

Walama List Sentencing Procedure

Preamble

1. This Practice Note establishes 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**”.

Commencement

2. This Practice Note commences at Sydney District Court on 31 January 2022.

Application

3. This Practice Note applies to matters committed for sentence or where a plea of guilty has been entered upon Arraignment after 1 December 2021.

Introduction

4. The aims of the Walama List are to:
 - (a) reduce the risk factors related to re-offending by Aboriginal and Torres Strait Islander offenders;
 - (b) reduce the rate of breaches of court orders by Aboriginal and Torres Strait Islander offenders;
 - (c) increase compliance with court orders by Aboriginal and Torres Strait Islander offenders;
 - (d) reduce the overrepresentation of Aboriginal and Torres Strait Islander persons in custody in NSW;
 - (e) increase Aboriginal and Torres Strait Islander community participation and confidence in the criminal justice system; and
 - (f) facilitate a better understanding of any underlying issues which may increase the likelihood of re-offending.

5. The Walama List will seek to achieve these aims by:
 - (a) enabling Aboriginal and Torres Strait Islander community participation in the court process and embedding Aboriginal and Torres Strait Islander narratives in the sentencing process;
 - (b) utilising culturally appropriate programs and supports to address needs and risk factors that may impact on an offender's continued involvement with the criminal justice system; and
 - (c) facilitating continuous court monitoring of appropriate therapeutic interventions to address identified needs and risk factors.

Nomination of Walama List Judge(s)

6. The Chief Judge of the District Court will nominate at least one Judge as the "**Walama List Judge**".

Sittings of the Walama List

7. The Walama List will operate at Sydney District Court.
8. The Walama List Judge will hear all Walama List matters during one week per calendar month. All Walama List matters are to be listed in the same week during the relevant month.

Eligibility Criteria

9. To be referred to the Walama List, an offender must:
 - (a) have pleaded guilty to the offence either before the Local Court or upon Arraignment in the District Court;
 - (b) have signed an Agreed Statement of Facts;
 - (c) be descended from an Aboriginal person 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
 - (d) be willing to participate in the Walama List sentencing procedure.
10. An offender is not eligible for referral to the Walama List if he or she is charged with an offence set out in the Schedule to this Practice Note.

11. Only matters listed for sentence at District Court venues in the Greater Sydney Area (namely, Sydney District Court, Parramatta District Court, Campbelltown District Court and Penrith District Court) are eligible for referral to the Walama List.
12. Notwithstanding that an offender is otherwise assessed as suitable, the Court may decline to accept him or her into the Walama List.

Listing of Cases Referred to the Walama List

13. Where a matter has been committed for sentence to the District Court, and the offender meets the eligibility criteria, the legal representative for the offender is to make an **Application for Referral to the Walama List** on the date of First Mention in the District Court. Where an eligible offender has made an Application for Referral, the presiding Judge must adjourn the proceedings for mention to the Walama List, after consultation with the Walama List Judge to ascertain availability.
14. Where an 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.
15. In the ordinary course, and subject to available listings, the matters are to be listed for mention on the next available Walama List mention date using the Walama List Diary.

Stage 1: First Mention in the Walama List

16. The **first mention** in the Walama List is to be attended by a representative for the Prosecution, the legal representative(s) for the offender, the offender, a Senior Aboriginal Client and Community Support Officer ("**SACCSO**") from the Aboriginal Services Unit, DCJ Strategy, Policy and Commission Division, and the Walama List Judge.

17. At the first mention in the Walama List, case management orders will be made as follows:

(a) the Prosecution is to serve and file the Crown bundle no later than 3 business days prior to the second mention date in the Walama List.

18. The matter will then be adjourned for a **second mention** during the next Walama List hearing week.

Stage 2: Completion of Intake Documentation

19. Between the first mention in the Walama List and the second mention in the Walama List, the **SACCSO** assisting the Walama List is to interview the offender and complete the “**initial intake documentation**”.

Stage 3: Second Mention in the Walama List

20. At the second mention in the Walama List, the prosecution bundle will be formally tendered, and case management orders made as follows:

(a) the Defence bundle, including any psychiatric or psychological material, is to be served and filed no later than 7 business days prior to the Sentencing Conversation.

21. The matter will then be adjourned for “**Sentencing Conversation**” during the next Walama List hearing week.

22. A release application may be made on either the first or second mention date subject to notice being given to the DPP and the Court.

Stage 4: The Sentencing Conversation

23. The **Sentencing Conversation** will be facilitated by the Walama List Judge, and is to be attended by:

(a) the offender and the offender’s legal representative(s);

(b) the Prosecution;

(c) an allocated Community Corrections Officer and/or caseworkers from other nominated government and non-government support services;

- (d) two Aboriginal or Torres Strait Islander Elders or Respected Persons 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;
 - (e) a support person for the offender at the discretion of the Walama List Judge;
 - (f) the **SACCSO**; and
 - (g) any other person the Walama List Judge considers appropriate, including but not limited to any victim(s) and their support person.
24. The proceedings are to be open to the public unless a closed court is required by law.
25. The purpose of the **Sentencing Conversation** is to discuss:
- (a) the nature of the offending behaviour;
 - (b) the implications of that offending behaviour on the victim(s), the offender's family and community;
 - (c) the offender's background;
 - (d) the offender's need for treatment and/or a rehabilitation program, and the availability of a suitable program/s;
 - (e) the offender's willingness to comply with a **Walama Case Plan**; and
 - (f) any other matter relevant to sentencing.
26. At the **Sentencing Conversation** the Walama List Judge may:
- (a) impose conditions on the offender's bail requiring the offender to submit to assessments for a rehabilitation program as required;
 - (b) 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;
 - (c) nominate support agencies and/or caseworkers to work with the offender as required;
 - (d) make orders for further reports and updated reports; and
 - (e) make any other orders necessary to facilitate the formulation of the **Walama Case Plan**, to be finalised at the next court date.

Stage 5: Preparation of draft Walama Case Plan

27. A “**Walama Case Plan**” will be formulated to meet the particular needs and risk factors relevant to the individual offender, and may include a combination of culturally appropriate rehabilitation programs; counselling, physical and mental health therapies; and/or other programs and support services as appropriate.
28. Between the **Sentencing Conversation** and the first **Case Plan Conversation**, the participant’s case worker/Community Corrections Officer will facilitate the preparation of a draft **Walama Case Plan**. This may involve interviewing the offender and their legal representative, identifying any existing caseworkers and other supports (including treatment providers) that the offender wishes to continue to engage with, and obtaining contact details to notify existing service providers of the offender’s next court date in the Walama List.
29. A case worker may be a NSW Community Corrections Officer or a caseworker from a community organisation.

Stage 6: Case Plan Conversation

30. At the first **Case Plan Conversation**, the draft **Walama Case Plan** will be discussed and finalised subject to any required modifications identified. **Case Plan Conversations** are to be conducted by the Walama List Judge with as little formality as possible, in the presence of:
- (a) the offender and the offender’s legal representative(s);
 - (b) the Prosecution;
 - (c) an allocated Community Corrections Officer and/or caseworkers from other nominated government and non-government support services;
 - (d) two Aboriginal or Torres Strait Islander Elders or Respected Persons 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;

- (e) a support person for the offender at the discretion of the Walama List Judge;
 - (f) the **SACCSO**; and
 - (g) any other person the Walama List Judge considers appropriate, including but not limited to any victim(s) and their support person.
31. The Walama List Judge may successively adjourn the proceedings part-heard for a period of up to 12 months for the purpose of ongoing **Case Plan Conversations**.
32. The purpose of ongoing **Case Plan Conversations** is to:
- (a) monitor the suitability and effectiveness of the offender's **Walama Case Plan**;
 - (b) monitor the offender's participation in the **Walama Case Plan** to ensure compliance; and
 - (c) determine whether the **Walama Case Plan** requires modification.
33. The frequency of the **Case Plan Conversations** will be determined by the Walama List Judge in consultation with the offender's legal representatives, the Prosecution, community Elders or Respected Persons and case worker(s)/supports with whom the offender is engaged.
34. Where an offender breaches a condition of their **Walama Case Plan**, the offender is to be called up before the Walama List Judge. Without limiting the penalties available at law, the Walama List Judge may:
- (a) take no action on the breach;
 - (b) make changes to the offender's **Walama Case Plan**;
 - (c) discharge the offender from the Walama List sentencing procedure; or
 - (d) proceed to sentence the offender or adjourn the case for sentence to a later date.
35. Before an offender may be discharged from the Walama List sentencing procedure, the Walama List Judge is to convene for the purpose of a

further **Case Plan Conversation** in the presence of the community Elders or Respected Persons who attended the initial Sentencing Conversation.

36. If the offender informs the Walama List Judge that he or she wishes to cease participation in the Walama List sentencing procedure, the Walama List Judge may:
- (a) note on the court file that consent to participate in the Walama List sentencing procedure has been withdrawn;
 - (b) adjourn the case for sentence; and
 - (c) direct the preparation of a Sentencing Assessment Report if such a report has not previously been ordered.

Stage 7: Sentencing

37. Upon the offender's 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:
- (a) the offender and the offender's legal representative(s);
 - (b) the Prosecution;
 - (c) an allocated Community Corrections Officer and/or caseworkers from other nominated government and non-government support agencies;
 - (d) two Aboriginal or Torres Strait Islander Elders or Respected Persons 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;
 - (e) a support person for the offender at the discretion of the Walama List Judge;
 - (f) the **SACCSO**; and
 - (g) any other person the Walama List Judge considers appropriate, including but not limited to any victim(s) and their support person.
38. The sentencing options available to the Walama List Judge are those available at law.

Role of Elders and Respected Persons

39. In order to significantly assist the Walama List Judge in sentencing, the Walama List Judge may grant the applications of Aboriginal and Torres Strait Islander Elders and Respected Persons to act as *amici curiae* in Sentencing and **Case Plan Conversations**.
40. Aboriginal and Torres Strait Islander Elders and Respected Persons may:
- (a) provide cultural and community advice to the Walama List Judge;
 - (b) assist the Walama List Judge to understand the offender's cultural heritage, history and norms;
 - (c) offer support and advice to the Walama List Judge on how the offender could improve connections with his or her culture and community; and
 - (d) assist the Walama List Judge to identify culturally significant issues and culturally appropriate programs or supports that might be included in the **Walama Case Plan**.
41. Elders and Respected Persons will not participate in the determination of the sentence to be imposed.



The Honourable Justice D M Price AO
Chief Judge of the District Court
22 November 2021

Schedule of offences not eligible for referral to the Walama List:

- i) A prescribed sexual offence as defined by s 3 of the *Criminal Procedure Act 1986* (NSW);
- ii) An offence contrary to s 33 of the *Crimes Act 1900* (NSW);
- iii) An offence contrary to s 37 of the *Crimes Act 1900* (NSW);
- iv) An offence contrary to ss 26, 27, 28, 29 and 30 of the *Crimes Act 1900* (NSW).