The background features a stylized graphic of a grey and orange landscape. A dark grey area on the left slopes upwards towards the right, where it meets a bright orange area. The boundary between them is defined by a pattern of small, dark grey dots. In the upper right quadrant, there is a large, solid black circle. Inside this circle, the words "WALAMA LIST" are written in a white, sans-serif font, with "WALAMA" on top and "LIST" below it. Below "LIST", the word "PILOT" is also written in a smaller, white, sans-serif font.

WALAMA LIST  
PILOT

# Walama List and Cultural Healing: Not Just A List But An Idea

2023 Public Defenders Conference

Justice D Yehia

# THERAPEUTIC JUSTICE

- Therapeutic justice “*focuses attention to the law’s impact on emotional life and psychological well-being*”.\* It emphasises the need for more effective forms of communication in relating to offenders and responding to their criminogenic risk factors.
- Therapeutic justice is associated with a set of practices, which include:
  - the use of cultural authority and dialogue;
  - the integration of treatment services;
  - ongoing judicial intervention and close monitoring; and
  - multi-disciplinary involvement and collaboration with community-based organisations.\*\*



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# Therapeutic Justice

- In the context of Indigenous sentencing courts, therapeutic justice aims to empower Indigenous communities through the focal participation of Elders and community-led organisations. Indigenous sentencing courts centre a First Nations narrative to change dominant perspectives of the contemporary criminal justice system and better inform judicial officers about the circumstances and case management of offenders.\*
- In commenting on the procedures and protocols within the County Koori Court, then Victorian Attorney-General, Rob Hulls, observed that:

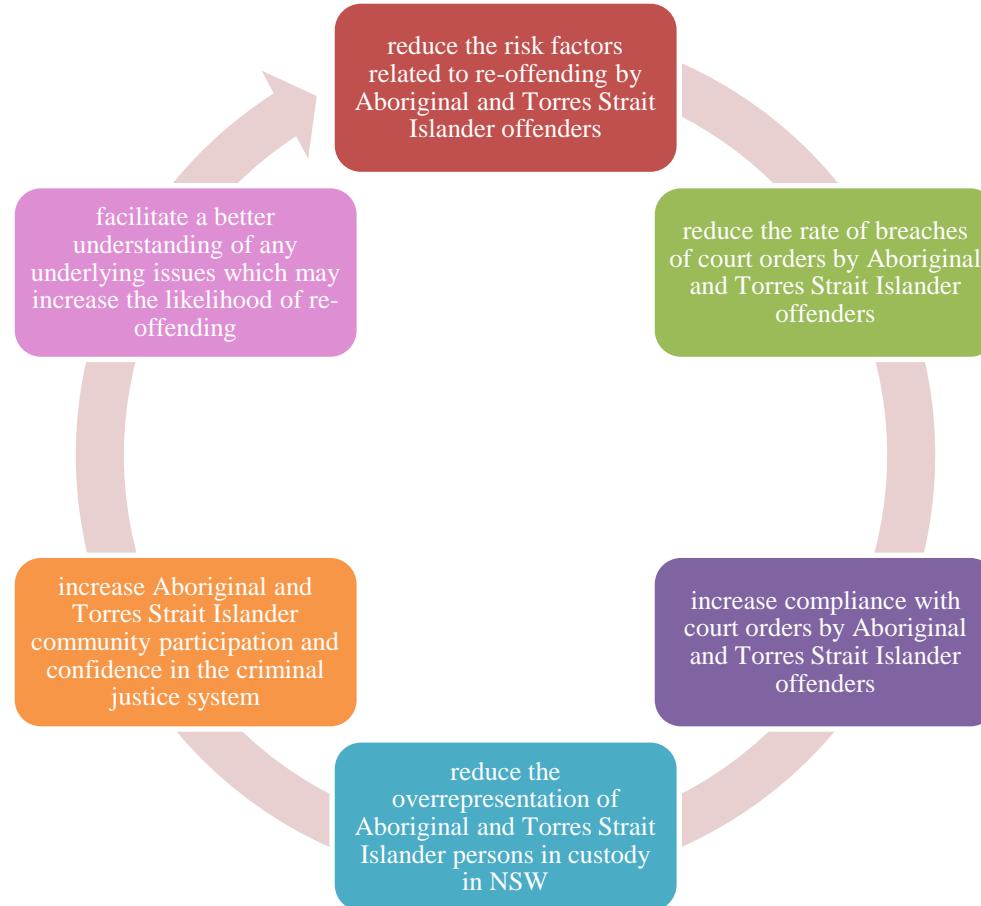
*“In the mainstream court system, offenders can hide behind their lawyers. In the Koori Court, defendants have to speak for themselves and answer questions on why they committed an offence. They are forced to take full accountability for their actions in a way that is far more confronting than the mainstream court process”.*\*\*

# WHAT IS WALAMA?

- ‘Walama’ is a word 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.
- 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 and reducing recidivism.

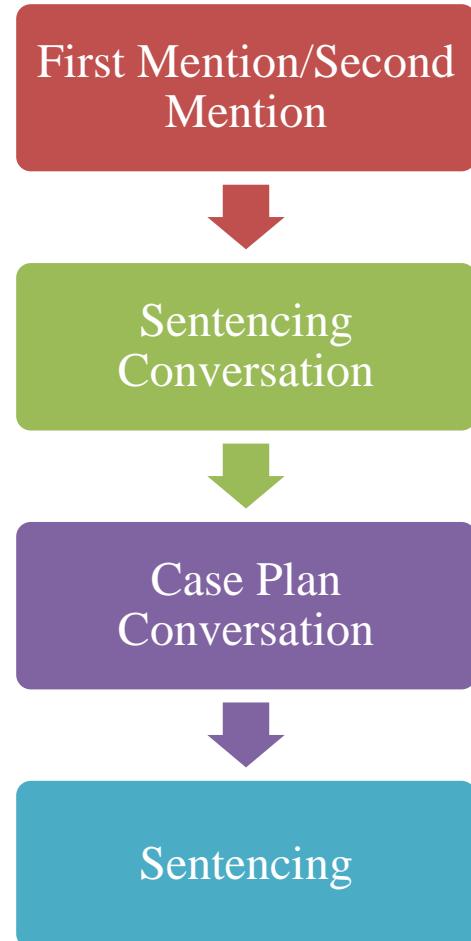


# WALAMA LIST OBJECTIVES



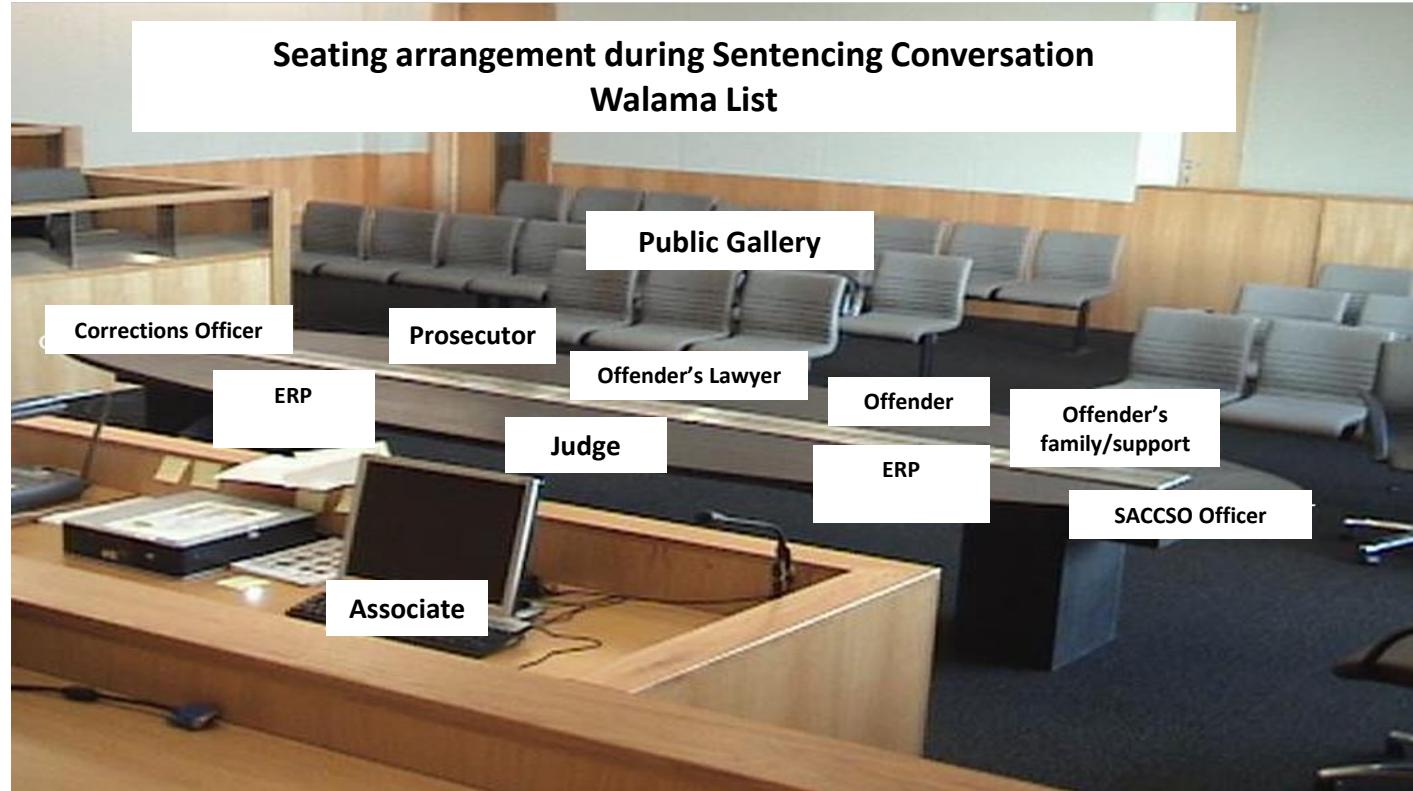
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# WALAMA LIST SENTENCING PROCESS



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# WALAMA LIST COURTROOM



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# **AUNTY MARCIA ELLA-DUNCAN**

*Walama List Elder*

Microsoft Teams

## **Walama List - Interview - Aunty Marcia Ella-Duncan**

2023-02-28 01:44 UTC

Recorded by

Catherine Lomas

Organized by

Catherine Lomas

# UNCLE DENNIS DUNN

*Walama List Elder*

Microsoft Teams

## Walama List - Interview - Uncle Dennis Dunn

2023-02-28 03:10 UTC

Recorded by

Catherine Lomas

Organized by

Catherine Lomas

# AUNTY BARBARA O'NEILL

*Walama List Elder*

Microsoft Teams

## Walama List - Elders Interview Aunty Barbara O'Neill

2023-02-28 03:49 UTC

Recorded by

Catherine Lomas

Organized by

Catherine Lomas

# CATHERINE LOMAS

*Walama List Lead – Aboriginal Services Unit*

Microsoft Teams

## Walama List Interview - Catherine Lomas

2023-03-06 02:20 UTC

Recorded by

Shahad Al Majed

Organized by

Shahad Al Majed

# JUDGE W HUNT

*Walama List Judge – District Court of New South Wales*



# CRIMINAL LAW v CIVIL LAW

- Traditionally, civil law has referred to private wrongs, while criminal law relates to public wrongs.
- Existing and operating in silos when dealing with marginalised individuals, is arguably inefficient and, more importantly, ineffective. There is a significant intersection between criminal law and civil law.
- A plight of an individual who is being sentenced for an offence(s) cannot be effectively (or adequately) addressed without analysing, confronting, and addressing, the underlying disadvantage and deprivation. Those underlying issues often have nothing at all to do with the criminal law and are unlikely to be resolved by criminal lawyers.
- In the majority of cases, the following issues arise:
  - poverty;
  - drug and alcohol addiction;
  - homelessness and transience;
  - outstanding fines and debt;
  - protection and ADVO orders; and
  - parenting orders.

# A HYBRID APPROACH IN THE WALAMA LIST

- The Walama List combines a multi-disciplinary approach to address the underlying risk factors of Aboriginal and/or Torres Strait Islander offenders. The Walama List process involves a multi-agency approach to sentencing to deliver wraparound support services.
- A Walama List Case Plan is formulated to meet the particular risk factors and needs of an offender, and may include a combination of culturally appropriate rehabilitation programs; counselling; employment; and housing.
- Case workers and service providers are present during the Sentencing Conversation and Case Plan Conversation to identify support services for the offender, to provide updates to the Court about the offender's progress, and to be held accountable for the provision of support services.



# CASE STUDY 1

- Sally (a pseudonym) pleaded guilty to robbery and was referred to the Walama List.
- During the Sentencing Conversation, it became evident that Sally came from a deprived background, which included:
  - history of domestic violence;
  - children removed from her care;
  - drug use;
  - mental health issues; and
  - unstable housing.
- During the Sentencing Conversation, Sally recognised that her housing situation was the most urgent issue because she could not address all the other risk factors until she had a stable and safe place to live.
- How was this addressed in the Walama List?
  - Dedicated Community Corrections Officer assisted in securing emergency accommodation.
  - A referral was made to the Civil Law Team at Legal Aid in an effort to assist Sally with obtaining permanent and long-term accommodation.



# SALLY'S WALAMA LIST CASE PLAN

## **IDENTIFIED RISK FACTORS**

(Note: Only sections corresponding to identified risk factors to be completed.)

## **ACCOMMODATION**

**Current Issues:** [REDACTED] has identified that lack of accommodation is a predominate risk factor. Her main goal is to obtain stable and secure accommodation in the Sydney Metro area. [REDACTED] is currently residing with friend in unstable accommodation.

ACTIONS TO ADDRESS RISK FACTOR	AGENCY/PERSON RESPONSIBLE	TIMEFRAME START/END	UPDATE
Referral made to St. Vincent's Homeless Health service for suitability assessment to assist with facilitating case management to include risk and responsibility factors	Community Corrections/ [REDACTED]	02/05/2022 through to sentencing	Referral was made to St Vincent's Homelessness Service.
Referral to Innari First Nations Homeless Support to assist with Housing application	Community Corrections/ [REDACTED]	02/05/2022 through to sentencing	Referral was made to Innari by [REDACTED] to sign documents on 04/05/22

## **CULTURAL SUPPORTS/CONNECTIONS**

**Current Issues:** [REDACTED] takes significant pride in her culture, however, has identified she would like to connect and learn more about her with culture.

ACTIONS TO ADDRESS RISK FACTOR	AGENCY/PERSON RESPONSIBLE	TIMEFRAME START/END	UPDATE
Support from Aboriginal Community Engagement & Culture Officer (ACECO) [REDACTED] for assistance with case management, motivation, and cultural support.	Community Corrections [REDACTED]	02/05/2022 - ongoing	Referral has been made. [REDACTED] to continue to support [REDACTED] on Walama List. [REDACTED] to arrange further meetings with [REDACTED]

## **HEALTH AND DISABILITY** (includes both Physical and Intellectual Disabilities/Closing the Gap Assessment)

### **Current Issues:**

[REDACTED] does suffer from physical issues including but not limited to dental. [REDACTED] is linked in with the Aboriginal Medical Service.

ACTIONS TO ADDRESS RISK FACTOR	AGENCY/PERSON RESPONSIBLE	TIMEFRAME START/END	UPDATE
Continued connection with Aboriginal Medical Service (AMS) regarding medications and general health.	[REDACTED] and AMS	Start: 04/05/22 to sentencing	[REDACTED] spoke with AMS last week. To continue to have appointments when issues arise.
Dental care	Aboriginal Medical Service/ Aboriginal Legal Service.	Start: 04/05/22 to sentencing	[REDACTED] was referred to Sydney Dental Hospital by AMS. [REDACTED] to attend next available appointment. ALS and AMS to assist with follow up.

## **EMOTIONAL/PSYCHOLOGICAL/PSYCHIATRIC ISSUES**

### **Current Issues:**

[REDACTED] has a number of diagnoses that impact her. She suffers from a myriad of mental health issues including, PTSD and Anxiety.

ACTIONS TO ADDRESS RISK FACTOR	AGENCY/PERSON RESPONSIBLE	TIMEFRAME START/END	UPDATE
Trauma Counselling	Nelly's Healing Centre	Start: 4/05/22 to sentencing	Waiting for referral to be accepted. Once accepted [REDACTED] will be linked into trauma counselling at Nelly's Healing Centre.

# CASE STUDY 2

- Blake (a pseudonym) pleaded guilty to a number of break and enter offences and was referred to the Walama List.
- During the Sentencing Conversation, it became evident that Blake had a number of underlying issues, including:
  - history of being exposed to violence and drugs;
  - institutionalised;
  - semi literate;
  - never held stable employment;
  - no ID/Birth Certificate;
  - unpaid fines.
- Blake identified that it was important for him to address his drug abuse, in addition to finding stable housing an employment. However, this was impossible for him to do on his own as he had no ID, no birth certificate, no license, was semi literate and had significant debt.
- Blake's Walama List Case Plan focused predominantly on obtaining identification for Blake before we could commence addressing housing and employment opportunities.



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# BLAKE'S WALAMA LIST CASE PLAN

## LEGAL ISSUES (includes Police/Corrective Services/Revenue NSW/Work Development Order/Outstanding Fines/Centrelink/AVO/Family Law Orders/Other Supervised Orders)

### Current Issues:

[REDACTED] has identified a number of legal issues that are preventing him from progressing to a number of areas in his life. They include but are not limited to fines and possible disqualification periods. [REDACTED]

ACTIONS TO ADDRESS RISK FACTOR	AGENCY/PERSON RESPONSIBLE	TIMEFRAME START/END	UPDATE
Revenue NSW fines- to address by Working Development Order (WDO) when in community	Senior Aboriginal Client and Community Support Officer	Start: 3/5/22 End 01/06/22	[REDACTED] to provide update of fines and best option available to [REDACTED] to pay off his fines. However, depending on outcome of fines balance another item may be needed to be added to case plan i.e. if [REDACTED] has significant debt then a referral to LAC Civil to apply for partial or full write or referral to a WDO organisation (for example TAFE, Mental Health treatment, D & A counselling etc).
Ongoing victims' compensation claim; maintain contact with lawyers.	[REDACTED] and Aboriginal Legal Service	Ongoing	ALS confirmed next court dates are [REDACTED]. Lawyers: [REDACTED]
Legal Aid Law Check Up	Senior Aboriginal Client and Community Support Officer	Start: 03/05/22 End: 30/05/2022	[REDACTED] completed Legal Aid Law Check Up (26.5.22). SACCSSO determined [REDACTED] needs referral to LAC Civil to address the following: [REDACTED] has requested a credit check to ensure that he does not have any outstanding debt / loans etc and Previously emailed partial or full write off of Revenue debt approximately \$23k.
Referral to Legal Aid Civil Service	Senior Aboriginal Client and Community Support Officer and Aboriginal Legal Service	Start 26/05/22	ALS sought assistance from CLSAC in terms of appropriate referral (26.5.22). Referral made to CLSAC. (26.5.22)

## SOCIAL ISSUES (includes Identification/Birth Certificate)

Current Issues: [REDACTED] has a significant lack of identification which is a barrier to a number of things including but not limited to housing, education, employment, obtaining a driver's licence, receiving Centrelink etc. This creates a number of social issues. [REDACTED] has identified the main sources of identification needed.

ACTIONS TO ADDRESS RISK FACTOR	AGENCY/PERSON RESPONSIBLE	TIMEFRAME START/END	UPDATE
To assist in obtaining birth certificate	Senior Aboriginal Client and Community Support Officer	Start: 03/05/2022 End: Pending [REDACTED] release	[REDACTED] to obtain signatures on birth certificate forms, however applications will be pending due to additional ID being required before application can be submitted to BDM. Community Corrections + ALS provided [REDACTED] with ID document (3/5/22) [REDACTED] made application for Birth Certificate (26.5.22).
To assist in obtaining identification documents and cards	Caseworker		To complete when Birth Certificate is obtained
Assisting in obtaining Medicare card; linking in with Centrelink etc.	Caseworker		To complete when Birth Certificate is obtained

# A PATH FORWARD

- Thinking about a different approach to sentencing generally, which includes the following:
  - better coordination between criminal law and civil law needs;
  - providing a safe space where offenders and their families can give the best evidence;
  - having a multi-agency approach to addressing the underlying issues giving rise to the offending conduct;
  - encouraging the presence of caseworkers at sentencing proceedings.



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