

CLANT 2026

MAINSTREAMING A SOLUTION FOCUSED APPROACH TO SENTENCING

Judge Sarah Hopkins and Tony McAvoy SC

Solution Focused Sentencing

What has brought this person before the court and what can be done about those issues in these proceedings?

Purposes of sentencing

	NSW	Cth	ACT	Qld	Vic	Tas	NT	SA	WA
	<i>s 3A Crimes (Sentencing Procedure) Act 1999</i>	<i>s 61A Crimes Act 1914</i>	<i>s 7 Crimes (Sentencing) Act 2005</i>	<i>s 9 Penalties and Sentences Act 1992</i>	<i>s 5 Sentencing Act 1991</i>	Not expressly set out in <i>Sentencing Act 1997</i>	<i>s 5 Sentencing Act 1995</i>	<i>ss 3-4 Sentencing Act 2017</i>	Not expressly set out in <i>Sentencing Act 1995</i>
Punishment	✓	✓	✓	✓	✓		✓	✓	
General deterrence	✓	✓	✓	✓	✓		✓	✓	
Specific deterrence	✓	✓	✓	✓	✓		✓	✓	
Community protection	✓		✓	✓	✓		✓	✓ Primary purpose	
Rehabilitation	✓	✓	✓	✓	✓		✓	✓	
Accountability	✓		✓					✓	
Denunciation	✓		✓	✓	✓		✓	✓	
Recognition of harm	✓		✓	✓				✓	

Purposes of sentencing

Backward looking

- to ensure adequate punishment (retribution and proportionality)
- to denounce the conduct

Both

- to make the offender accountable for his or her actions
- to recognise the harm done to the victim and the community (restorative)

Forward looking

- to prevent crime by detering the offender and other persons from committing similar offences
- to protect the community from the offender (incapacitation or rehabilitation)
- to promote the rehabilitation of the offender

Commonwealth: s 16A(1) of severity appropriate in all of the circumstances; s 16A(2):

Backward Looking

nature and circumstances of the offence and if course of conduct

adequate punishment (retribution and proportionality)

circumstances of victim

injury, loss or damage

the plea: utilitarian value and benefit to victim

Forward Looking

- deterrent effect on the person and others
- character, antecedents, age, physical and mental condition of offender
- prospects of rehabilitation of the person (but not the purpose of rehabilitating the offender)
- probable effect that any sentence would have on person's family or dependants
- child sex offence – s 16A (2AAA) – the objective of rehabilitation of the person including conditions about rehabilitation and treatment options and ensuring sufficient time to undertake rehabilitation program
- nature and severity of conditions that may be imposed – 16A(3)

ICOs: State and Commonwealth

NSW – s66 CSPA

“Community safety” requires assessment of merits of full-time detention and intensive correction for reducing the offender’s particular risk of re-offending, looking at future possible impacts (*Stanley* at 74) and s 3A

Cth – ICO imposed pursuant to s 20AB(1) *Crimes Act*

HC in *Wong*: no hierarchy of matters to take into account; under s16A there is no statutory obligation on the sentencing court to give particular weight to one or other of the identified purposes of sentencing

→ • = inconsistent with s66 requiring community safety to be paramount consideration

it is not possible to apply s66 while also applying s16A because they are incompatible. S20 AB(3) prohibits application of NSW provisions which are inconsistent with law of the Cth (*Vamadevan v the King* [2024] NSWCCA 223 overturning *AM v R* [2024] NSWCCA 26 and *Chan v R* [2023] NSWCCA 206)

How can judges/advocates make sentence proceedings more accessible and understood by offenders and victims, and family members?

Deferral of sentencing for rehabilitation, participation in intervention or other purposes
S 11 Crimes (Sentencing Procedure Act)

- Section 11 of the Crimes (Sentencing Procedure) Act 1999 (NSW) allows a court to defer sentencing for a person found guilty of an offense. This deferral can be for up to 12 months, and the court can use this time to assess the offender's capacity and prospects for rehabilitation, allow the offender to demonstrate rehabilitation, or for any other purpose the court deems appropriate. Essentially, it allows for a "cooling-off" period or an opportunity for the offender to participate in programs aimed at addressing the underlying issues that led to the offending.
- "Griffith remand" per *Griffiths v R* (1977) 137 CLR 293

Walama: HOW IT WORKS

- The first conversation: an in-depth discussion about factors leading participant into offending behaviour and what will support rehabilitation.
 - Led by the First Nations voices at the table
 - Focus on protective factors and cultural strength
 - A case plan prepared
- Case plan conversation: where they are up to, what is working and what is not working.
- In one of the early conversations, the DPP solicitor takes participant through the agreed facts of the offence and any victim impact statements.
- Restorative process aligned with purposes of sentencing: recognising harm done to victim and holding offender accountable - to be taken account in ultimate sentence.
- Sentenced according to law.
- The Walama List is an evolving process, responding to input from participants.
- See [District Court Practice Note 26 – Walama List Sentencing Procedure](#)



Walama List

Walama Objectives:

- 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
- f. Facilitate a better understanding of any underlying issues which may increase the likelihood of re-offending

How objectives to be achieved:

- 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.