

Delegated Legislation Committee

Discussion paper

Consolidation of the
provisions of the Interpretation
Act 1987, Subordinate
Legislation Act 1989 and
Legislation Review Act 1987
relating to delegated legislation

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Chapter 1 Introduction to the Discussion Paper

Introduction

- 1.1 On 26 May 2025, the Delegated Legislation Committee of the Legislative Council (the Committee) resolved to inquire into and report on the consolidation of the provisions of the *Interpretation Act 1987*, *Subordinate Legislation Act 1989* and *Legislation Review Act 1987* in relation to delegated legislation.¹
- 1.2 The legislative framework for the management of delegated legislation in New South Wales is currently governed across the three separate Acts; [*Interpretation Act 1987*](#), [*Subordinate Legislation Act 1989*](#) and [*Legislation Review Act 1987*](#).
- 1.3 In undertaking its functions, the work of the Committee is predominantly subject to or concerned with the provisions of these Acts and how they interrelate with one another. In previous work of the Committee, the idea of consolidating the relevant provisions of the three Acts into one has been recommended as an option to overcome the practical and legal challenges associated with navigating any overlapping provisions and inconsistencies. The purpose of the inquiry before the Committee is to explore these issues.
- 1.4 This paper provides an overview of the three Acts in question and outlines potential areas for consolidation to be explored during the inquiry.

Purpose of the discussion paper

- 1.5 When the Committee resolved to undertake its inquiry, it also resolved that a discussion paper be prepared to provide stakeholders with a more focused understanding of the issues of interest to the Committee when preparing submissions to the inquiry.
- 1.6 This discussion paper provides stakeholders with an outline of the potential areas for consolidation between the three Acts in order to guide submissions to the inquiry. Leading questions for discussion have been incorporated throughout the discussion paper, and Appendix 1 combines all of these question in list form.
- 1.7 As noted in the Terms of Reference, the Committee also welcomes the opportunity for stakeholders to provide information on any other related matters.

¹ *Minutes*, NSW Legislative Council, 27 May 2025, pp 2350-2351.

Previous work of the Committee that has led to this inquiry

- 1.8** The Delegated Legislation Committee, formerly known as the Regulation Committee, was first established on a trial basis on 23 November 2017 in the 56th Parliament.² The Committee was reappointed in the 57th Parliament on 8 May 2019³ and in the 58th Parliament on 10 May 2023.⁴
- 1.9** The functions of the Committee include inquiring and reporting on:
- any instruments of a legislative nature regardless of its form, including the policy or substantive content of the instrument,
 - draft delegated legislation,
 - trends or issues in relation to delegated legislation, and
 - 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*.⁵
- 1.10** As outlined in the Terms of Reference, two key reports significant informed this inquiry being established: the Committee's 2022 report entitled *Options for reform of the management of delegated legislation in New South Wales* and the 2024 report entitled *Evaluation into the technical scrutiny function of the Regulation Committee*.

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

- 1.11** In September 2022, the Committee tabled its report entitled *Options for reform of the management of delegated legislation in New South Wales*.⁶ The purpose of this inquiry was 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, and
 - (c) suggestions for improvements in the use of delegated legislative powers to prevent executive overreach.
- 1.12** The Terms of Reference included a provision that the House authorise the Committee to engage an external legal adviser to assist in its inquiry. The Committee engaged Professor Gabrielle Appleby, University of New South Wales, who prepared a discussion paper that provided an

² *Minutes*, NSW Legislative Council, 23 November 2017, pp 2327-2329.

³ *Minutes*, NSW Legislative Council, 8 May 2019, pp 100-103.

⁴ *Minutes*, NSW Legislative Council, 10 May 2023, pp 37-39.

⁵ The resolution establishing the Committee can be found [here](#). The Committee's scrutiny function was a result of an amendment to resolution of the House of 10 May 2023 in the Legislative Council on 19 October 2023 expanding the functions of the Committee on a trial basis for 12 months. The resolution of the Committee was further amended on 12 February 2025 following the tabling of Report No. 10 of the Regulation Committee entitled *Evaluation of the Regulation Committee's technical scrutiny function*, dated February 2025, to include this function on a permanent basis.

⁶ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022.

analysis of regulatory and scrutiny frameworks for the management of delegated legislation and proposed a set of principles to guide reforms.⁷

- 1.13** Chapter 3 of the report contained the Committee's consideration of reform proposals in five key areas, one of which was statutory consolidation.⁸ Further, Recommendation 1 of the report recommended that the provisions of the three Acts be consolidated into a single 'Legislation Act' including all provisions relating to the making, consultation, notice, tabling, publication, disallowance, remaking, sunseting and scrutiny of primary and delegated legislation, on the basis that the interaction between the provisions of these Acts are complex and in some cases, inconsistent.⁹

Evaluation into the technical scrutiny function of the Regulation Committee

- 1.14** In February 2025, the Committee tabled its report entitled *Evaluation of the technical scrutiny function of the Regulation Committee*.¹⁰ The purpose of the report was to evaluate the 12-month trial of the Committee's additional scrutiny function as required by resolution of the House on 19 October 2023.¹¹ Recommendation 1 of the report recommended that the House amend the resolution establishing the Regulation Committee to permanently expand the Committee's functions to include the technical review of delegated legislation against scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b).
- 1.15** Accordingly, the resolution establishing the Committee was amended in the House on 12 February 2025.¹²
- 1.16** In evaluating the functions of the Committee, the report also referred to the Committee's 2022 inquiry report, particularly, that the interaction between the provisions of the *Interpretation Act 1987*, *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987* is fragmented and complex.¹³ On this basis, Recommendation 7 of the report recommended that the Committee conduct an inquiry into the consolidation of the provisions of the Acts, noting that consolidation would make it easier for members of the public, members of Parliament and government officials to understand the statutory requirements that operate in this complex area of the law.¹⁴

⁷ Professor Gabrielle Appleby, [Discussion Paper](#), *Inquiry into options for reform of the management of delegated legislation in New South Wales*, May 2022.

⁸ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 9.

⁹ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 11.

¹⁰ Regulation Committee, *Evaluation of the Regulation Committee's technical scrutiny function*, Report 10, February 2025.

¹¹ *Minutes*, NSW Legislative Council, 19 October 2023, pp 643-644.

¹² *Minutes*, NSW Legislative Council, 12 February 2025, pp 1988-1989.

¹³ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 10.

¹⁴ Regulation Committee, *Evaluation of the Regulation Committee's technical scrutiny function*, Report 10, February 2025, pp 43-44.

Chapter 2 Overview of the legislative scheme

2.1 The table below provides an overview of the current legislative framework for the management of delegated legislation in New South Wales.

Act	Key provisions
<i>Interpretation Act 1987</i>	Application of Act – Applies to 'instruments', as defined in section 3 to include a statutory rule or an environmental planning instrument made under an Act, and includes an instrument made under any such instrument. Part 6, which comprises sections 39-45A, applies to 'statutory rules', as defined in Schedule 4 Dictionary to mean a regulation, bylaw, rule or ordinance that is made by the Governor (or is required by law to be approved or confirmed by the Governor), or a rule of court.
	Section 39, Making of statutory rules – requires that a statutory rule must be published on the NSW Legislation website and commences on the day of publication on the website unless a later date is specified in the regulation itself.
	Section 40, Notice of the making of statutory rules – requires written notice of the making of a statutory rule to be laid before each House of Parliament within 14 sitting days of that House after the day on which it is published on the NSW Legislation website (though failure to do so does not invalidate the instrument).
	Section 41, Disallowance – provides that either House of Parliament may resolve to disallow a statutory rule at any time before written notice of it is laid before the House or at any time after the relevant written notice is laid before the House, but only if notice of the resolution was given within 15 sitting days of the House after the relevant written notice was so laid. On the passing of such a motion, the rule ceases to have effect.
	Section 45A, Tabling of instruments – provides that an instrument that may or must be tabled in a House of Parliament under any other Act (without any indication as to who is authorised or required to table it) may be laid before the House by a Minister or the Clerk of the House.
	Part 6A, Publication of legislation – provides for publication of legislation on the NSW legislation website.
<i>Subordinate Legislation Act 1989</i>	Application of Act – applies to 'statutory rules', defined in section 3 as a regulation, by-law, rule or ordinance that is made by the Governor (or is required by law to be approved or confirmed by the Governor), but does not include instruments specified in Schedule 4. Schedule 4 Excluded instruments include the Legislative Council and Legislative Assembly Standing Orders, rules of court, and regulations and by-laws made under certain enabling acts, including the Constitution Act 1902.
	Section 4, Guidelines – provides that before a statutory rule is made, the responsible Minister is required to ensure compliance with certain guidelines for the preparation of statutory rules.
	Section 5, Regulatory impact statements and consultation – provides that before a statutory rule is made, the responsible Minister is required to ensure that a regulatory impact statement is prepared, and that consultation with relevant stakeholders takes place.

<i>Legislation Review Act 1987</i>	Section 8, Remaking of a disallowed statutory rule – prohibits the making of a statutory rule that is in the 'same in substance' as a previously disallowed statutory rule within four months of the disallowance.
	Section 10, Staged repeal – provides for staged repeal of statutory rules after five years.
	Application of Act – applies to 'regulations', defined in section 3 as a statutory rule, proclamation or order that is subject to disallowance by either or both Houses of Parliament. 'Statutory rule' is in turn defined as per definition as in the <i>Interpretation Act 1987</i> .
	Part 2, Constitution and procedure of the Legislation Review Committee – establishes the joint committee and sets out its procedures.
	Part 3, Functions of the Committee – sets out the joint committee's functions, including to review all regulations while they are so subject to disallowance to determine whether the special attention of Parliament should be drawn to any such regulation on any ground.

Chapter 3 Specific issues for consideration

Definitions of 'instrument', 'statutory rule', etc.

3.1 The Committee seeks submissions with respect to the following:

- (a) the impacts of the overlapping definitions of a 'statutory rule' across the current legislative framework,
- (b) the potential creation of a consolidated Legislation Act which would instead apply to 'instruments of a legislative character' and whether this is the right policy setting for the application of the three Acts,
- (c) how to assess which instruments are of a legislative character, including how 'instruments of a legislative character' should be defined,
- (d) the criteria for assessing which instruments should be exempt from regulatory and scrutiny frameworks,
- (e) whether documents incorporated by an instrument of a legislative character should themselves be treated as an instrument of a legislative character and therefore be subject to regulatory and oversight requirements,
- (f) whether environmental planning instruments should be treated as instruments of a legislative character and therefore be subject to regulatory and oversight requirements, and
- (f) any other classes of 'instruments of a legislative character' not explicitly referred to in this discussion paper that should be exempt from any or all the requirements of the three Acts insofar as they relate to delegated legislation.

Definition of a 'statutory rule'

3.2 The Committee has previously noted that the interaction between the provisions of the three Acts is complex due in part to the fact that the definitions of the types of delegated legislation to which each Act applies are substantially, but not exactly, the same.¹⁵

3.3 The *Interpretation Act 1987* applies to 'instruments' with the definition including 'statutory rules'. While the *Subordinate Legislation Act 1989* applies to 'statutory rules', the definition of 'statutory rule' contained in the Act is not identical to the definition contained in the *Interpretation Act 1987*.

3.4 The *Legislation Review Act 1987* applies to 'regulations' with the definition including 'statutory rules' and certain other instruments. The *Legislation Review Act 1987* adopts the same definition of 'statutory rule' contained in the *Interpretation Act 1987*.

3.5 The relevant definitions within the current legislative framework are set out below:

¹⁵ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 9.

Interpretation Act 1987

The *Interpretation Act 1987* defines 'instrument' and 'statutory rule' as follows:

3 Definitions

(1) In this Act—

instrument means an instrument (including a statutory rule or an environmental planning instrument) made under an Act, and includes an instrument made under any such instrument.¹⁶

Schedule 4 Dictionary

statutory rule means—

- (a) a regulation, by-law, rule or ordinance—
 - (i) that is made by the Governor, or
 - (ii) that is made by a person or body other than the Governor, but is required by law to be approved or confirmed by the Governor, or
- (b) a rule of court.¹⁷

Subordinate Legislation Act 1989

The *Subordinate Legislation Act 1989*, section 3, defines a 'statutory rule', as follows:

statutory rule means a regulation, by-law, rule or ordinance—

- (a) that is made by the Governor, or
- (b) that is made by a person or body other than the Governor, but is required by law to be approved or confirmed by the Governor,

but does not include any instruments specified or described in Schedule 4.¹⁸

The *Subordinate Legislation Act 1989*, Schedule 4 Excluded instruments include the Legislative Council and Legislative Assembly Standing Orders, rules of court, and regulations and by-laws made under certain enabling Acts, including the *Constitution Act 1902*.¹⁹

Legislation Review Act 1987

The *Legislation Review Act 1987*, section 3, defines 'regulation' and 'statutory rule' as follows:

regulation means a statutory rule, proclamation or order that is subject to disallowance by either or both Houses of Parliament.

statutory rule means—

¹⁶ *Interpretation Act 1987*, section 3(1).

¹⁷ *Interpretation Act 1987*, Schedule 4, Dictionary,

¹⁸ *Subordinate Legislation Act 1989*, section 3.

¹⁹ *Subordinate Legislation Act 1989*, Schedule 4 Excluded instruments.

- (a) a regulation, by-law, rule or ordinance—
 - (i) that is made by the Governor, or
 - (ii) that is made by a person or body other than the Governor, but is required by law to be approved or confirmed by the Governor, or
- (b) a rule of court.²⁰

Q1 What are the impacts of the overlapping definitions of a 'statutory rule' across the current legislative framework?

'Instruments of a legislative character'

- 3.6** In its 2022 inquiry report, the Committee noted that the current definitions prioritise the *form* of an instrument over the *substantive effects*, and in effect, instruments that are not made in a form which meet the requirements of the current statutory definitions are excluded from accountability and oversight requirements that apply to other legislative instruments.²¹
- 3.7** In order to address this issue, the Committee agreed with the proposal in Dr Appleby's discussion paper to potentially extend the regulatory and scrutiny requirements that apply to 'statutory rules' and 'regulations' to 'all instruments of a legislative character', which would ensure that all exercises of delegated legislative power are subjected to safeguards, for example, disallowance procedures, scrutiny and sunset provisions.²²
- 3.8** Therefore, Recommendations 2 and 3 of the 2022 report recommended that a consolidated version of the Acts should apply to all instruments of a legislative character, and if a consolidated Act is not enacted, the three Acts be amended to that effect.²³

Q2 What are your views on the potential creation of a consolidated Legislation Act which would instead apply to 'instruments of a legislative character'? Do you think this is the right policy setting for the application of the three Acts?

²⁰ *Legislation Review Act 1987*, section 3.

²¹ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 15.

²² Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 15.

²³ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 15.

Q3 How should we assess which instruments are of a legislative character, and what should the definition of 'instruments of a legislative character' be?

Exemptions

- 3.9** In its 2022 inquiry report, the Committee noted that exemptions from regulatory and scrutiny frameworks have the potential to undermine the robustness of the framework and to diminish the role of the Parliament as the ultimate law-making authority. In light of this, the Committee supported the imposition of strict controls on the making of exemptions from the regulatory and scrutiny requirements that are to extend to all instruments of a legislative character.²⁴
- 3.10** Recommendation 4 of the report recommended that any exemptions from the definition and framework applying to instruments of a legislative character be made in primary legislation rather than delegating that power to the regulations, and that they adhere to the following criteria:
- exemptions should not be granted where instruments adversely affect rights, liberties, duties and obligations,
 - exemptions should not be granted unless there is an alternative form of accountability, and
 - exemptions should not, except in exceptional circumstances, be granted for instruments made under 'Henry VIII provisions'.²⁵

Q4 If a set of criteria were established to assess which instruments should be exempt from regulatory and scrutiny frameworks, what should that criteria consist of?

Incorporated documents

- 3.11** The Committee seeks submissions as to whether 'incorporated documents' should be treated as 'instruments of a legislative character', and if so, whether they should be exempt from any or all regulatory and scrutiny requirements.
- 3.12** In its 2022 inquiry report, the Committee noted that the *Interpretation Act 1987*, section 42(1), provides that the incorporation of non-legislative instruments by delegated legislation results in external documents becoming legally binding. The Committee expressed concern about the

²⁴ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 15.

²⁵ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 16.

impact of this kind of incorporation on the parliament's ability to adequately oversight the exercise of delegated legislative power.²⁶ The Committee supported the approach adopted by the Commonwealth Parliament in the *Legislative Act 2003*, section 14(2), whereby the incorporation of an external document is only permitted where the individual primary legislation delegating the authority expressly provides for it.²⁷

- 3.13** In light of this, Recommendations 12 and 13 of the report recommended that the incorporation of non-legislative documents into legislative instruments only be permitted where the individual primary legislation delegating the authority expressly provides for it, and that the non-legislative documents be deemed to be legislative instruments subjected to the consultation, publicity, scrutiny and disallowance requirements.²⁸
- 3.14** Additionally, Recommendation 14 recommended that the statutory presumption in the *Interpretation Act 1987*, section 69(1) be retained and that any change to an incorporated document be treated as a change to the legislative instrument, and therefore, be subjected to the same regulatory and scrutiny framework.²⁹

Q5 Should documents that are incorporated by an instrument of a legislative character be treated as an instrument of a legislative character and therefore be subject to regulatory and oversight requirements?

Environmental planning instruments

- 3.15** The Committee seeks submissions in relation to whether environmental planning instruments should be treated as instruments of a legislative character, and if so, whether they should be exempt from any or all of the regulatory and scrutiny requirements, for example, regulatory impact statements and public consultation.
- 3.16** An environmental planning instrument (EPI) is a planning document made under the *Environmental Planning Assessment Act 1979* and includes local environmental plans (LEPs) and State environmental planning policies (SEPPs).
- 3.17** The Act contains a number of provisions providing for the scrutiny and transparency of EPIs, for example, section 3.24 provides that all EPIs be published on the NSW legislation website, and section 3.21 provides that all SEPPs must be kept under regular and periodic review for the

²⁶ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 39.

²⁷ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 39.

²⁸ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 40.

²⁹ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, Report 9, September 2022, p 40.

purpose of ensuring that the objects of the Act are achieved and to determine whether each SEPP needs to be updated every five years.³⁰

- 3.18** However, currently there are no legislative requirements which provide that SEPPs are to be subjected to scrutiny by Parliament, for example, they do not need to be tabled in Parliament or reviewed by a parliamentary committee. In addition to this, there are no legislative provisions that subject EPIs to disallowance procedures.³¹
- 3.19** In August 2021, the Committee tabled a report on its inquiry into Environmental Planning Instruments.³² This inquiry reported on the making of these instruments, particularly SEPPs, and whether they should be disallowable under the *Interpretation Act 1987*, section 41. While the Committee heard strong diverging views on the issue, it ultimately concluded that a case had not been made for these instruments to be subject to disallowance by Parliament. In the context of EPIs, the Committee considered that disallowance had the potential to create uncertainty and inconsistency in the planning system.³³
- 3.20** In its 2021 inquiry report, the Committee noted that several stakeholders expressed the view that some of the requirements that apply to regulations, including regulatory impact statements, could be informative in the context of EPIs, particularly SEPPs.³⁴ In addition, several stakeholders expressed the view that regulatory impact statements could be useful tools in the context of SEPPs, particularly if they include an assessment of environmental, as well as socioeconomic, costs.³⁵
- 3.21** In relation to public consultation requirements, in its 2021 inquiry report, the Committee noted that the legislative provisions for making LEPs require a more robust review in terms of the preparation of explanatory material and public consultation as compared with SEPPs.³⁶ In addition, several stakeholders expressed the view that SEPPs have fewer legislative requirements for public consultation when compared with equivalent jurisdictions, for example, South Australia, where public consultation is required by law and includes at least two months of public consultation and review of public submissions.³⁷ In Victoria, the Environment Protection Authority (EPA) is required to provide several documents to the relevant parliamentary committee, including the final policy impact statement, a summary of submissions, an evaluating statement and the review panel's advice and the EPA's response.³⁸

³⁰ *Environmental Planning and Assessment Act 1979*, section 3.21.

³¹ Regulation Committee, *Environmental Planning Instruments (SEPPs)*, Report 9, August 2021, p 3.

³² Regulation Committee, *Environmental Planning Instruments (SEPPs)*, Report 9, August 2021.

³³ Regulation Committee, *Environmental Planning Instruments (SEPPs)*, Report 9, August 2021, p 24.

³⁴ Regulation Committee, *Environmental Planning Instruments (SEPPs)*, Report 9, August 2021, p 10.

³⁵ Regulation Committee, *Environmental Planning Instruments (SEPPs)*, Report 9, August 2021, p 11.

³⁶ Regulation Committee, *Environmental Planning Instruments (SEPPs)*, Report 9, August 2021, p 10.

³⁷ Regulation Committee, *Environmental Planning Instruments (SEPPs)*, Report 9, August 2021, p 11.

³⁸ Regulation Committee, *Environmental Planning Instruments (SEPPs)*, Report 9, August 2021, p 11.

Q6 Should environmental planning instruments be treated as instruments of a legislative character and therefore be subject to regulatory and oversight requirements, for example, Regulatory Impact Statements and public consultation?

Q7 Are there any other classes of 'instruments of a legislative character' not explicitly referred to in this discussion paper that should be exempt from any or all the requirements of the three Acts insofar as they relate to delegated legislation?

Consultation process for delegated legislation

Regulatory Impact Statements

- 3.22** The Committee seeks submissions with respect to the effectiveness of Regulatory Impact Statements (RIS) in New South Wales as a mechanism for promoting consultation with stakeholders who are likely to be impacted by proposed statutory rules. The Committee also seeks submissions with respect to whether and how the RIS process should be amended if it were expanded to apply to all instruments of a legislative character, and whether any classes of instrument should be exempt from the process.
- 3.23** In New South Wales, a RIS is a document required by law that provides information on the economic, social, and environmental impacts of a principal statutory rule.³⁹
- 3.24** The *Subordinate Legislation Act 1989*, section 5 provides that, before a principal statutory rule is made, the responsible Minister is required to ensure that a RIS that complies with Schedule 2 of the Act is prepared in connection with the substantive matters to be dealt with by the statutory rule.⁴⁰ A 'principal statutory rule' is defined to be a statutory rule that contains provisions other than amendments or repeals, or provisions that deal with citation and commencement.⁴¹
- 3.25** The *Subordinate Legislation Act 1989*, section 6 provides that a RIS is not required in certain circumstances.⁴² These circumstances include when the proposed statutory rule relates to matters of a machinery nature, direct amendments or repeals, and matters of a savings or

³⁹ Regulation Committee, *Evaluation of the Regulation Committee's technical scrutiny function*, Report 10, February 2025, p 40.

⁴⁰ *Subordinate Legislation Act 1989*, section 5.

⁴¹ *Subordinate Legislation Act 1989*, section 3, definition of **principal statutory rule**.

⁴² *Subordinate Legislation Act 1989*, section 6.

transitional nature.⁴³ In addition, failing to comply with sections 5 and 6 does not affect the validity of the regulation.⁴⁴

- 3.26** The *Legislation Review Act 1987*, section 9(1)(b)(viii), provides that one of the functions of the Committee⁴⁵ with respect to regulations is to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedule 1 and 2 to that Act, appear not to have been complied with.⁴⁶
- 3.27** For an outline of regulatory impact statements relating to environmental planning instruments, please see paragraph 3.13.

Q8 Are Regulatory Impact Statements (RIS) effective in promoting consultation with stakeholders who are likely to be impacted by proposed statutory rules?

- (a) Should the RIS process be amended if it were expanded to apply to all instruments of a legislative character? If so, how?
- (b) Which, if any, classes of instruments should be exempt from the process?

Consultation requirements in other jurisdictions

- 3.28** The Committee seeks submissions with respect to the potential adoption of consultation requirements in New South Wales like that of other jurisdictions, particularly, legislative requirements for NSW Parliament to be informed about the consultation undertaken in the making of delegated legislation.
- 3.29** Legislation in other jurisdictions includes requirements for the Parliament to be informed about consultation undertaken in the making of delegated legislation. For example, the *Legislation Act 2003* (Cth), section 15J provides that the Explanatory Statement for a legislative instrument must contain a description of consultation undertaken in the making of the instrument or an explanation as to why no such consultation was undertaken.⁴⁷ Additionally, section 17 provides that, before an instrument is made, the rule-maker must be satisfied that there has been consultation that is considered by the rule-maker to be appropriate and reasonably practicable to undertake.⁴⁸

⁴³ *Subordinate Legislation Act 1989*, section 6.

⁴⁴ *Subordinate Legislation Act 1989*, section 9.

⁴⁵ This is a reference to the Joint Legislation Review Committee, as established under the *Legislation Review Act 1987*, section 4. The resolution establishing the Delegated Legislation Committee requires that it scrutinises all disallowable instruments against the same criteria set out in section 9(1)(b).

⁴⁶ *Legislation Review Act 1987*, section 9(1)(b)(viii).

⁴⁷ *Legislation Review Act 1987*, section 15J(2)(d) and (e).

⁴⁸ *Legislation Review Act 1987*, section 17(1).

- 3.30** Similar requirements apply in Queensland under the *Legislative Standards Act 1992* (Qld). Sections 24(2) and (4) provide that an explanatory note must include whether or not consultation took place about the subordinate legislation, and if not, the reasons why.⁴⁹ In addition, there is a requirement that for 'significant subordinate legislation', the explanatory note tabled in Parliament must be accompanied by the regulatory impact statement prepared for the subordinate legislation concerned.⁵⁰
- 3.31** For an outline of consultation requirements relating to environmental planning instruments, please see paragraph 3.14.

Q9 Should legislative requirements in New South Wales include requirements that NSW Parliament be informed about the consultation undertaken in the making of delegated legislation?

Notice and tabling of statutory rules

- 3.32** The Committee seeks submissions with respect to whether any changes to the process of, and requirements relating to, tabling statutory rules in Parliament are necessary. The Committee also seeks specific submissions on whether and how the process should be changed if it were to apply to all instruments of a legislative character.
- 3.33** The *Interpretation Act 1987* provides that the executive government must inform the Parliament of the making of 'statutory rules' as defined in that Act.⁵¹ Section 40(1) provides that written notice of the making of a statutory rule must be laid before each House of Parliament within 14 sitting days of its publication on the NSW legislation website. Notice of the making of a statutory rule must be laid before a House of Parliament by a Minister or by the Clerk of that House.⁵²
- 3.34** Notably, section 40(4) provides that failure to lay written notice before each House of Parliament does not affect the validity of a statutory rule, although 'such a notice must nevertheless be laid before each House'.⁵³ This is in contrast to section 38(3) of the *Legislation Act 2003* of the Commonwealth, which states:

If a copy of a legislative instrument is not laid before each House of the Parliament in accordance with this section, the legislative instrument is repealed immediately after the last day for it to be so laid.

⁴⁹ *Legislative Standards Act 1992*, section 24(2) and (4).

⁵⁰ *Legislative Standards Act 1992*, section 24(3) and (5).

⁵¹ See section 3.2 for discussion of the different definitions for statutory rules under the *Subordinate Legislation Act 1989* and the *Interpretation Act 1987*.

⁵² *Interpretation Act 1987*, section 40(3A).

⁵³ *Interpretation Act 1987*, section 40(4).

- 3.35** In its 2022 inquiry report, the Committee recommended that the statutory obligation to table notice of the making of a statutory rule be made enforceable by providing that any rule that is not duly notified to the Houses is invalid.⁵⁴
- 3.36** In practice, the Parliamentary Counsel's Office regularly prepares lists of statutory rules for tabling. The Parliamentary Counsel's Office prepares the lists following notification of the instruments on the NSW legislation website and publication in the Government Gazette (as relevant) and forwards the list to the Clerk of each House. The list is generally received every Monday, and the Clerk tables the statutory rules on the Tuesday of each sitting week.

Q10 Should the current process of, and requirements relating to, tabling statutory rules in Parliament be amended, particularly if it were to apply to all instruments of a legislative character? If so, how?

Publication and commencement of delegated legislation

- 3.37** The Committee seeks submissions on potential improvements to the system of publication of delegated legislation in New South Wales, particularly in relation to instruments of a legislative character that are not currently required to be published on the NSW legislation website.
- 3.38** The Committee also seeks submissions about whether a requirement that a period of time must pass between the publication of a delegated instrument and its commencement would be of benefit to New South Wales.

Publication

- 3.39** The *Interpretation Act 1987*, section 39(1)(a) provides that a statutory rule must be published on the NSW legislation website. Certain exceptions are set out in section 39(3)-(5), including the standing orders of either House of the Parliament.
- 3.40** Delegated legislation that does not fall within the definition of 'statutory rule' will usually be required to be published in the Gazette or on the legislation website. For example, the *Public Health Act 2010*, section 7 requires a ministerial order to be published in the Gazette as soon as practicable after it is made, although failure to do so does not invalidate the order.
- 3.41** However, whether an instrument that is not a 'statutory rule' must be published in the Gazette, the NSW legislation website, a website maintained by the relevant Department, or is not required to be published at all, will depend on the terms of the Act under which it is made.

⁵⁴ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, September 2022, p 18.

- 3.42** Further, because delegated instruments that are not 'statutory rules' will not necessarily be published on the NSW legislation website, the website cannot be taken to be a central repository of all legislative instruments made in New South Wales.
- 3.43** In its 2022 report, the Committee recommended that all legislative instruments be published on the NSW legislation as soon as they are made, and that the website clearly indicate where those instruments are exempted from any part of the regulatory and scrutiny framework.⁵⁵
- 3.44** Another avenue of consideration for the Committee is whether, if incorporated documents were treated as instruments of a legislative character for the purposes of a consolidated Legislation Act, the documents should be subject to the same publication requirements as other instruments, and how such a requirement would operate in practice.

Q11 Could improvements to the system of publication of delegated legislation be made, particularly in relation to instruments of a legislative character that are not currently required to be published on the NSW legislation website?

Q12 If incorporated documents were to be treated as instruments of a legislative character, should these documents be subjected to the same publication requirements as other instruments? If so, how should such a requirement operate in practice?

Commencement

- 3.45** The *Interpretation Act 1987*, section 39(1) provides that a statutory rule must be published on the NSW legislation website, and that it commences on the day on which it is published or, if a later day is specified in the rule for that purpose, on the later day specified. This does not prevent a statutory rule from specifying different days for the commencement of different portions of the rule.⁵⁶
- 3.46** If a statutory rule is published after the day on which one or more of its provisions is or are expressed to commence, those provisions commence on the day the statutory rule is published, instead of on the earlier day.⁵⁷
- 3.47** In New South Wales, there is no requirement that a period of time must pass between the publication of a statutory rule on the NSW legislation website and the rule commencing, which

⁵⁵ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, September 2022, p 18.

⁵⁶ *Interpretation Act 1987*, section 39(2).

⁵⁷ *Interpretation Act 1987*, section 39(2A).

is consistent with other Australian jurisdictions. However, as the Committee heard in its 2022 inquiry:

[I]n New Zealand and the United Kingdom it is well accepted that instruments should generally commence 28 or 21 days (respectively) after they are made.⁵⁸

- 3.48** In its 2022 inquiry report, the Committee stated the following in relation to delayed commencement:

The committee notes that delayed commencement provisions have not been adopted in Australian jurisdictions. In addition, delegated legislation is among the most effective tools for Government's to respond to situations where urgent action is needed to meet unexpected crises. As such, the committee does not recommend any changes to existing provisions.⁵⁹

- 3.49** The Committee also seeks submissions relating to whether the Committee's above statement is equally applicable to all classes of instruments of a legislative character, or whether any delayed commencement requirement would be appropriate for a particular class of instruments of a legislative character.

Q13 Would New South Wales benefit from a requirement that a period of time must pass between the publication of a delegated instrument and its commencement?

- (a) Would delayed commencement provisions be appropriate to apply to all classes of instruments of a legislative character?
- (b) If not, which classes of instruments should be exempt?

Disallowance of delegated legislation

- 3.50** The Committee seeks submissions about whether the disallowance process set out in the *Interpretation Act 1987* adequately achieves the goal of parliamentary oversight over delegated legislation in New South Wales, and whether any changes to the disallowance process should be made if the process were to apply to all instruments of a legislative character.

⁵⁸ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, September 2022, pp 40-42, citing Professor Gabrielle Appleby, Discussion Paper, *Inquiry into options for reform of the management of delegated legislation in New South Wales*, p 78, 79.

⁵⁹ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, September 2022, p 34.

- 3.51** The Committee also seeks submissions on whether any classes of instruments of a legislative character that are not currently subject to the disallowance process should continue to be exempt from the process.
- 3.52** Disallowance refers to the process, provided for in the *Interpretation Act 1987*, by which either House of Parliament may, by resolution, disallow a statutory rule with the effect that the instrument is treated as if it has been repealed and any amendments made by it undone.⁶⁰ An instrument may be disallowed by either House at any time, provided notice of the disallowance is given within 15 sitting days after notice of the rule was tabled in the House.⁶¹ The House may disallow a portion of, or the whole of, a statutory rule.⁶²
- 3.53** In addition to the provisions of the *Interpretation Act 1987*, certain other Acts also provide that instruments made under their own provisions that would not otherwise be disallowable must be tabled in Parliament and are subject to disallowance by either House. In some cases, these Acts provide that disallowance is to be in accordance with the *Interpretation Act 1987*, Part 6, whilst in others, the disallowance mechanism is set out in the Act itself.⁶³
- 3.54** Standing Orders 42 and 82 provide the procedures of the Legislative Council for the bringing on, debating and resolution of a motion to disallow a statutory instrument under the *Interpretation Act 1987*, section 41 or the authority of any other Act.
- 3.55** In the Legislative Council, the day after the disallowance notice of motion is given, it is given precedence as 'Business of the House' on the Notice Paper.⁶⁴ The disallowance motion remains as Business of the House for six sitting days.⁶⁵ If it is not moved within that time, it will be set down as private members' business or government business as applicable.⁶⁶
- 3.56** In New South Wales, unlike in some other jurisdictions, there is no provision for automatic disallowance of a statutory rule where a notice of motion for disallowance of the rule is not dealt with by the House within a certain period.⁶⁷
- 3.57** The *Subordinate Legislation Act*, section 8 prohibits the making of a statutory rule that is 'the same in substance' as a previously disallowed statutory rule within four months of the disallowance. As noted in the Committee's 2022 inquiry report, this is the shortest timeframe of the Australian jurisdictions (the Commonwealth, the ACT, the Northern Territory and Tasmania) that restrict the remaking of instruments that have been disallowed.⁶⁸
- 3.58** The Committee stated the following in its 2022 inquiry report:

⁶⁰ *Interpretation Act 1987*, section 41(2) and (3).

⁶¹ *Interpretation Act 1987*, section 41(1).

⁶² *Interpretation Act 1987*, section 41(6).

⁶³ See, for example, the *National Parks and Wildlife Act 1974*, section 35.

⁶⁴ Standing Order 42(1)(d).

⁶⁵ Standing Order 42(2).

⁶⁶ Standing Order 42(2).

⁶⁷ The *Legislation Act 2003*, section 42(2). For further discussion about automatic disallowance, see *Evaluation report into the technical scrutiny function of the Regulation*, pp 31-32.

⁶⁸ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, September 2022, p 32.

The committee notes that the current statutory limitation on the timeframe for remaking disallowed rules performs an important role in the system of checks and balances that governs the use of delegated legislative power. By preventing the executive from immediately remaking a disallowed rule, the statutory limitation protects the integrity of the Parliament's democratic mandate as expressed in the disallowance motion. The committee believes the current four-month timeframe is adequate.⁶⁹

Q14 Does the current disallowance process contained in the *Interpretation Act 1987* adequately achieve the goals of Parliamentary oversight over delegated legislation in New South Wales, particularly if the process were to apply to all instruments of a legislative character? If not, what changes should be made?

Q15 Should any classes of instruments of a legislative character that are not currently subject to the disallowance process continue to be exempt from the process?

Remake, repeal and sunseting of delegated legislation

- 3.59** The Committee seeks submissions about whether the system of automatic repeal of New South Wales regulations after five years could be improved, and whether any specific changes would need to be made if the application of the system were extended to all instruments of a legislative character.
- 3.60** Under the *Subordinate Legislation Act 1989*, 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).
- 3.61** By contrast, regulations in Victoria, Queensland, South Australia, Tasmania and the Commonwealth are generally automatically repealed on the tenth anniversary of the making of the regulation.⁷⁰
- 3.62** Postponement of the repeal of a statutory rule can be made by order of the Governor.⁷¹ This occurs by way of the Minister responsible for the relevant rule writing to the Premier requesting

⁶⁹ Regulation Committee, *Options for reform of the management of delegated legislation in New South Wales*, September 2022, p 33.

⁷⁰ *Subordinate Legislation Act 1994* of Victoria, section 5. *Statutory Instruments Act 1992* of Queensland, section 54; *Legislative Instruments Act 1978* of South Australia, section 16B; *Subordinate Legislation Act 1992* of Tasmania, section 11; *Legislation Act 2003* of the Commonwealth, section 50.

⁷¹ *Subordinate Legislation Act 1989*, section 11(1).

the making of an order to postpone the repeal of that particular rule for one year, including the reasons for such a request.

- 3.63** The repeal of a statutory rule may not be postponed on a third, fourth or fifth occasion unless the responsible Minister has given the Legislation Review Committee at least one month's written notice of the proposed postponement.⁷² Subject to these requirements, the order can be made to postpone the statutory repeal of a statutory rule for one year.
- 3.64** A statutory rule may not be postponed more than five times.⁷³ If further postponements of the repeal of a rule are required, this can be done in the Statute Law Revision Bill which is ordinarily passed in each session of Parliament. The *Subordinate Legislation Act 1989*, Schedule 4 lists a limited number of statutory rules exempted from the staged repeal process.
- 3.65** The Committee also seeks specific comment on whether, if environmental planning instruments were included in a new definition of 'instrument of a legislative character', the instruments should be subject to or exempt from the staged repeal program.

Q16 Could the system of automatic repeal of regulations in New South Wales after five years be improved, particularly if the application of the system was extended to apply to all instruments of a legislative character?

Q17 Should environmental planning instruments be subject to or exempt from the system of automatic repeals if these instruments were to be treated as instruments of a legislative character?

Scrutiny of delegated legislation

- 3.66** The Committee seeks submissions about potential mechanisms to improve, streamline or expand the processes of scrutinising legislation in New South Wales, and how those processes should be provided for in a consolidated Legislation Act.
- 3.67** Two committees of Parliament (the joint Legislation Review Committee and the Legislative Council Delegated Legislation Committee) are currently specifically charged with scrutinising new delegated legislation on behalf of the Parliament.

⁷² *Subordinate Legislation Act 1989*, section 11(4).

⁷³ *Subordinate Legislation Act 1989*, section 11(3).

Legislation Review Committee

- 3.68** The Legislation Review Committee (LRC) is a joint committee of both Houses. It is constituted under the *Legislation Review Act 1987*, section 4 and appointed by resolution of both Houses at the commencement of each Parliament. The LRC has eight members: three nominated by the Council and five by the Assembly.⁷⁴ The means of establishment of the LRC is declared in the Act to be ‘in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament’.⁷⁵
- 3.69** The LRC scrutinises bills introduced into Parliament as well as delegated legislation subject to disallowance by resolution of either House of the Parliament. In relation to bills, the LRC may consider whether a bill engages any of the scrutiny grounds listed in section 8A, for example, whether a Bill trespasses unduly on personal rights and liberties or inappropriately delegates legislative powers. In relation to delegated legislation, the LRC may consider whether an instrument engages any of the scrutiny grounds listed in section 9(1)(b).

Delegated Legislation Committee

- 3.70** The Delegated Legislation Committee, formerly known as the Regulation Committee, is a committee of the Legislative Council that was first established on a trial basis on 23 November 2017 in the 56th Parliament.⁷⁶ The Committee was reappointed in the 57th Parliament on 8 May 2019⁷⁷ and in the 58th Parliament on 10 May 2023.⁷⁸ The functions of the Committee are set out in paragraph 1.9.
- 3.71** The Committee consists of eight members, comprising four government members, two opposition members and two crossbench members, and the Chair must be a non-government member.
- 3.72** The Delegated Legislation Committee scrutinises all instruments of a legislative nature that are subject to disallowance while they are so subject against the scrutiny principles set out in the *Legislation Review Act 1984*, section 9(1)(b).

Q18 What are some potential mechanisms to improve, streamline or expand the current processes for scrutinising delegated legislation in New South Wales, and how can these processes be provided for in a consolidated Legislation Act?

⁷⁴ *Legislation Review Act 1987*, section 5.

⁷⁵ *Legislation Review Act 1987*, section 5.

⁷⁶ *Minutes*, NSW Legislative Council, 23 November 2017, pp 2327-2329.

⁷⁷ *Minutes*, NSW Legislative Council, 8 May 2019, pp 100-103.

⁷⁸ *Minutes*, NSW Legislative Council, 10 May 2023, pp 37-39.

Recurring scrutiny issues by the Committee

- 3.73** The Committee also invites submissions on the following issues that have arisen in the course of the Committee's ongoing scrutiny work, as set out in the publication of its Delegated Legislation Monitors, and the extent to which these issues should be dealt with specifically in a consolidated Legislation Act.

Identification of Henry VIII clauses

- 3.74** The Committee invites submissions on the way in which a regulation (or any other instrument of a legislative character) made under a 'Henry VIII provision' should be identified. A Henry VIII provision is a provision of an Act of Parliament that empowers delegated legislation to amend that Act.
- 3.75** For example, the Committee is interested in whether there should be a requirement that regulations made under a Henry VIII provision be clearly identified in the explanatory note accompanying the regulation.

Q19 Should there be specific requirements for a regulation, or any other instrument of a legislative character, made under a 'Henry VIII provision' to be identified? If so, what should the requirements be?

Indefinite exemptions using seemingly transitional regulation-making powers

- 3.76** The Committee has previously drawn the House's attention to regulations that rely on a regulation-making power to exempt persons or things from the operation of an Act, where the power is seemingly transitional in nature and yet is relied upon on successive occasions in a way that could effectively amount to an indefinite exemption.
- 3.77** For example, section 107(5A) of the *Design and Building Practitioners Act 2020* provides that "[t]he regulations may exempt all persons or bodies, specified persons or bodies or classes of persons or bodies, or all work, specified work or classes of work, or all or specified registrations—
- (a) from the insurance requirements under the Act, and
 - (b) for a maximum period of 12 months."
- 3.78** Section 106 of the *Design and Building Practitioners Regulation 2021* provides that registered building practitioners are exempt from the insurance requirements under the Act. The provision was included in the regulation in 2021 and has been extended for successive periods of 12 months, most recently by the *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2025* which extended the exemption until 30 June 2026.

- 3.79** When the Committee raised concerns about the previous extension of the exemption, contained in the *Design and Building Practitioners Amendment (Miscellaneous) Regulation 2024*, the Minister for Better Regulation and Fair Trading's response included the following:

Section 107(5A) of the DBP Act operates to ensure that any exemptions from insurance obligations under the DBP Act are subject to regular review to ensure there is an ongoing need for certain practitioners to be exempt and that Parliament retains the authority to consider the exemption on an annual basis. The Government does not consider that the regulation making power is limited to a one-off power to exempt a class of practitioners from obligations under the DBP Act.⁷⁹

- 3.80** The Committee invites submissions on how regulation-making powers that appear to include a time limit, such as section 107(5A), should be interpreted and scrutinised.

Q20 How should regulation-making powers that appear to include a time limit be interpreted and scrutinised?

Penalty notice offences

- 3.81** Many Acts include provisions that provide for offences under the Act or the regulations made under the Act to be prescribed as penalty notice provisions. A penalty notice is a notice issued under a statutory provision to the effect that (a) the person to whom the notice is issued has committed the penalty notice offence specified in the notice, and (b) if the person does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount for the offence specified in the notice.⁸⁰ If the full amount specified in a penalty notice for an alleged offence is paid in accordance with the notice, no person is liable to any further proceedings for the alleged offence.⁸¹
- 3.82** The Committee has identified provisions of regulations that prescribe offences as penalty notice offences and then prescribe an amount for the offence that is relatively high compared to the maximum penalty for the offence, for example 50% of the maximum penalty.
- 3.83** The Committee seeks submissions on whether there should be a legislated maximum percentage of the maximum penalty for an offence that may be prescribed as the amount payable for a penalty notice for that offence.
- 3.84** The Committee also seeks submissions on whether there are classes of offences that are not appropriate to be prescribed as penalty notice offences.

Q21 Should there be a legislated maximum percentage of the maximum penalty for an offence that may be prescribed as the amount payable for a penalty notice for that offence?

⁷⁹ Delegated Legislation Committee, *Delegated Legislation Monitor No. 7 of 2024*, p. 12.

⁸⁰ *Fines Act 1996*, section 20

⁸¹ *Fines Act 1996*, section 22A.

Chapter 4 Submissions to the inquiry

- 4.1 The Committee thanks all readers for their engagement with this discussion paper.
- 4.2 The Committee invites submissions to the inquiry through the submission portal which will be available from **11 August 2025**.
- 4.3 To make a submission, please follow the link here: [Submissions](#)
- 4.4 For any questions, please contact the Delegated Legislation Committee secretariat at dlc@parliament.nsw.gov.au.

Appendix 1 Questions for discussion

Appendix 1 contains a list of the questions for discussion provided throughout this discussion paper with relevant page numbers.

Question 1 (p 9)

What are the impacts of the overlapping definitions of a 'statutory rule' across the current legislative framework?

Question 2 (p 9)

What are your views on the potential creation of a consolidated Legislation Act which would instead apply to 'instruments of a legislative character'? Do you think this is the right policy setting for the application of the three Acts?

Question 3 (p 10)

How should we assess which instruments are of a legislative character, and what should the definition of 'instruments of a legislative character' be?

Question 4 (p 10)

If a set of criteria were established to assess which instruments should be exempt from regulatory and scrutiny frameworks, what should that criteria consist of?

Question 5 (p 11)

Should documents that are incorporated by an instrument of a legislative character be treated as an instrument of a legislative character and therefore be subject to regulatory and oversight requirements?

Question 6 (p 13)

Should environmental planning instruments be treated as instruments of a legislative character and therefore be subject to regulatory and oversight requirements, for example, Regulatory Impact Statements and public consultation?

Question 7 (p 13)

Are there any other classes of 'instruments of a legislative character' not explicitly referred to in this discussion paper that should be exempt from any or all the requirements of the three Acts insofar as they relate to delegated legislation?

Question 8 (p 14)

Are Regulatory Impact Statements (RIS) effective in promoting consultation with stakeholders who are likely to be impacted by proposed statutory rules?

- (a) Should the RIS process be amended if it were expanded to apply to all instruments of a legislative character? If so, how?
- (b) Which, if any, classes of instruments should be exempt from the process?

Question 9 (p 15)

Should legislative requirements in New South Wales include requirements that NSW Parliament be informed about the consultation undertaken in the making of delegated legislation?

Question 10 (p 16)

Should the current process of, and requirements relating to, tabling statutory rules in Parliament be amended, particularly if it were to apply to all instruments of a legislative character? If so, how?

Question 11 (p 17)

Could improvements to the system of publication of delegated legislation be made, particularly in relation to instruments of a legislative character that are not currently required to be published on the NSW legislation website?

Question 12 (p 17)

If incorporated documents were to be treated as instruments of a legislative character, should these documents be subjected to the same publication requirements as other instruments? If so, how should such a requirement operate in practice?

Question 13 (p 18)

Would New South Wales benefit from a requirement that a period of time must pass between the publication of a delegated instrument and its commencement?

- (a) Would delayed commencement provisions be appropriate to apply to all classes of instruments of a legislative character?
- (b) If not, which classes of instruments should be exempt?

Question 14 (p 20)

Does the current disallowance process contained in the *Interpretation Act 1987* adequately achieve the goals of Parliamentary oversight over delegated legislation in New South Wales, particularly if the process were to apply to all instruments of a legislative character? If not, what changes should be made?

Question 15 (p 20)

Should any classes of instruments of a legislative character that are not currently subject to the disallowance process continue to be exempt from the process?

Question 16 (p 21)

Could the system of automatic repeal of regulations in New South Wales after five years be improved, particularly if the application of the system was extended to apply to all instruments of a legislative character?

Question 17 (p 21)

Should environmental planning instruments be subject to or exempt from the system of automatic repeals if these instruments were to be treated as instruments of a legislative character?

Question 18 (p 22)

What are some potential mechanisms to improve, streamline or expand the current processes for scrutinising delegated legislation in New South Wales, and how can these processes be provided for in a consolidated Legislation Act?

Question 19 (p 23)

Should there be specific requirements for a regulation, or any other instrument of a legislative character, made under a 'Henry VIII provision' to be identified? If so, what should the requirements be?

Question 20 (p 24)

How should regulation-making powers that appear to include a time limit be interpreted and scrutinised?

Question 21 (p 24)

Should there be a legislated maximum percentage of the maximum penalty for an offence that may be prescribed as the amount payable for a penalty notice for that offence?