



Proving its worth – Reflecting on the Delegated Legislation Committee’s scrutiny function, four years on

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History of the Delegated Legislation Committee's technical scrutiny function



Sept 2022

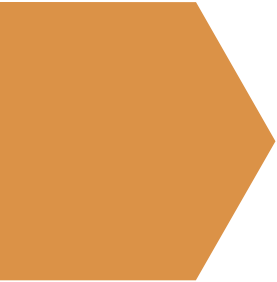
Tabling of Regulation Committee report, *Options for reform of the management of delegated legislation in New South Wales*, recommending establishing technical scrutiny function.

Oct 2023

Resolution of the House establishing a 12-month trial of the Regulation Committee's technical scrutiny function commencing from the first sitting day in 2025.

Feb 2025

Tabling of evaluation report of 12-month trial. Resolution of the House agreeing to permanently expand technical scrutiny function and rename the Committee the Delegated Legislation Committee.



How does the Committee perform its technical scrutiny function?

- 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).
- If a scrutiny issue is identified in an instrument, **Committee will write to the responsible minister or body** to request information regarding the instrument or its effects.
- The Committee may, if it has ongoing concerns, **seek an undertaking for specific action to address its scrutiny concerns**.
- The Committee **may also recommend to the House that an instrument, or part of an instrument, be disallowed**.
- 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.
- Supported by a **dedicated secretariat** with skills and experience in statutory interpretation, and a **part-time independent legal adviser**.

Maturation of the Committee's scrutiny function

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

- Of the 43 scrutiny issues identified in instruments published in 2025 and 2026 to date, Committee has only had to send follow-up correspondence on 3 occasions.
- Committee has only recommended disallowance on two occasions – in both circumstances, Committee was able to work with the Government to resolve the issue.

The Cabinet Office circular entitled: 'Notifying the Delegated Legislation Committee about implementing undertakings'

- Agencies who have made an undertaking to the Committee are required to inform the Committee of the undertaking being implemented within five days of its implementation.
- 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.

Training sessions with departments and other bodies

- Secretariat and legal adviser have conducted information sessions with legal and policy officers in departments.
- Focused on Committee processes and regularly identified scrutiny issues.
- Well received and seem to improve quality of responses.

Priorities of the Delegated Legislation Committee in the 59th Parliament

- Future inquiry into explanatory notes accompanying delegated legislation in New South Wales
- Advocating for further reform recommended by the Committee in its report into the consolidation of legislative provisions relating to delegated legislation, including:
 - the development of a consolidated Legislation Act,
 - 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.