutiny concerns generally being timely, responsive and meaningful. The fact that the Committee has only recommended the disallowance of two instruments, in its review of over 686 instruments over the course of the 58th Parliament, and is able to resolve most of its scrutiny concerns in its initial round of correspondence shows that ministers and departments are engaging seriously with the Committee's scrutiny role. In addition, The Cabinet Office issuing a circular relating to the Committee's processes demonstrates that this work has now become embedded in government processes and is recognised as important and ongoing.

The Committee will continue to conduct training and education sessions with departments and bodies, noting that the more informed legal and policy officers are about the work of the Committee, the better the quality of the engagement with scrutiny concerns is. Indeed, if legal and policy officers are better informed about scrutiny concerns that are regularly identified by the Committee, it may ultimately be less likely that these concerns will arise in the first place.

As the technical scrutiny function has matured, so has the way in which the Committee and its secretariat have been able to engage with its stakeholders across government. This should be an ongoing priority of the Committee in the 59th Parliament in order for the scrutiny function to maintain its success.

Additionally, over the past two years, it has become even more evident that the Committee must be supported by a dedicated secretariat and a part-time legal adviser in order to effectively discharge its responsibilities. The work of reviewing delegated legislation requires specialised skills and training, and this can only be effectively done by having an appropriately resourced and qualified secretariat. The Committee thanks its secretariat for its work during this Parliament delivering robust, trusted technical scrutiny support that has been essential to the successful delivery of the Committee's new function, as well as its hard work operationalising this function in its early stages. As well as the secretariat, the Committee also expresses its thanks to Dr Rock for her high-quality and reliable legal advice on a variety of complex matters.

Finally, on behalf of the Committee, I acknowledge the valuable support it has received from the drafters seconded to the secretariat from the NSW Parliamentary Counsel's Office. Their expertise has greatly assisted the Committee in delivering high-quality legislative analysis. In particular, the Committee appreciates the ongoing support of Annette O'Callaghan, NSW Parliamentary Counsel, in facilitating these secondments over the past three years.

How the work of the Delegated Legislation Committee supports the Council's scrutiny role

Over the course of the 58th Parliament, it has become clear that the Delegated Legislation Committee's technical scrutiny function has been an important addition to the Council's role as a House of Review. The work of this Committee plainly supports the role of the Council in promoting accountability of the executive government in a way that had not been done by the Council since before 1960.

In performing its scrutiny function, the Committee is able to, on behalf of the House, identify issues in delegated legislation and often have those issues resolved by way of an undertaking made by a minister. As well as delivering essential scrutiny of the exercise of delegated legislative

power by the executive, the Committee has also been able to undertake its work in a generally collaborative, cooperative and multipartisan way. This is particularly notable given that other exercises of the Council's scrutiny role can often be contested, controversial and highly political, such as the Budget Estimates process, committee inquiries focused on government accountability, and the ordering of State papers under Standing Order 52. While there is indisputably merit and value in each of these forms of scrutiny, it is important that the somewhat understated role of legislative scrutiny committees be identified as meaningful and extremely productive.

By strictly adhering to its remit of technical scrutiny, not policy analysis, the Delegated Legislation Committee has been able to consistently identify issues in subordinate legislation that subsequently result in corrective legislative change. This has in turn improved accountability and transparency in relation to delegated legislation in New South Wales. It is of critically important that in the 59th Parliament, the Committee continue to undertake this role in this same way it has in the 58th Parliament in order to maintain the same high levels of oversight of delegated legislation in New South Wales.

Priorities of the Delegated Legislation Committee in the 59th Parliament

This section outlines potential reform the Committee may wish to explore in the 59th Parliament, with specific reference to recommendations made in its 2025 evaluation report and its August 2026 inquiry report entitled *Consolidation of the provisions of the Interpretation Act 1987, Subordinate Legislation Act 1989 and Legislation Review Act 1987 relating to delegated legislation*.

Future inquiry into explanatory notes accompanying delegated legislation in New South Wales

In its 2025 evaluation report, the Committee examined explanatory notes in New South Wales and other jurisdictions. The report noted that the issue that arises most often when undertaking technical scrutiny is understanding the intent behind a provision, with the most cited scrutiny ground consistently being 'that the form or intention of the regulation calls for elucidation'. The Committee made the point that if it had access to, or required the production of, an explanatory note drafted by the department or body with carriage of the instrument, the circumstances in which there is uncertainty or ambiguity may be reduced, negating the need to write to the responsible minister or body. However, the Committee also noted that more research and evidence on this issue is necessary before any further recommendations could be made, as such a requirement would entail a significant change to current processes for the making of delegated legislation in New South Wales, and it would therefore be important to obtain the views of stakeholders before the Committee was able to come to a conclusion about this matter. On this basis, the Committee recommended that an inquiry into explanatory notes accompanying delegated legislation in New South Wales to consider potential options for reform in this area be undertaken.

This inquiry has not yet been conducted and will not be conducted in the time remaining in the 58th Parliament. In the view of the Committee, this issue remains significant and it would be beneficial for an inquiry to be conducted by the Committee next Parliament.

Advocating for further reform recommended in previous reports of the Committee

As set out earlier in this paper, the Committee's 2022 report entitled *Options for reform of the management of delegated legislation in New South Wales* made a number of significant recommendations, one of which was the establishment of the Committee's technical scrutiny function. However, it is important to note that the report made a number of other significant recommendations, and the Committee remains committed to pursuing outstanding reform in this area.

One of the key points made in the 2022 report was that the current legislative framework governing delegated legislation in New South Wales is fragmented and complex. To better understand this issue, the Committee undertook an inquiry in this Parliament 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 report was tabled in August 2026 and reiterated both the need for and stakeholder support for further reform in relation to how delegated legislation is managed in New South Wales, and in particular, the development of a consolidated Legislation Act.

This report also made a number of recommendations relating to other matters, including:

- that the new Legislation Act apply to all instruments of a legislative character,
- that appropriate exemptions from the definition and framework applying to instruments of a legislative character be made in primary legislation, and be guided by specific and strict criteria,
- limitations on incorporation of non-legislative documents into legislative instruments,
- the statutory obligation to table notice of the making of a statutory rule being made enforceable by providing that any rule that is not duly notified to the Houses is invalid, and
- all legislative instruments being published on the New South Wales legislation website.

All of these recommendations ultimately aim to make the legislative framework more accessible and understandable, as well as strengthening executive accountability and parliamentary oversight of delegated legislation. A government response to this inquiry report is due on 6 November 2026.

While it is now a matter for the Government to respond to the recommendations made by the Committee, it is important that the Committee continue to advocate for these important changes relating to the management of delegated legislation in New South Wales. The establishment and successful operation of the Committee's technical scrutiny function demonstrated the value of reform in this area, and the Committee remains committed to the other important issues that remain outstanding. In the 59th Parliament, it will be a key part of the Committee's role to monitor these issues, and where necessary, continue its role in advocating for long-term change.

Conclusion

It was a significant moment for the Legislative Council when the House first resolved in October 2023 for what was then known as the Regulation Committee to undertake technical scrutiny of all disallowable instruments on a 12-month trial basis. More significant still was the success of this trial period and the subsequent resolution of the House in February 2025 to establish this additional function on a permanent basis. Since this time, the work of the Committee has evolved

and matured, with its role now generally well understood by ministers, departments and other bodies it engages with.

As set out in this paper, the fact that stakeholders across government generally engage with the Committee seriously and constructively has allowed the scrutiny function to be effectively discharged. The Committee remains committed to continuing its efforts to promote its role by offering training and educational opportunities where appropriate, as an effective way of improving both the understanding of what technical scrutiny of delegated legislation is, as well as building stronger relationships between the Committee and the agencies responsible for instructing on the drafting of delegated legislation.

While the success of the technical scrutiny role of the Committee is beyond question, it remains important that the Committee does not lose sight of the other reforms relating to the management of delegated legislation in New South Wales. As set out in its August 2026 inquiry report, it is still a priority for this Committee to advocate for the development of a consolidated Legislation Act in New South Wales, as well as a number of other changes relating to delegated legislation that are important and supported by relevant stakeholders. It will be a matter for this Committee to build on its success of the 58th Parliament by continuing to advocate for these broader reforms in the 59th Parliament, alongside the exercise of its scrutiny function.