

A black oval with a white border containing the text 'WALAMA LIST PILOT'. The background features a grey and orange wavy design with a dotted pattern.

WALAMA LIST
PILOT

Legal Aid Criminal Law Conference
2022

Judge D Yehia SC, Edwina Crawford and Vanessa
Edwige



District Court
New South Wales



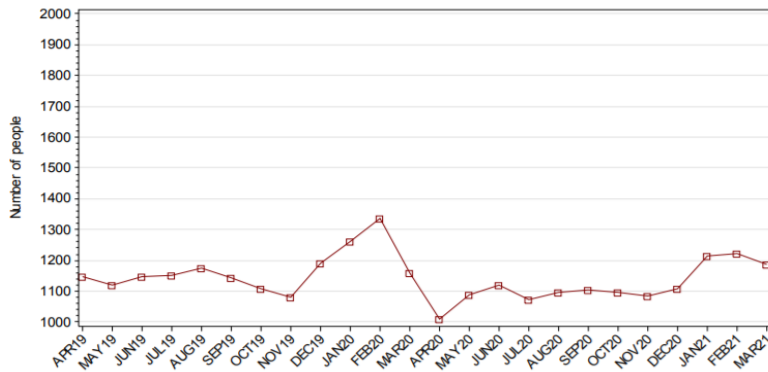
INTRODUCTION

- Many of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) called on reducing Indigenous incarceration and increasing participation of Aboriginal and Torres Strait Islander people in the justice system as court staff and advisors.
- Numerous reports, such as the RCIADIC and the Bringing them Home Report, have recommended that the legal system be modified to make it less culturally alienating and more tailored to the needs of Aboriginal and Torres Strait Islander offenders and their community.

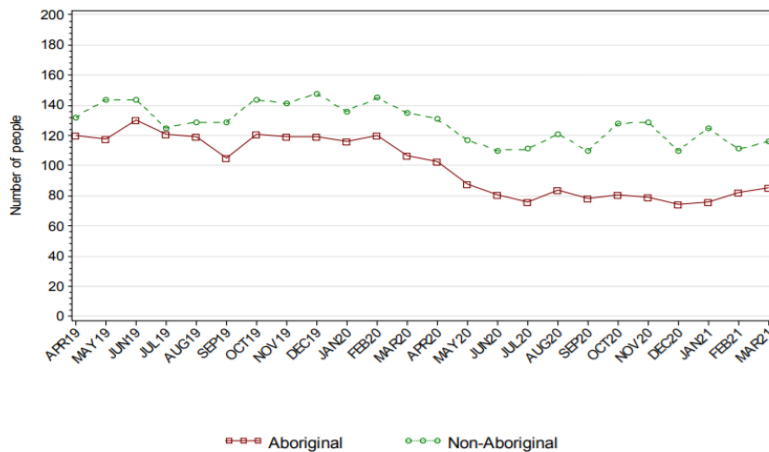


RELEVANT STATISTICS

2.1.11 ABORIGINAL ADULT REMAND POPULATION



1.1.3 JUVENILE CUSTODY POPULATION BY ABORIGINALITY



- Aboriginal and Torres Strait Islander people are disproportionately represented in the criminal justice system and in the State’s prisons.
- Aboriginal and Torres Strait Islander people make up approximately **3%** of the population of NSW.
- Aboriginal and Torres Strait Islander men make up approximately **24%** of the male prison population in NSW.
- Aboriginal and Torres Strait Islander women make up approximately **32%** of the female prison population in NSW.
- Aboriginal and Torres Strait Islander children make up approximately **42%** of the juvenile population in detention in NSW.
- **32%** of Aboriginal and Torres Strait Islander offenders re-offend within 12 months.

The above figures have been obtained from BOCSAR and are up-to-date as of March 2021
https://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/bocsar_custody_stats.aspx



WHAT IS WALAMA?

- ‘Walama’ is a word from the Dharug language meaning ‘come back’ or return. In the context of the Walama List, it is a coming back to identity, community, culture and a healthy, crime-free life. The use of the word ‘Walama’ involved community consultation, including approval from the Metro Aboriginal Land Council.



WHY HAVE THE WALAMA LIST?

- The Walama List introduces a process that is focused on a more holistic and intensive approach to sentencing that includes input from Aboriginal and Torres Strait Islander Elders and Respected Persons (ERPs) in an effort to reduce the over representation of Aboriginal and Torres Strait Islander people in custody by increasing engagement with the Court; increasing compliance with Court orders; and reducing recidivism.
- The Walama List will empower Aboriginal and Torres Strait Islander ERPs to provide honest and fearless advice to the Court about the offender; his/her community; the impact of the offence on community; culturally appropriate rehabilitative programs; and the availability of community support and assistance for the offender.

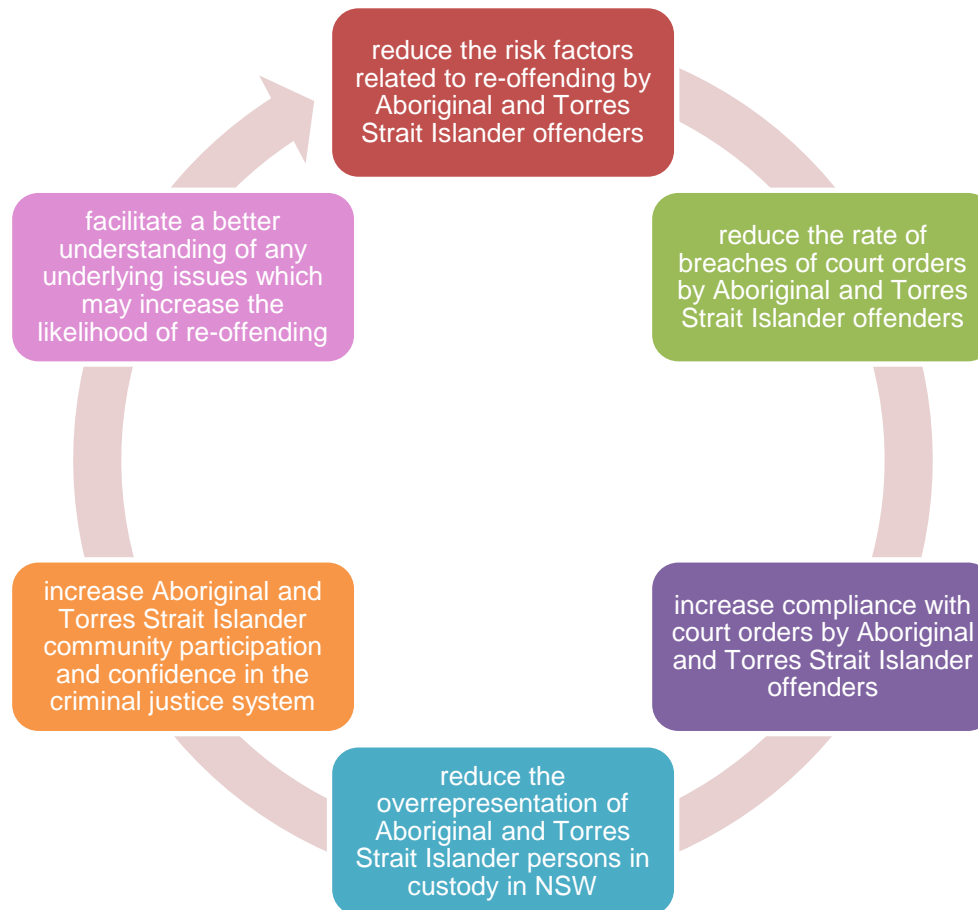


WHY HAVE THE WALAMA LIST?

- The Walama List will provide an opportunity for victims (where appropriate) to have greater input and engagement with the Court.
- The Walama List provides an opportunity to introduce a First Nations narrative that will serve to better inform the Court about the circumstances of the offender and the formulation of an appropriate and effective case plan.



WALAMA LIST OBJECTIVES



WALAMA LIST PROCESS

- The Walama List Pilot commenced on 31 January 2022 in the NSW District Court at the Downing Centre. It is a sentencing court only.
- The Walama List is set up by a Practice Note. It is not a substitute for the Walama Court to be established by legislation by the NSW Parliament.
- The Walama List operates pursuant to existing legislation and sentencing principles.



WALAMA LIST PROCESS

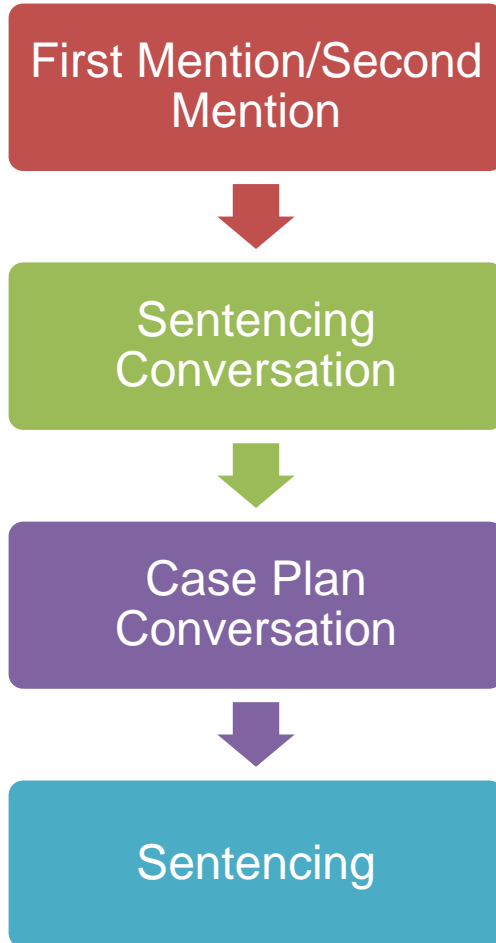
- The Walama List is not funded and the numbers will be capped at 50 participants at any one time.
- The Walama List will include sentence matters committed to Sydney, Parramatta, Campbelltown and Penrith District Court.

WALAMA LIST ELIGIBILITY

- To be referred to the Walama List, an offender must:
 - have pleaded guilty to the offence either before the Local Court or upon Arraignment in the District Court;
 - have signed an Agreed Statement of Facts;
 - be descended from an Aboriginal or Torres Strait Islander person, identify as an Aboriginal person or Torres Strait Islander person, and be accepted as such by the relevant community; and
 - be willing to participate in the Walama List sentencing procedure.



OVERVIEW OF THE WALAMA SENTENCING PROCESS



FIRST AND SECOND MENTION

- **Referral Process:**

- Where a matter has been committed for sentence to the District Court, the legal representative for the offender is to make an application for referral to the Walama List at the first mention date in the District Court.
- Where an eligible offender makes such an application, the presiding Judge must adjourn the proceedings for mention to the Walama List (after consultation with the Walama List Judge to ascertain availability).
- Where an eligible offender has entered a plea of guilty after committal to the District Court and an application for referral is made by the offender, the presiding Judge must adjourn the proceedings for mention to the Walama list (after consultation with the Walama List Judge to ascertain availability).



FIRST AND SECOND MENTION

- **First Mention in the Walama List:**
 - Case management orders will be made as follows:
 - The prosecution is to serve and file the Crown Bundle no later than 3 days prior to the second mention in the Walama List;
 - The offender can make a release application if sufficient notice has been given to the DPP.
 - The matter is adjourned for a second mention.
 - An order can be made at this stage for relevant reports.



FIRST AND SECOND MENTION

- **Second Mention in the Walama List:**

- Between the first and second mention, the SACCSO assisting the Walama List will interview the offender and complete the “Intake Form”.
- The Crown bundle will be formally tendered and case management orders will be made as follows:
 - The Defence bundle, including any expert reports, is to be served and filed no later than 7 days prior to the Sentencing Conversation.
- The proceedings will be adjourned for the Sentencing Conversation.



THE SENTENCING CONVERSATION

- The purpose of the Sentencing Conversation is to discuss:
 - the nature of the offending behaviour.
 - the implications of that offending behaviour on the victim or victims, the offender's family and community.
 - the offender's background.
 - the offender's need for treatment and/or a rehabilitation program, and the availability of a suitable program/s.
 - the offender's willingness to comply with a Walama Case Plan.
 - any other matter relevant to sentencing.



THE SENTENCING CONVERSATION

- At the Sentencing Conversation, the Walama List Judge may:
 - impose conditions on the offender's bail requiring the offender to submit to assessments for a rehabilitation program as required.
 - impose conditions on the offender's bail requiring the offender to commence participation in any rehabilitation program and/or submit to drug and/or alcohol testing.
 - nominate support agencies and/or caseworkers to work with the offender as required.
 - make orders for further reports and updated reports.
 - make any other orders necessary to facilitate the formulation of the Walama Case Plan, to be finalised at the next court date.



THE CASE PLAN CONVERSATION

- Between the Sentencing Conversation and the Case Plan Conversation, the offender's caseworker/ Community Correction's officer will facilitate the preparation of a draft Walama Case Plan.
- At the Case Plan Conversation, the Case Plan will be discussed and finalised subject to any required modifications identified.
- The offender may be sentenced in accordance with the Case Plan or the proceedings may be adjourned pursuant to section 11 of the *Crimes (Sentencing Procedure) Act 1999* (NSW).



THE CASE PLAN CONVERSATION

- The Purpose of the Case Plan Conversation is to:
 - monitor the suitability and effectiveness of the offender's Walama Case Plan.
 - monitor the offender's participation in the Walama Case Plan to ensure compliance.
 - determine whether the Walama Case Plan requires modification.

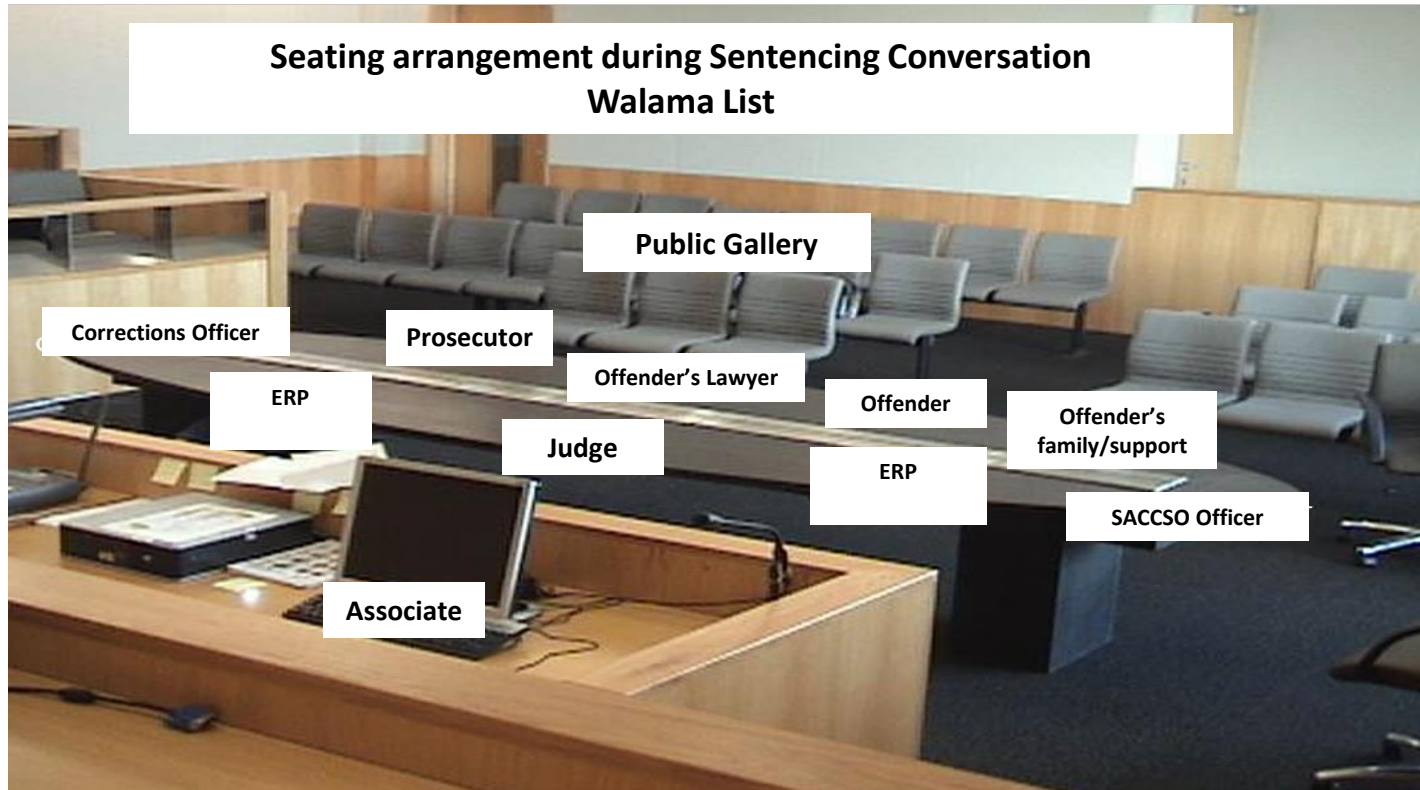


THE CASE PLAN CONVERSATION

- The Sentencing Conversation and Case Plan Conversation will be conducted with as little formality as possible.
- Present at the Sentencing Conversation and Case Plan Conversation will be:
 - the offender and the offender's legal representative(s).
 - the Prosecution.
 - an allocated Community Corrections Officer and/or caseworkers from other nominated government and non-government support services.
 - two Aboriginal or Torres Strait Islander ERPs nominated by the Walama List Judge in consultation with the SACCSO where the Walama List Judge considers they are likely to be of significant assistance to him or her.
 - a support person for the offender at the discretion of the Walama List Judge.
 - the SACCSO.
 - any other person the Walama List Judge considers appropriate, including but not limited to any victim(s) and their support person.



WALAMA LIST COURTROOM



BREACHES

- Where an offender breaches a condition of the Walama Case Plan, either after sentence or during a period of adjournment pursuant to section 11 of the *Criminal (Sentencing Procedure) Act 1999* (NSW), the offender is to be called up before the Walama List Judge.
- Without limiting the penalties available at law, the Walama List Judge may:
 - take no action on the breach.
 - make changes to the offender's Walama Case Plan.
 - discharge the offender from the Walama List sentencing procedure.
 - proceed to sentence the offender or adjourn the case for sentence to a later date.



SENTENCING

- On either the finalisation of the Walama Case Plan at the Case Plan Conversation or the completion of the Walama Case Plan, the Walama List Judge is to sentence the offender in open court (unless a closed court is required by law) in the presence of:
 - the offender and the offender's legal representative(s).
 - the Prosecution.
 - an allocated Community Corrections Officer and/or caseworkers from other nominated government and non-government support services.
 - two Aboriginal or Torres Strait Islander ERPs nominated by the Walama List Judge in consultation with the SACCSO where the Walama List Judge considers they are likely to be of significant assistance to him or her.
 - a support person for the offender at the discretion of the Walama List Judge.
 - the SACCSO.
 - any other person the Walama List Judge considers appropriate, including but not limited to any victim(s) and their support person.
- The sentencing options available to the Walama List Judge are those available at law.



ROLE OF ELDERS AND RESPECTED PERSONS

- The ERPs assist in the Walama List by sitting with the presiding Judge during the Sentencing Conversation and the Case Plan Conversation by providing advice regarding the background of the offender and the possible reasons for the offending behaviour.
- The ERPs of the Walama List give honest and fearless advice to the Court which is informed by their cultural knowledge, wisdom and experiences. They advise the Judge on cultural issues relating to the offender and his or her offending behaviour.



ROLE OF ELDERS AND RESPECTED PERSONS

- The voices of ERPs are a powerful cultural aspect of the Walama List and their participation sends a clear message to the offender that the offences committed are not condoned by either Aboriginal and Torres Strait Islander or non-Aboriginal and Torres Strait Islander communities.
- The voices of ERPs are also a powerful contribution to the sentencing proceedings by informing the court about cultural, historical and social issues relating to the offender's background and community in a culturally safe way.



ROLE OF ELDERS AND RESPECTED PERSONS

- The ERPs may be required to explain relevant kinship connections of the offender, how a particular crime has affected the Aboriginal and Torres Strait Islander community and advice on cultural practices, protocols and perspectives relevant to sentencing.
- The ERPs symbolise the importance of First Nations cultural authority in the decision-making and respect for the judicial process in sentencing.



ROLE OF LAWYERS, CASEWORKERS AND STAKEHOLDERS

- Each participant in the Walama List will discharge their duty to the Court mindful of the objectives of the Walama List.
- Each participant is to be especially mindful of the important input and advice provided by ERPs.



ROLE OF LAWYERS, CASEWORKERS AND STAKEHOLDERS

- The role of caseworkers includes, but is not limited to, supporting and assisting the offender to address underlying issues giving rise to the offending behaviour.
- Caseworkers are encouraged to assist and support an offender by referring the offender to culturally appropriate rehabilitative programs.
- The Walama List encourages the use of grassroots, community-led programs to ensure effective rehabilitation by providing a safe, culturally appropriate and healing environment.

