

Sydney West Referral List: solution focused justice

Judge Sophia Beckett
Training Session 1: 17 June 2026

Genesis: Sydney West appeals from Local Court to District Court

- Severity appeal list initially Penrith, situated in metropolitan Sydney
- High number of First Nations offenders dealt with in Local Court, appealing sentences of imprisonment to District Court.
- High rates of imposition of short sentences of imprisonment.
- Significant repeat offending and return to prison.
- Significant presence of Indigenous led services in the community.
- Low engagement of those services before the court.
- Recognition that culturally appropriate service providers can result in improved engagement.

How to make it happen

- Form users group committee of stakeholders: ODP; Legal Aid; Aboriginal Legal services. Later Community Corrections and DCJ.
- Consider available services to provide rehabilitation services and particularly, culturally appropriate services to persons before court.
- Ideally attend upon service providers to understand their operations.
- Invite service providers onto the committee or allow input into the process so that the court and organisations can work efficiently.
- Development of Protocol.



Legal mechanism

Statute and common law

STATUTE

- Guiding principles of sentencing: s 3A: punish; denounce; recognise harm; protect and promote rehabilitation
- Section 11 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) allows a court to defer sentencing for a person found guilty of an offence. 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.

COMMON LAW

- "Griffith remand" per *Griffiths v R* (1977) 137 CLR 293; *R v Trindall* (2002) 133 A Crim R 119; [2004] NSWCCA 148 to assess an offender's capacity for rehabilitation where appropriate and where essential to ensure a just result: *R v Palu* (2002) NSWCCA 381.

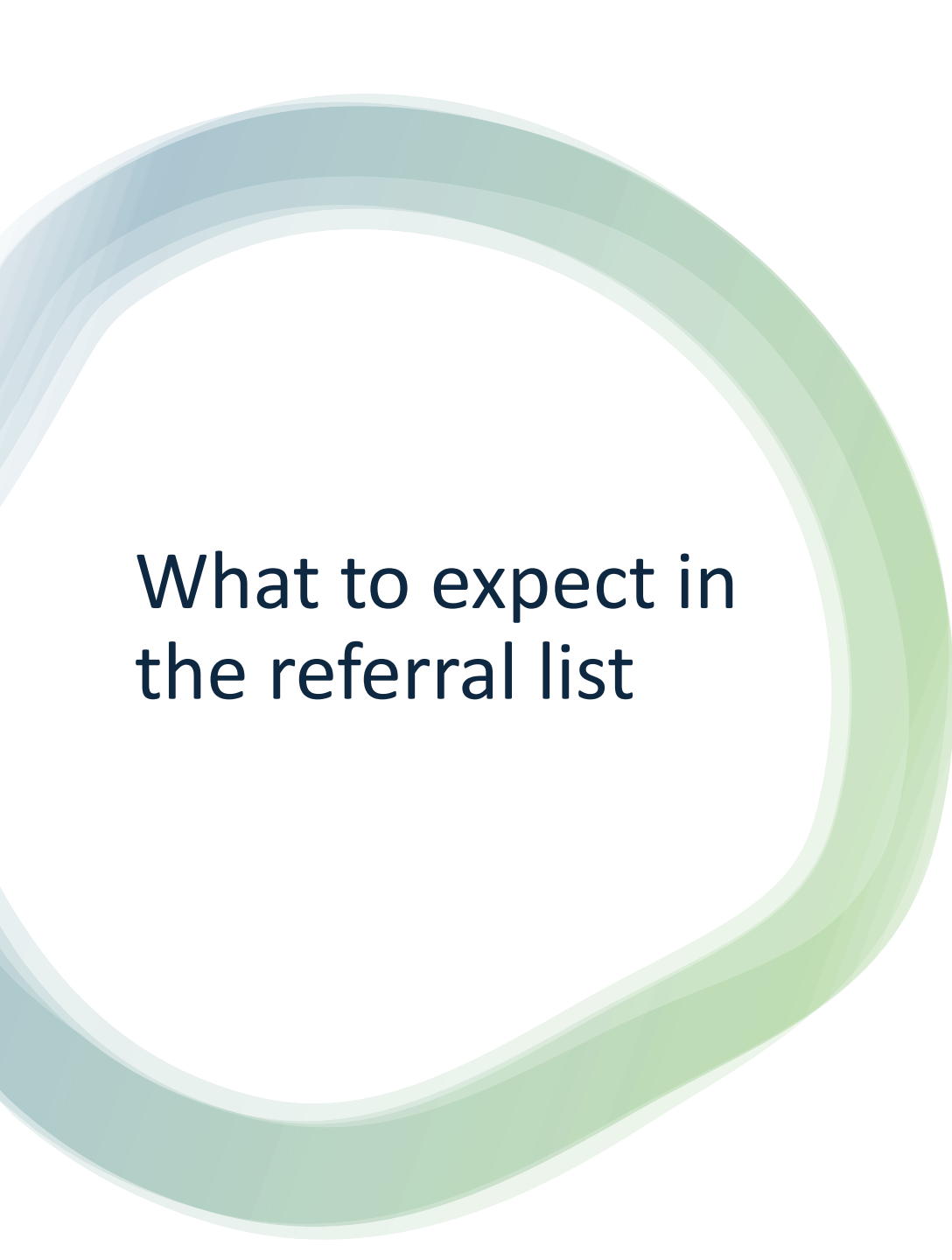
How it works

Eligibility:

- Pool comes from matters listed for severity appeals before the relevant District Court Appeals.
- Sits about once every 6 weeks, often with weekly “check ins”.
- Appellate advocacy and judicial discretion as to which matters are appropriate for a deep dive into the reasons for their criminal conduct and for a collaborative approach as to possible solutions.
- Consideration as to the use of a s 11 remand if there is evidence of a plan to address criminogenic vulnerabilities: judicial instinct and advocacy as to whether it is an appropriate case for the List.

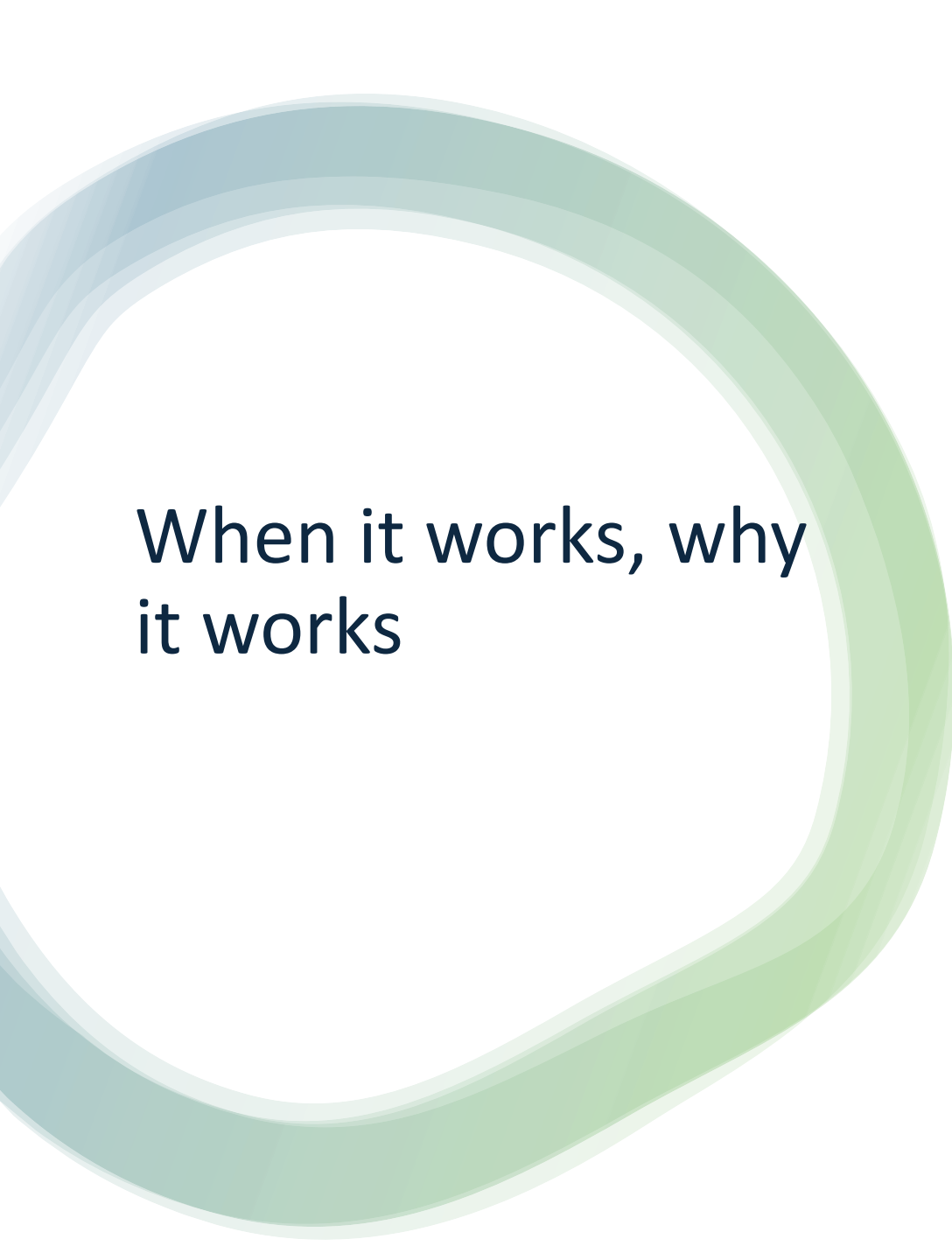
Usual steps:

- Identify appropriate candidate: in regular appeal list.
- Court, parties and appellant identify the criminogenic vulnerabilities – usually by the appellant giving evidence: Identify the appropriate service providers;
- Refer for potential acceptance by the service provider;
- Craft appropriate bail conditions and release.
- The above steps may take place in a regular appeal list or after referral to the Referral List;
- **Check in – monitor – assess – listen – consult – consider –**
- **Re-sentence.**



What to expect in the referral list

- It is a matter for each Referral List judge to determine how their list is conducted.
- To date the Parramatta West Referral list has adopted a hybrid approach; adopting the usual style of an appeal list but once in referral mode adopting a level of informality: judge does not wear a wig; an appellant may be referred to by their first name; plain language is used.
- Lay out of court: the appellant sits at or next to the bar table as does a representative from Community Corrections and the Legal Aid Field officer. They may have their family member next to them;
- An appellant will be encouraged to come to court with their supports: friends/relatives who support their recovery and are also engaged in the conversation.
- An appellant will be nearly always be asked to engage and contribute to the process of seeking solutions;
- An appellant will be expected to speak and talk directly to the judge and may be questioned in a manner that is more informal, albeit under oath, not consistent with usual X, XX and Re-X, nor will they necessarily be giving their evidence from the witness box unless a party or the Court asks them to do so (for example in circumstances of breach).
- “The conversation”: all participants will be asked to identify vulnerabilities and recognise strengths, including relatives, Community Corrections, field officers and prosecution.
- The adducing of trauma related evidence is to be done in a sensitive way, which may involve closing the court, relying on affidavits or by agreement between the parties.
- The Court may ask non-typical questions, such as what makes someone happy and what motivates them to recovery and shape bail/outcomes and conditions accordingly or simply identify these matters in the conversation in recognition of a holistic approach to rehabilitation and an interest in the individual to break down barriers.
- The Court may ask for frequent check ins, often via AVL to confirm the bail conditions are still suitable and many conditions may be amended regularly to ensure compliance and pro-social activities are supported.
- The appellant will be told about the purposes of sentencing and what the job of the judge is to aid the understanding of the appellant in the sentencing process, the aims of the court and to encourage engagement.
- The judge will often praise the appellant and positively affirm that the court cares about seeing them recover for their own sake but also for the sake of the community and family.



When it works, why it works

- a. Provides opportunity for restorative justice with victim and community should the DPP wish to do so.
- b. Slows the process down: takes a deep dive into the reason for offending so as better to address it.
- c. Enhances better engagement in, and understanding of, the criminal justice system by offender and for them to be seen as an individual.
- d. Empowers the offender and family or other supports to find their own solutions to the conduct.
- e. Engages multi –service engagement in finding solutions;
- f. Reduces re-traumatising the offender in the re-sentencing process.
- g. Enhances understanding of the offender's conduct and background to allow for better shaped outcomes.
- h. Reduces inefficiencies: all stakeholders present at the hearing including Community Corrections and field officers and sometimes service providers and carers;
- i. Not solely relying on a deficit narrative but identifying strength- based evidence, supports that are openly acknowledged as pro-social and helpful.
- j. Provides encouragement and support to achieve outcome.
- k. Breaks down historical barriers with justice system.
- l. The identification and building of relationships and connections within the community (e.g. Local Land Councils; relatives; mentors; AMS; driving programs NDIS etc.). Forward supports beyond the period of bonds and the justice system.

Challenges

- Training of participants: turn over of stakeholder participants and lack of training/understanding around therapeutic models and philosophies.
- Time constraints.
- Lack of services and rehabilitation tailored for young males in particular and provision of mentor services.
- Lack of stable housing to allow secure place for rehabilitation, particularly for young men.
- Lack of supported placements for dual diagnosis.





Observations

- The Parramatta West Referral List is not doing anything any other Local or District Court in NSW, or likely, elsewhere could also do.
- It relies on the common law and statute that apply in all sentencing, and severity appeal matters.
- All it involves is the slowing down of the appeal process and the adoption of therapeutic procedures, rather than traditional court practices, noting that the rules of evidence only have application if the Court directs them apply.
- The roles of the court and the duties of the parties remain the same, but the model of justice alters, sometimes within the same hearing: a hybrid model.
- If anything, there is more integrity to the information adduced than there is in the Local Court/or traditional appeal process where evidence is often tendered in written form and rarely tested.
- The success of the list relies upon relationships with local referring services, the engagement of the participants, listening and learning from the experts and services to find solutions, within an offender's own family or community if possible.
- The process requires flexibility and the application of judicial instinct.