



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

Delegated Legislation Monitor No. 6 of 2025



27 May 2025

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Delegated Legislation Committee

Delegated Legislation Monitor No. 6 of 2025

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New South Wales Parliament Legislative Council Delegated Legislation Committee

Delegated Legislation Monitor No. 6 of 2025

'May 2025'

Chair: Hon Natasha Maclaren-Jones MLC

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Committee details

Committee members

Hon Natasha Maclaren-Jones MLC	Liberal Party	<i>Chair</i>
Ms Abigail Boyd MLC	The Greens	<i>Deputy Chair</i>
Hon Susan Carter MLC	Liberal Party	
Hon Greg Donnelly MLC	Australian Labor Party	
Hon Dr Sarah Kaine MLC	Australian Labor Party	
Hon Tania Mihailuk MLC	Independent	
Hon Cameron Murphy MLC	Australian Labor Party	
Hon Bob Nanva MLC	Australian Labor Party	

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Hon Natasha Maclaren-Jones MLC
Committee Chair

Secretariat

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 Rebecca Mahony, Principal Council Officer
 Bethanie Patch, A/Principal Council Officer
 Landen Simpson, Council Officer
 Madeleine Dowd, Director

Overview of the Delegated Legislation Monitor

Operation of the Committee's technical scrutiny function

- 1.1 The Regulation Committee was first established on a trial basis on 23 November 2017 in the 56th Parliament.¹ The Committee was reappointed in the 57th Parliament on 8 May 2019 and in the 58th Parliament on 10 May 2023.²
- 1.2 On 19 October 2023, the Legislative Council amended the resolution of the House establishing the Regulation Committee 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 Legislation Review Act 1987, section 9(1)(b) on a 12-month trial basis from the first sitting day in 2024.³
- 1.3 On 12 February 2025, the Legislative Council resolved to amend the resolution establishing the Regulation Committee to permanently expand the Committee to include the technical review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b). The House also resolved to change the name of the Regulation Committee to the Delegated Legislation Committee to more accurately reflect the Committee's role and remit.
- 1.4 Paragraph (3) of the amended resolution requires that:
- The committee is:
- (a) 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."
- 1.5 In accordance with paragraph (3), the Committee considers any instrument that is disallowable, during the period within which it may be disallowed. This includes 'statutory rules', within the meaning of the *Interpretation Act 1987*, that are disallowable by virtue of section 41 of that Act. It also includes other instruments to which section 41 applies indirectly, i.e., where the Act under which an instrument is made provides it is to be treated as if it were a statutory rule for the purposes of section 41.
- 1.6 A list of instruments that are subject to disallowance is published on the Parliament's website on the first Tuesday of each month and each Tuesday when the Legislative Council is sitting.

¹ *Minutes*, NSW Legislative Council, 23 November 2017, pp 2327-2329.

² *Minutes*, NSW Legislative Council, 10 May 2023, pp 37-39.

³ *Minutes*, NSW Legislative Council, 19 October 2023, pp 639-640.

- 1.7** With regard to the scrutiny principles the Committee is required to assess instruments against, the *Legislation Review Act 1987*, section 9(1)(b) sets out eight grounds of scrutiny as follows:
- (i) that the regulation trespasses unduly on personal rights and liberties
 - (ii) that the regulation may have an adverse impact on the business community
 - (iii) that the regulation may not have been within the general objects of the legislation under which it was made
 - (iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made
 - (v) that the objective of the regulation could have been achieved by alternative and more effective means
 - (vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act
 - (vii) that the form or intention of the regulation calls for elucidation, or
 - (viii) that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.
- 1.8** The Committee has published guidelines on its webpage that provide an overview of its intended approach to its technical scrutiny function and specific guidance in respect of each of these eight grounds.
- 1.9** Each sitting week, the Committee publishes a Delegated Legislation Monitor setting out its progress and conclusions relating to the technical scrutiny of disallowable instruments. The monitor sets out matters where the Committee has sought further information from the responsible minister, department or other body, the Committee's conclusions in relation to instruments where concerns have been raised and a list of those instruments the Committee has reviewed which have not raised scrutiny concerns.
- 1.10** In addition to the regular publication of monitors the Committee may, from time to time and under paragraph (2) of the resolution establishing it, inquire into and report on:
- (a) any instrument of a legislative nature regardless of its form, including the policy or substantive content of the instrument,
 - (b) draft delegated legislation, and
 - (c) trends or issues in relation to delegated legislation.

Conclusions and structure of Monitor No. 6 of 2025

- 1.11** For this monitor, the Committee has reviewed 24 instruments published on the NSW legislation website or in the NSW Government Gazette between 28 February 2025 and 9 May 2025. The Committee has:
- concluded its scrutiny of two instruments, as set out in Chapter 1,
 - concluded that 21 instruments raise no scrutiny concerns, as set out in Chapter 2, and
 - raised scrutiny concerns in relation to one instrument, for consideration in a future monitor, as set out in Chapter 3.
- 1.12** A further six instruments notified between 9 May 2025 and 16 May 2025 remain under review, for consideration in a future monitor.

Chapter 1 Concluded scrutiny matters

This chapter 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).

District Court Criminal Practice Notes 26 Walama List Sentencing Procedure⁴

Government Gazette reference	NSWGG-2025-78-3	Government Gazette reference	NSWGG-2025-90-10
Date published in Government Gazette	28/02/2025	Date published in Government Gazette	07/03/2025
Date tabled in Legislative Council	18/03/2025	Date tabled in Legislative Council	18/03/2025
Last date of notice for disallowance motion	24/06/2025	Last date of notice for disallowance motion	24/06/2025

Overview

- 1.1 The [District Court Practice Note 26 Walama List Sentencing Procedure](#) (Practice Note 1) was published in the Government Gazette on 26 November 2021, and commenced on 31 January 2022. Practice Note 1 established the 'Walama List', an alternative procedure for managing cases involving eligible Aboriginal and Torres Strait Islander persons charged with criminal offences before the District Court of New South Wales (the District Court).
- 1.2 Since the publication of the Practice Note 1, the following practice notes have been published in the Government Gazette by the District Court on the same matter:
- [District Court Practice Note 26 Walama List Sentencing Procedure](#) (NSWGG-2025-78-3) (Practice Note 2), published on 28 February 2025 and commenced on 3 March 2025.
 - [District Court Practice Note 26 Walama List Sentencing Procedure](#) (NSWGG-2025-90-10) (Practice Note 3), published on 7 March 2025 and commenced on 10 March 2025.
- 1.3 The Committee raised scrutiny concerns under the *Legislation Review Act 1987*, section 9(1)(b)(vii) in relation to Practice Note 2 and Practice Note 3 by letter sent to the Chief Judge of the District Court, the Honourable Justice Sarah Huggett, on 7 April 2025. The Chief Judge responded on 15 April 2025. This correspondence is included in Appendix 2.

⁴ This entry discusses two instruments of the same name, the District Court Practice Note 26 Walama List Sentencing Procedure (NSWGG-2025-78-3) published in the Government Gazette on 28 February 2025 and the District Court Practice Note 26 Walama List Sentencing Procedure (NSWGG-2025-90-10) published in the Government Gazette on 7 March 2025.

Scrutiny concerns

The form or intention of the regulation calls for elucidation

1.4 Under this ground, the Committee is generally concerned with clarity and certainty in delegated legislation and whether any matters require clarification.

1.5 In the Committee's review of Practice Notes 2 and 3, the Committee identified that Practice Note 2 implemented new procedures and terms for the Walama List effective from 3 March 2025, however, it did not contain an express provision in the preamble or body of the note that it intended to repeal and replace Practice Note 1. In addition, it appeared to the Committee that the content of Practice Note 3 was identical to that of Practice Note 2 except that Practice Note 3 included some minor grammatical changes and an express provision stating that:

This Practice Note replaces District Court Criminal Practice Note 26, which commenced on 31 January 2022.

1.6 The Committee queried whether the intention of Practice Note 3 was to clarify that Practice Note 2 replaced Practice Note 1 through the inclusion of the preamble. The Committee sought clarification from the Chief Judge of the District Court regarding the intended effects of Practice Notes 2 and 3. In its request for clarification, the Committee proposed that if the intention was that Practice Note 3 replace Practice Note 2, an erratum notice may be published in the Government Gazette to confirm the matter.

1.7 In response to the Committee's request for clarification, the Chief Judge advised:

I refer to the above and note the request for confirmation in your letter dated 7 April 2025 of the intended effect of Practice Notes 2 and 3.

The intention of Practice Note 2 was to replace Practice Note 1.

The following wording was erroneously omitted from Practice Note 2, "this Practice Note replaces District Court Criminal Practice Note 26, which commenced on 31 January 2022".

As such, Practice Note 3 was published for gazettal to correct the above omission. Practice Note 3's intention was to amend Practice Note 2 but adding in para [1].

In hindsight, the mistake in Practice Note 2 could have been remedied by publishing an erratum notice, however we were not aware of this available avenue.

Please see attached a draft Erratum Notice to be gazetted shortly to put this matter beyond doubt.

1.8 The draft erratum notice referred to in the Chief Judge's response was subsequently published in [Government Gazette No 152 of 17 April 2025](#).

Committee conclusion

1.9 The Committee appreciates the prompt and considered engagement by the Chief Judge with the scrutiny concerns raised by the Committee. The Committee acknowledges the publication

of an erratum notice in the Government Gazette on 17 April 2025, and considers the notice adequately clarifies the intended interaction between Practice Notes 1, 2 and 3.

- 1.10** In light of this, the Committee is of the view the scrutiny concerns identified under the *Legislation Review Act 1987*, section 9(1)(b)(vii) have been appropriately addressed. The Committee concludes its scrutiny of the Practice Notes.

Chapter 2 Instruments with no scrutiny concerns

The Committee has reviewed the following instruments and raised no scrutiny concerns:

Instrument	SI number/ GG reference
Road Transport Amendment (Miscellaneous) Regulation 2025	2025 No 125
State Debt Recovery Act 2018—Referable Debt Order	2025 No 148
Industrial Relations Commission Amendment Rules 2025	2025 No 159
Community Services Sector (Portable Long Service Leave) Regulation 2025	2025 No 160
Crimes (Administration of Sentences) Amendment (Prescribed Information) Regulation 2025	2025 No 161
Fines Amendment (Parking Fines) Regulation 2025	2025 No 163
Community Services Sector (Portable Long Service Leave) (Levy Determinations) Order 2025	2025 No 172
District Court Act 1973—District Court Criminal Practice Note 29 Management of Criminal Proceedings listed in the Downing Centre	NSWGG-2025-116-3
District Court Act 1973—District Court Criminal Practice Note 30 Management of Criminal Proceedings listed at Circuit Courts	NSWGG-2025-116-4
District Court Act 1973—District Court Criminal Practice Note 31 Management of Proceedings under the Child Sexual Offence Evidence Program	NSWGG-2025-116-5
National Parks and Wildlife Act 1974—Notice of Reservation of a Nature Reserve	NSWGG-2025-138-2
National Parks and Wildlife Act 1974—Notice of Reservation of a Nature Reserve	NSWGG-2025-138-3
Civil Procedure Act 2005 and Land and Environment Court Act 1979—Practice Note Use of Generative Artificial Intelligence (Gen AI)	NSWGG-2025-152-2
Civil Procedure Act 2005 and Land and Environment Court Act 1979—Practice Note Use of Generative Artificial Intelligence (Gen AI)	NSWGG-2025-152-3
District Court Act 1973—District Court Criminal Practice Note 26 Walama List Sentencing Procedure Erratum	NSWGG-2025-152-4
Legal Profession Uniform Law Application Act 2014—NSW Admission Board First Amendment Rule	NSWGG-2025-163-1
District Court Act 1973—District Court Criminal Practice Note 33 Management of Criminal Proceedings listed at Circuit Courts	NSWGG-2025-175-4
District Court Act 1973—District Court Criminal Practice Note 32 Management of Criminal Proceedings listed in the Downing Centre	NSWGG-2025-175-5

Instrument	SI number/ GG reference
Coroners Act 2009—Practice Note—Coronial Practice Note No. 3 of 2021	NSWGG-2025-175-6
Children’s Court Act 1987—Practice Note 19: Support Plan Conference Pilot	NSWGG-2025-175-8
Coroners Act 2009—Practice Note—Coronial Practice Note No. 3 of 2021	NSWGG-2025-179-2

Chapter 3 Instruments raising scrutiny concerns

The Committee has identified scrutiny concerns, and is engaging with the responsible minister or body, in relation to the instruments set out in the table below. The Committee will set out its conclusion on those scrutiny concerns in a future monitor, having regard to that engagement.

Responsible minister or body	Instrument	SI number / GG reference
Minister for Better Regulation and Fair Trading	Residential Tenancies Amendment Regulation 2025	2025 No 139

Appendix 1 Minutes

Draft minutes no. 24

Monday 26 May 2025

Delegated Legislation Committee

Room 1136, Parliament House, Sydney, 12.32 pm

1. Members present

Mrs Maclaren-Jones, *Chair*

Ms Boyd, *Deputy Chair (via teleconference)*

Mrs Carter

Mr Donnelly

Dr Kaine *(via teleconference)*

Ms Mihailuk *(via teleconference)*

Mr Murphy

Mr Nanva *(via teleconference)*

2. Previous minutes

Resolved, on the motion of Mr Murphy: That draft minutes no. 23 be confirmed.

3. Correspondence

The Committee noted the following items of correspondence:

Sent:

- 12 May 2025 – Letter from Chair to Minister for Water, the Hon Rose Jackson MLC regarding scrutiny concerns concluded in Delegated Legislation Monitor No. 5 of 2025.
- 12 May 2025 – Letter from Chair to Minister for Roads, the Hon Jenny Aitchison MP regarding scrutiny concerns concluded in the Delegated Legislation Monitor No. 5 of 2025
- 12 May 2025 – Letter from Chair to Chief Judge of Land and Environment Court, the Honourable Justice Brian Preston AO regarding scrutiny concerns concluded in the Delegated Legislation Monitor No.5 of 2025.
- 19 May 2025 – Letter from Chair to the Chief Judge of the District Court of New South Wales, the Hon Justice S Huggett regarding the gazettal and disallowance of criminal practice notes issued by the District Court.
- 21 May 2025– Letter from Chair to the Chief Magistrate of the Local Court of New South Wales, His Honour Judge Michael Allen, regarding minor matters identified in *Practice Note – Coronial Practice Note No. 3 of 2021 (NSWGG-2025-175-6)* and *Practice Note – Coronial Practice Note No. 3 of 2021 (NSWGG-2025-179-2)*.

Received:

- 6 May 2025 – Letter from Chair of the Legislation Review Committee, Ms Lynda Voltz MP to Chair regarding potential opportunities for collaboration between the two committees
- 6 May 2025 – Letter from Minister for Music, the Hon John Graham MLC, to Chair regarding amendments to the Music Festivals Regulation following scrutiny concerns raised by the Committee

- 12 May 2025 – Correspondence from the Legal Branch, Office of the General Counsel of The Cabinet Office, attaching the Government Response to Report No. 10 of the Regulation Committee entitled "Evaluation of the Regulation Committee's technical scrutiny function", tabled 10 February 2025

4. Government Response to Report No. 10 of the Committee entitled "Evaluation of the Regulation Committee's technical scrutiny function"

Committee noted that on 12 May 2025, the Government delivered its response to the report of the Committee in relation to the evaluation of the Committee's technical scrutiny function.

Protocol regarding the independent legal adviser

Committee noted its resolution of 26 February 2024 that the secretariat draft a protocol that outlines the process of advertising for and the selection of the external legal adviser with a view to ensuring the position is advertised to, and applications are encouraged from, candidates of diverse backgrounds, including culturally and linguistically diverse candidates, candidates based outside of Sydney and candidates with diverse educational backgrounds.

Resolved, on the motion of Mr Donnelly: That the Committee adopt the protocol for appointing an independent legal adviser to the Delegated Legislation Committee, which is to be utilised for any future appointments.

5. Flowchart of Committee and secretariat processes for scrutinising delegated legislation

Committee noted that as resolved on Friday 31 January 2025, the secretariat has prepared a flow chart setting out the process for reviewing statutory instruments, engaging with ministers and bodies, and preparing the Delegated Legislation Monitors.

6. Consideration of Chair's draft report

The Chair submitted her draft report entitled *Delegated Legislation Monitor No. 6 of 2025*, which having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: That:

The draft report be the report of the Committee and that the Committee present the report to the House;

The Committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The Committee secretariat be authorised to update the report where necessary to reflect changes to Committee conclusions or new Committee conclusions resolved by the Committee;

Correspondence sent to, and received from, relevant ministers or bodies that is referred to in the monitor, will be published as an appendix to the monitor;

The report be tabled in the House on Tuesday 27 May 2025.

7. Consideration of terms of reference

The Committee noted Recommendations 6 and 7 in its report entitled '*Evaluation of the Regulation Committee's technical scrutiny function*', agreed to on Friday 31 January 2025, regarding inquiries to be undertaken in 2025.

In accordance with Recommendation 7, the Chair tabled the following draft terms of reference:

Inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, the *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987* relating to delegated legislation

(1) That the Delegated Legislation Committee notes that:

- (a) the framework for the management of delegated legislation is currently split across three separate Acts: the *Interpretation Act 1987*, the *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987*,

- (b) the Committee's 2022 report entitled *Options for reform of the management of delegated legislation in New South Wales* recommended that the relevant provisions of these acts be consolidated into a single Legislation Act which includes 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 is complex and in some cases, inconsistent, and
 - (c) the Committee's 2024 report entitled *Evaluation of the Regulation Committee's technical scrutiny function* recommended that the Committee conduct an inquiry in 2025 into the consolidation of the provisions of the *Interpretation Act 1987*, *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987*.
- (2) That the Delegated Legislation Committee inquire into and report on the consolidation of the provisions of the *Interpretation Act 1987*, the *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987* relating to delegated legislation, including:
- (a) approaches taken by other jurisdictions regarding the management of delegated legislation,
 - (b) options for potential legislative reform relating to the definitions, making, consultation, notice, tabling, publication, disallowance, remaking, sunseting and scrutiny of delegated legislation in New South Wales,
 - (c) examination of recurring technical scrutiny concerns in delegated legislation as identified by the Committee, such as the making of indefinite exemptions from provisions of the parent Act through the successive use of a regulation-making power that is seemingly transitional in nature, and potential legislative options for addressing such concerns, and
 - (d) any other related matters.

Resolved, on the motion of Mrs Carter: That the Committee adopt the terms of reference.

8. Conduct of the inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, the *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987* relating to delegated legislation

10.1 Discussion paper

Resolved on the motion of Mr Murphy: That

The Committee authorise the secretariat to prepare a discussion paper for the inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987* relating to delegated legislation;

Submissions be opened once the discussion paper has been adopted and published by the Committee, and it be provided to stakeholders when they are invited to make a submission to the inquiry.

10.2 Proposed timeline

Resolved on the motion of Mr Murphy: That the Committee adopt the following timeline for the administration of the inquiry:

- 26 May 2025 – inquiry adopted.
- 4 August 2025 – discussion paper considered for adoption and publication by the Committee.
- 11 August 2025 – submissions open.
- 19 December 2025 - submissions closed.
- Early February 2026– briefings or hearings, as needed.
- Late April 2026 – report deliberative and tabling.

10.3 Stakeholder list

Committee noted that a stakeholder list will be developed and provided to the Committee for consideration closer to the date that submissions are opened.

9. Correspondence from the Legislation Review Committee (LRC)

Committee noted that, as resolved at its meeting on Friday 31 January 2025, the Chair of the Delegated Legislation Committee wrote to the Chair of the LRC, Ms Lynda Voltz MP on 18 March 2025 to identify potential opportunities for collaboration between the two committee secretariats. Correspondence in response was received from Ms Voltz on 6 May 2025.

Resolved, on the motion of Mrs Carter: That the Chair of the Delegated Legislation Committee write to the Chair of the Legislation Review Committee informing her that the DLC has adopted an inquiry into the consolidation of the provisions of the *Interpretation Act 1987*, the *Subordinate Legislation Act 1989* and the *Legislation Review Act 1987* relating to delegated legislation, and noting that the LRC will receive an invitation to make a submission to that inquiry in due course.

10. Adjournment

The Committee adjourned at 12.43 pm.

11. Next Meeting

Monday 2 June 2025, 12.30 pm, Room 1136 (consideration of the Committee report entitled 'Delegated Legislation Monitor No. 7 of 2025').

Madeleine Dowd
Committee Clerk

Appendix 2 Correspondence

Appendix 2 contains the following items of correspondence sent to, and received from, ministers or bodies regarding instruments referred to in this monitor:

- Sent 7 April 2025 – Letter from Chair to Chief Judge of the District Court of New South Wales, the Hon Justice S Huggett, regarding the *District Court Criminal Practice Note 26 Walama List Sentencing Procedure*
- Received 15 April 2025 – Letter from Chief Judge of the District Court of New South Wales, the Hon Justice S Huggett to Chair regarding the *District Court Criminal Practice Note 26 Walama List Sentencing Procedure*.



LEGISLATIVE COUNCIL

DELEGATED LEGISLATION COMMITTEE

7 April 2025

The Hon Justice S Huggett
Chief Judge of District Court of New South Wales

D25/015435

By email:

Dear Chief Judge

District Court Criminal Practice Note 26 Walama List Sentencing Procedure

As you are aware, on 19 October 2023 the Legislative Council adopted a resolution expanding the functions of the Regulation Committee to incorporate systematic review of delegated legislation against the scrutiny principles set out in the *Legislation Review Act 1987*, section 9(1)(b). On 12 February 2025, the Legislative Council resolved to further amend the resolution establishing the Committee to permanently expand the functions of the Committee to include the technical review of delegated legislation against the aforementioned scrutiny principles, and to change the name of the Committee.

The Committee is now required to review all statutory rules and other instruments that are subject to disallowance while they are so subject and has reviewed the following instruments, notice of the making of which was tabled in Parliament on 18 March 2025:

- *District Court Criminal Practice Note 26 Walama List Sentencing Procedure*, notified in the Gazette on 28 February 2025 (NSWGG-2025-78-3)
- *District Court Criminal Practice Note 26 Walama List Sentencing Procedure*, notified in the Gazette on 7 March 2025 (NSWGG-2025-90-10)

The Committee has identified issues under the *Legislation Review Act 1987*, section 9(1)(b)(vii) on the basis that the form or intention of the above practice notes calls for elucidation. I am writing to you as the Chief Justice of the District Court of New South Wales to seek clarification on the issues outlined below.

The Committee will consider your response and publish its conclusions regarding the instrument in a future Delegated Legislation Monitor. Consistent with its establishing resolution, the Committee may, if it has outstanding concerns, draw the instrument to the attention of the House or recommend to the House that the instrument, or part of the instrument, be disallowed. In certain circumstances, the Committee may seek further clarification.

Further information about the Committee's work practices and the application of the scrutiny principles is available in the *Guidelines for the operation of the Delegated Legislation Committee's technical scrutiny function*, on the [NSW Parliament website](#).

Scrutiny concerns

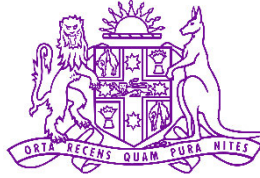
	Issue
1	<p>On 26 November 2021, the <i>District Court Criminal Practice Note 26 Walama List Sentencing Procedure</i> (Practice Note 1) was published in the Gazette and established 'an alternative procedure for managing cases involving eligible Aboriginal and Torres Strait Islander persons charged with criminal offences before the District Court of New South Wales, to be known as the “Walama List”.' Practice Note 1 commenced on 31 January 2022.</p> <p>On 28 February 2025, the <i>District Court Criminal Practice Note 26 Walama List Sentencing Procedure</i> was published in the Gazette (Practice Note 2). Practice Note 2 appears to implement new terminology and procedures for the Walama List from 3 March 2025, however, there is no express provision that Practice Note 2 is intended to repeal and replace Practice Note 1.</p> <p>The following week, on 7 March 2024, a practice note of the same name, was again published in the Gazette (Practice Note 3). Whilst Practice Notes 2 and 3 are almost identical, Practice Note 3 includes a preamble, stating that: 'This Practice Note replaces District Court Criminal Practice Note 26, which commenced on 31 January 2022 [Practice Note 1].'</p> <p>Given the similarity between Practice Notes 2 and 3, the Committee seeks confirmation on the intended effect of the two practice notes, and queries whether the intention of Practice Note 3 was to clarify that the content set out in Practice Note 2 was to replace Practice Note 1, as suggested by the new preamble. If this is the case, the Committee considers it may be helpful to put this matter beyond doubt via an erratum notice published in the Government Gazette.</p>

Please provide a response to the issue identified as no 1 by **22 April 2025**, noting a copy of your return correspondence will be annexed to a future Delegated Legislation Monitor.

If you have any questions about this correspondence, please contact Madeleine Dowd, Director – Delegated Legislation Committee, on 9230 3050 or dlc@parliament.nsw.gov.au.

Kind regards

The Hon Natasha Maclaren-Jones MLC
Committee Chair



The Chief Judge of the District Court
& President of the Dust Diseases
Tribunal of NSW

15 April 2025

Legislative Council
Delegated Legislation Committee
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Delegated Legislative Council,

Re: District Court Criminal Practice Note 26 Walama List Sentencing Procedure

I refer to the above and note the request for confirmation in your letter dated 7 April 2025 of the intended effect of Practice Notes 2 and 3.

The intention of Practice Note 2 was to replace Practice Note 1.

The following wording was erroneously omitted from Practice Note 2, “this Practice Note replaces District Court Criminal Practice Note 26, which commenced on 31 January 2022”.

As such, Practice Note 3 was published for gazettal to correct the above omission. Practice Note 3’s intention was to amend Practice Note 2 but adding in para [1].

In hindsight, the mistake in Practice Note 2 could have been remedied by publishing an erratum notice, however we were not aware of this available avenue.

Please see attached a draft Erratum Notice to be gazetted shortly to put this matter beyond doubt.

Yours sincerely,

Justice Sarah Huggett
Chief Judge

District Court of New South Wales

District Court Act 1974

District Court Criminal Practice Note 26 Walama List Sentencing Procedure

ERRATUM

In the notice published in the NSW Government Gazette No 78 of 28 February 2025, number NSWGG-2025-78-3, the words 'This Practice Note replaces District Court Criminal Practice Note 26, which commenced on 31 January 2022' were inadvertently omitted from "District Court Criminal Practice Note 26 Walama List Sentencing Procedure".

The words 'This Practice Note replaces District Court Criminal Practice Note 26, which commenced on 31 January 2022' were inserted into "District Court Criminal Practice Note 26 Walama List Sentencing Procedure" published in the notice published in the NSW Government Gazette No 90 of 7 March 2025, number NSWGG-2025-90-10.

This notice corrects that error.

The gazettal date remains 28 February 2025.

The Hon. Justice S Huggett

Chief Judge of the District Court of New South Wales
15 April 2025

