



**Inquiry into options for reform of the management of delegated legislation in
New South Wales**

TERMS OF REFERENCE

- (1) That this House note that in its report entitled 'Making of delegated legislation in New South Wales', dated October 2020, the Regulation Committee recommended in Recommendation 2 that the Attorney General consider referring to the NSW Law Reform Commission the following terms of reference:
 - '1. Pursuant to section 10 of the Law Reform Commission Act 1967, the NSW Law Reform Commission is to review and report on:
 - (a) the extent and use of delegated legislative powers in New South Wales
 - (b) powers and safeguards relating to delegated legislation in other jurisdictions
 - (c) suggestions for improvements in the use of delegated legislative powers to prevent executive overreach.
 2. In particular, the Commission is to consider:
 - (a) the merits of extending statutory provisions regarding disallowance and committee scrutiny to all instruments of a legislative character including quasi legislation
 - (b) the adequacy of current requirements for consultation in the development of delegated legislation
 - (c) the need to ensure that all forms of delegated legislation can be easily accessed by the public as soon as they commence
 - (d) the need for additional safeguards in relation to the use of Henry VIII provisions, shell legislation and quasi legislation
 - (e) the merits of consolidating into a single statute the Subordinate Legislation Act 1989, the Legislation Review Act 1987 and the relevant provisions of the Interpretation Act 1987
 - (f) the merits of adopting a comprehensive statutory framework for primary and secondary legislation similar to the Legislative Standards Act 1992 (Qld)
 - (g) the merits of extending the time limits for the disallowance of delegated legislation
 - (h) the merits of extending the 4-month time limit on remaking a disallowed statutory rule
 - (i) any other matters the Commission considers relevant.'
- (2) That this House notes the government's response to the Regulation Committee's report, dated 19 April 2021, in which Recommendation 2 was not supported.

- (3) That, in the absence of a referral by the Attorney General to the NSW Law Reform Commission, this House:
- (a) refer the Regulation Committee's report and evidence back to the committee for further inquiry and report into options for reform of the management of delegated legislation in New South Wales, and
 - (b) authorise the committee to engage an external legal adviser to assist the committee in its inquiry into options for reform of the management of delegated legislation in New South Wales.
- (4) That the committee commence its inquiry in February 2022 and report by the last sitting day in September 2022.¹

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 24 November 2021.²

Committee membership

Hon Mick Veitch MLC	Australian Labor Party	<i>Chair</i>
Ms Abigail Boyd MLC	The Greens	<i>Deputy Chair</i>
Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	
Hon Greg Donnelly MLC	Australian Labor Party	
Hon Wes Fang MLC	The Nationals	
Hon Aileen MacDonald MLC*	Liberal Party	
Hon Taylor Martin MLC**	Liberal Party	
Hon Peter Poulos MLC	Liberal Party	

* The Hon Aileen MacDonald MLC replaced the Hon Catherine Cusack MLC as a substantive member of the committee from 16 August 2022. The Hon Catherine Cusack MLC was a substantive member of the committee to 9 August 2022.

** The Hon Taylor Martin MLC replaced the Hon Lou Amato MLC as a substantive member of the committee from 29 March 2022. The Hon Lou Amato MLC replaced the Hon Scott Farlow MLC as a substantive member of the committee from 1 March 2022.

¹ The original reporting date was the first sitting day in August 2022 (*Minutes*, NSW Legislative Council, 24 November 2021, pp 2847-2848). On Wednesday 8 June 2022, the reporting date was extended to the last sitting day in September 2022 (*Minutes*, NSW Legislative Council, 8 June 2022, p 3419). The last sitting day in September 2022 was resolved as 22 September 2022 (*Minutes*, NSW Legislative Council, 16 November 2021, p 2713).

² *Minutes*, NSW Legislative Council, 24 November 2021, pp 2847-2848.