

Speech for Walama List Ceremonial Sitting

4 April 2022

Judge D Yehia SC

Thank you, Chief Judge.

I commence by acknowledging the traditional owners of the land upon which we gather, the Gadigal people of the Eora nation. I pay my respects to their Elders, past and present. I acknowledge the ongoing impact of colonisation and dispossession, but I also acknowledge the strength and resilience of First Nations peoples and their continuing connection to lands, waters and culture.

I acknowledge all First Nations peoples present with us today and, in particular, our Walama List Elders and Respected Persons. They are as follows:

1. Uncle Charles Mundine;
2. Aunty Susan Wardhough;
3. Aunty Patricia Fields;
4. Aunty Elizabeth Burke;
5. Aunty Thelma Quartey;
6. Robert Leslie;
7. Aunty Barbara O'Neill;
8. Lorraine Leslie;
9. Theresa Haines; and
10. Uncle Shane Phillips.

Mr Attorney, Chief Justice, the Chief Judge at Common Law, Justice Hamill, Justice Adams, Justice Pepper, the President of the Bar Association, the President of the Law Society, and distinguished guests. You honour us by your presence.

This is a momentous occasion in the history of the New South Wales District Court. It is the first time that this Court will have an Indigenous Sentencing List which will bring a holistic approach to sentencing so that we can meaningfully address an offender's needs and underlying issues.

This audience is acutely aware of the disproportionate rate of Aboriginal and Torres Strait Islander people in custody. It has been said that the over representation of Indigenous people in custody is a crisis and a source of great shame.

Much has been said over the years about reducing the rate of Indigenous people in custody and providing alternatives to address, in a more meaningful way, offending conduct.

The Walama List is the way in which this Court will address these issues.

Walama is a Dharug word that means to “return” or “come back”. In the context of the List, it is a return to identity, a return to culture, and a return to a healthy crime-free life.

Our objectives include: reducing the rate of Indigenous people in custody; reducing the rate of recidivism and increasing the rate of compliance with court orders to make communities safer; to engage in a more meaningful way with offenders and, in some instances, victims; to increase the confidence amongst First Nations peoples and communities in the criminal justice system; and to have a more positive engagement with Indigenous communities.

The process will enable Aboriginal and Torres Strait Islander community participation. We will utilise culturally appropriate programs and supports to address needs and risk factors that may impact upon an offender’s continued involvement with the criminal justice system, and we will facilitate continuous court monitoring of appropriate therapeutic interventions to address the identified needs and risk factors.

You might be thinking that this is an ambitious task. It is. I do not think anyone is pretending that this will be easy. But it is a start. It is a hopeful start.

As judicial officers, we are too often faced with evidence of the negative aspects of the life of an Indigenous person – their trauma, disadvantage and deprivation. Of course, that material is both important and necessary.

What we lose sight of, however, is the strength and resilience in community. We lose sight of the fact that culture is powerfully healing. We forget that the experience, wisdom and knowledge of Elders and other community members can inform our decision-making and assist us in formulating the appropriate penalty.

Walama will focus on the strengths. It will do so by listening to the voices of First Nations Peoples – through our Elders and respected community members, the service providers including, importantly, Aboriginal Organisations and by embracing culturally appropriate rehabilitation programs.

We did not get to this point without the support and hard work of many. I know that brevity is the friend of a good speech, but I am going to take a little time to acknowledge and thank a number of people.

At the top of that list is our Chief Judge. In March 2015, about 10 months after I was appointed, I emailed him to ask whether he would be open to an Indigenous Sentencing Court in the District Court.

I must admit that I was somewhat anxious about how he would respond, given that I did not know him very well at that time. Within a few minutes of sending the email, he responded with something along the following lines: “Great idea. Get it done. One piece of advice, don’t get bogged down in committees”.

Chief Judge, your support was not only immediate, but it has also been unwavering over the last seven years. Without you, there would be no Walama List. This is a significant legacy.

To the Judges on this Court, your support and enthusiasm for the Walama List has been overwhelming. Many of you have expressed your desire to sit as the Walama List Judge. I think we can all be proud of this initiative.

Mr Attorney, you have publicly acknowledged that we can and must do better. You have identified the importance of continuing to work hand-in-hand with Aboriginal communities to reduce the overrepresentation of Aboriginal people in the prison population.

One of the ways in which you have demonstrated your genuine commitment to these issues is by your support for the Walama List. Thank you for that support.

Mr McHugh and Ms Van Der Plaat, each of you, your predecessors over the last seven years and your members have supported the Walama proposal. It is very heartening to have the support of the profession.

To the Walama Working Group, which has included representatives from various organisations including the Public Defenders, Aboriginal Legal Services (NSW/ACT), Legal Aid Commission, Director of Public Prosecutions, Community Corrections and Corrective Services – many of you are here today – I want to particularly thank you for your commitment over the last seven years. You have given up your time to attend countless meetings, prepare the original proposal and business case, deal with challenging issues that have arisen and, importantly, never wavered.

Amongst that group, I want to take the time to thank my Associates over the past seven years and, in particular, my current Associate, Ms Al Majed. They have essentially performed two roles, supporting me in the usual work of the Court and also supporting me in the work of Walama – in organising meetings, preparing proposals, consulting with community organisations and generally keeping me sane. My current Associate has even put together a spreadsheet to collect the necessary data for the evaluation.

I am happy to report that the Walama Working Group will continue to meet to monitor the progress of the List and address any issues that may arise.

Over the past six months or so, we have worked closely with the Aboriginal Service Unit, led by Edwina Crawford. This is a team of formidable, committed and skilled women. The members of that team are: Catherine Lomas; Dianna Newman; Penelope Josey; Vanessa Sakal; Keegan Williams; and Annette Hennessey.

In a short space of time, you have attended to the recruitment of Elders, assisted in preparing and presenting at the various inductions, and preparing documents and processes necessary to ensure the efficient operation of the Walama List.

Without you, we would not have been ready to commence.

I have left the most important participants in the Walama List until last. To our Elders – as I said earlier, you bring your wisdom, knowledge and experience to the

process to assist us in fulfilling the objectives of the List. You also fulfil the very important objective of educating the profession and the judiciary by contributing a very different narrative to our sentencing process – a First Nations narrative.

To the service providers and representatives from grassroots community organisations, you have repeatedly expressed your commitment and willingness to work with the Walama List by providing dedicated caseworkers, culturally appropriate programs, and general support and guidance to the offenders. You have considerable experience and an understanding of the issues and challenges involved.

It is not going to be easy. Real change never is. But I am confident that we will make a difference.

Thank you, Chief Judge.