



New South Wales

Justice Legislation Amendment (Walama Court) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to amend the *District Court Act 1973* and the *Crimes (Administration of Sentences) Act 1999* as follows:

- (a) to establish the Walama Court, being the District Court exercising criminal jurisdiction by sitting as the Walama Court,
- (b) to confer jurisdiction on the Walama Court to deal with the sentencing of accused persons who are Aboriginal persons and to enable a judge to refer a person to the Walama Court for sentencing,
- (c) to enable the District Court rules to provide for additional or different procedures for the Walama Court,
- (d) to enable the Chief Judge of the District Court to make practice notes relating to the practice and procedure of the Walama Court,
- (e) to confer jurisdiction on the Walama Court (instead of the Parole Authority) to deal with offenders on whom the Court imposes intensive correction orders and who fail to comply with the orders,
- (f) to make other minor and consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of District Court Act 1973 No 9

Schedule 1 [1] amends the *District Court Act 1973* to give effect to the objects described in paragraphs (a) and (b) of the Overview.

Schedule 1 [2] amends the *District Court Act 1973* to give effect to the objects described in paragraphs (c) and (d) of the Overview.

Schedule 2 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

Schedule 2 [2] amends the *Crimes (Administration of Sentences) Act 1999* to give effect to the object described in paragraph (e) of the Overview.

Schedule 2 [1] and [3]–[13] amend the *Crimes (Administration of Sentences) Act 1999* to make other minor and consequential amendments.



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New South Wales

Justice Legislation Amendment (Walama Court) Bill 2018

No. , 2018

A Bill for

An Act to amend the *District Court Act 1973* and other legislation with respect to the establishment and functions of the Walama Court.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Justice Legislation Amendment (Walama Court) Act 2018*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

5

Schedule 1 Amendment of District Court Act 1973 No 9 1

[1] Section 9A 2

Insert after section 9: 3

9A Walama Court 4

(1) The Court may exercise its criminal jurisdiction by sitting as the Walama Court. 5
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(2) The Walama Court may deal with the following matters in which the accused person is an Aboriginal person: 7
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(a) the sentencing of an accused person referred to the Walama Court by the judge after a guilty plea or a finding of guilt, 9
10

(b) a matter for which jurisdiction is conferred on the Walama Court by or under another Act or law. 11
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(3) A judge may refer an accused person to the Walama Court if the judge thinks it appropriate to do so in the circumstances of the case. 13
14

(4) In this section: 15

Aboriginal person means a person who: 16

(a) is a member of the Aboriginal race of Australia, and 17

(b) identifies as an Aboriginal person, and 18

(c) is accepted by the Aboriginal community as an Aboriginal person. 19

[2] Section 171 Criminal procedure rules 20

Insert after section 171 (3): 21

(4) Rules may be made under this section to provide for additional or different procedures of the Court when sitting as the Walama Court. 22
23

(4A) Without limiting any other power of the Court, practice notes, not inconsistent with this Act or the rules, may be made by the Chief Judge to provide for the practice or procedure of the Court when sitting as the Walama Court. 24
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26

Schedule 2	Amendment of Crimes (Administration of Sentences) Act 1999 No 93	1
		2
[1] Section 3 Interpretation		3
	Insert in alphabetical order in section 3 (1):	4
	<i>Walama Court</i> means the District Court when sitting as the Walama Court.	5
[2] Section 163A		6
	Insert after section 163:	7
163A Conferral of jurisdiction on Walama Court		8
(1)	This section applies to an offender on whom the Walama Court imposes an intensive correction order.	9 10
(2)	The Commissioner, a community corrections officer or the Parole Authority must refer an offender to the Walama Court if the Commissioner, officer or Parole Authority is satisfied that the offender has failed to comply with the offender's obligations under an intensive correction order imposed by the Court.	11 12 13 14 15
(3)	The Walama Court may take any of the following actions if it is satisfied that an offender has failed to comply with the offender's obligations under an intensive correction order imposed by the Court:	16 17 18
	(a) record the breach and take no further action,	19
	(b) give a formal warning to the offender,	20
	(c) impose any conditions on the intensive correction order,	21
	(d) vary or revoke any conditions of the intensive correction order,	22
	(e) make an order revoking the intensive correction order (a <i>revocation order</i>).	23 24
(4)	In deciding whether and what action should be taken in respect of the offender's breach of the intensive correction order, the Walama Court may have regard to any action previously taken in respect of the breach or any earlier breaches of the order.	25 26 27 28
(5)	Sections 163 and 164 do not apply to an offender to whom this section applies.	29
[3] Section 164A Effect of revocation order		30
	Insert "or the Walama Court" after "Parole Authority" wherever occurring in section 164A (1) and (2).	31 32
[4] Section 164A (4)		33
	Insert after section 164A (3):	34
	(4) This section applies to all revocation orders made under this Division.	35
[5] Section 165 Parole Authority or Walama Court may reinstate revoked intensive correction order		36 37
	Insert "by the Parole Authority or the Walama Court" after "has been revoked" in section 165 (1).	38 39
[6] Section 165 (1)		40
	Insert "or the Walama Court" after " , the Parole Authority".	41

[7] Section 165 (3), (4) and (5)	1
Insert “or the Walama Court” after “Parole Authority” wherever occurring.	2
[8] Section 179 Consequential revocation of other orders	3
Insert “by the Parole Authority or the Walama Court” after “this Part” in section 179 (1) (a).	4
[9] Section 179 (1)	5
Insert “or the Walama Court” after “Parole Authority”.	6
[10] Section 179B Revocation of consecutive intensive correction orders	7
Insert “or the Walama Court” after “Parole Authority” wherever occurring in section 179B (1).	8 9
[11] Section 181 Warrants committing offenders to correctional centres	10
Insert “or the Walama Court” after “Parole Authority” wherever occurring in section 181 (1) and (1B).	11 12
[12] Section 181 (2), (2A) and (5)	13
Insert “of the Parole Authority” before “under this section” wherever occurring.	14
[13] Section 182 Functions may be exercised after order has expired	15
Insert “or the Walama Court” after “Parole Authority”.	16