

# Referrals commonly made by practitioners in the Local Court

Joan Lee  
Solicitor, Legal Aid NSW

May 2021

## Contents

|  |    |
|--|----|
| Magistrates Early Referral Into Treatment (MERIT) .....          | 3  |
| Balund-a Residential Diversionary Program.....                   | 10 |
| Client Assessment and Referral Service (CARS) .....              | 13 |
| NSW Statewide Community & Court Liaison Service .....            | 14 |
| (Justice Health & Forensic Mental Health Network) .....          | 14 |
| Justice Advocacy Service (JAS) / .....                           | 16 |
| Intellectual Disability Rights Service (IDRS) .....              | 16 |
| Drug Court .....   | 18 |
| Compulsory Drug Treatment Correctional Centre (Drug Court) ..... | 20 |

## Magistrates Early Referral Into Treatment (MERIT)

MERIT is a voluntary program available in the Local Court for eligible defendants. The program is targeted for defendants who have problems with drug and/or alcohol abuse.

There is a two-stage assessment for referrals made to MERIT. Defendants must be 1) eligible; and 2) suitable, to participate in the program.

### Eligibility criteria

To be considered **eligible for MERIT**, a defendant must:

- Be an adult
- Be an Australian resident
- Be either in the community or be eligible for bail (to be released to the community to be available to participate)
- Voluntarily agree to participate in MERIT
- Be suspected of using drugs or be known to have a history of drug use (and in some cases, alcohol abuse)
- NOT be charged with a strictly indictable offence or sexual offence, and should not have charges for similar offences pending before any Court

Previous convictions for strictly indictable offences or sexual offences are not considered when determining eligibility.

It is the role of the magistrate to decide whether a defendant is **eligible** for the MERIT program.

### Suitability criteria

If eligible, to be **suitable for MERIT**, a defendant must:

- Have a treatable drug/alcohol problem for which there is appropriate treatment available
- Usually reside within the catchment area or have sufficient connection to the area, e.g. full-time employment in the area
- Voluntarily consent to undertake the MERIT program

It is the role of the MERIT team to decide whether a defendant is **suitable** for the MERIT program.

### Timing of referrals

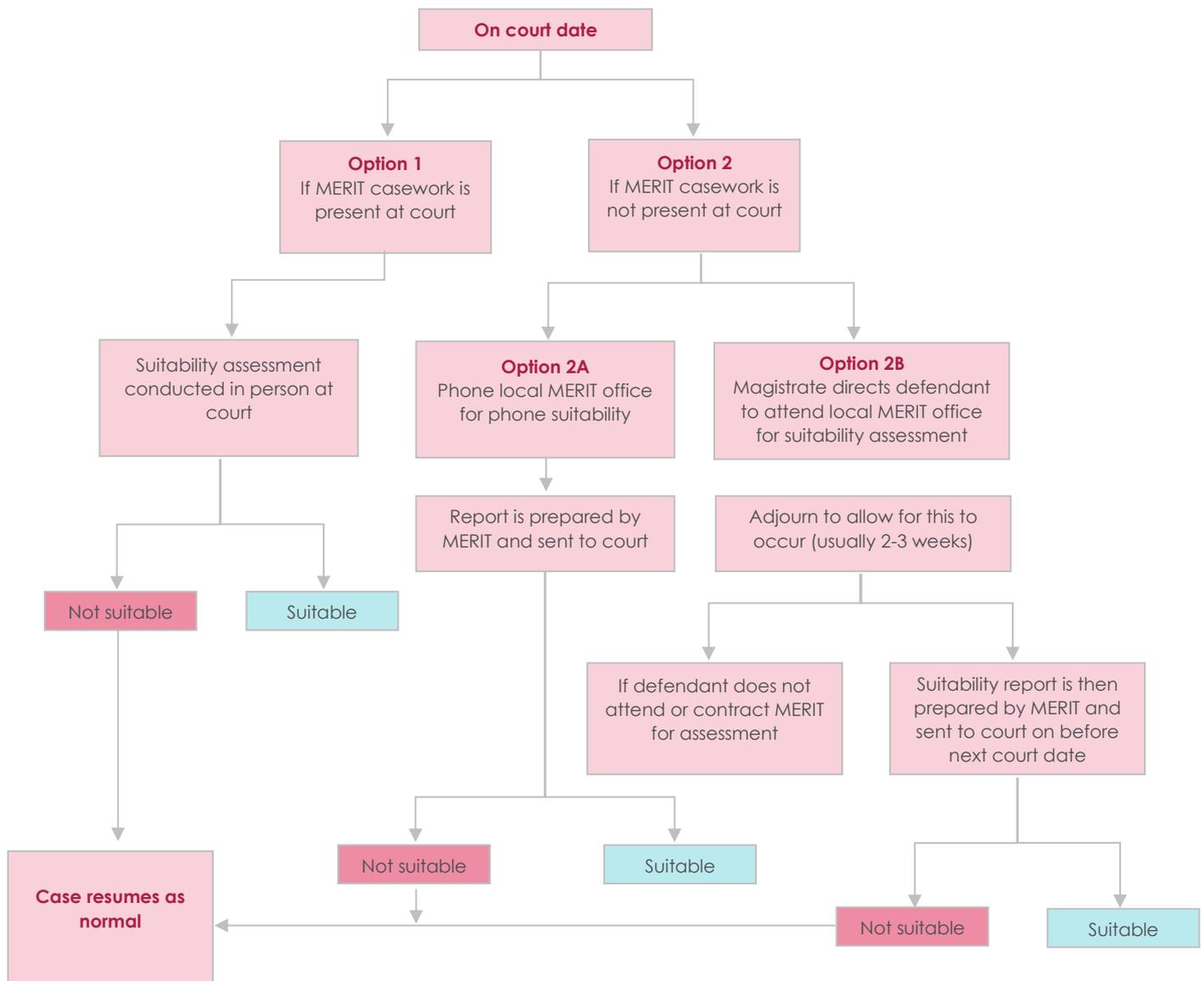
Referrals to MERIT can be made at any time before the finalisation of the matter in the Local Court. Referrals from Court can be made either by the magistrate, legal representative or by the defendant.

At some Courts, there will be a MERIT caseworker(s) present at Court (particularly on 'list days') who are available to conduct suitability assessments.

Referrals can also be made before the first Court date, either by a Police officer, legal representative, or by the defendant themselves. If this is the case, eligibility and suitability can be determined at the first Court appearance. In such cases, an initial MERIT suitability assessment report may have already been prepared and on the Court file.

It is important to note that participation in MERIT is not limited to matters proceeding to sentence and is not an admission of guilt for the offence(s) charged. Participation in the program can occur prior to or following any pleas being made.

**Process for referrals**



Once the suitability assessment process has been undertaken by the MERIT caseworker, the MERIT team provides the Court with either:

1. An Initial Court Report; or
2. A Comprehensive Assessment Court Report.

Both report options confirm if the defendant is suitable for the program.

A Comprehensive Assessment Court Report recommends the type of drug treatment services that are appropriate, relevant support, and a proposed treatment plan.

If a defendant is found suitable by the MERIT team, the magistrate then determines if they should be accepted into MERIT.

If the defendant is found unsuitable or the magistrate declines to allow the defendant to participate in MERIT, then the case proceeds as normal.

### **Program timeline**

MERIT is a 12-week program. A rough guideline for adjournments are:

- Up to three weeks for comprehensive assessment for suitability;
- If suitable and accepted, a Court appearance in four to eight weeks (from the commencement of treatment) to report on the participant's progress; then
- Final appearance at 12 weeks (from the commencement of treatment).

Each adjournment will be accompanied by a short progress report from the MERIT team. The progress report will show the participant's progress and compliance, or non-compliance, with their treatment plan. The MERIT team may also, in their report, suggest the length of adjournments, taking into account other care that may be involved and the MERIT court days for the particular court location.

### **Treatment**

The treatment offered will vary according to the particular participant and may include:

- Detoxification
- Urine drug testing (with the results being included in the MERIT report(s))
- Methadone and other pharmacotherapies
- Residential rehabilitation
- Individual and group counselling
- Case management and numerous forms of welfare support and assistance

### **Bail**

There are three different bail options for MERIT participants that the magistrate may consider. These are:

1. The requirement for bail has been dispensed with;
2. Bail is applicable and a MERIT bail condition is added\*; or
3. Bail is applicable and a MERIT bail condition is not added.

\* If a MERIT bail condition is added, the MERIT caseworker is responsible for monitoring bail conditions related to MERIT and, where necessary, reporting non-compliance of a MERIT bail condition to the magistrate. However, MERIT caseworkers are not responsible for monitoring bail conditions other than those related to MERIT.

### **Removal or withdrawal from the program**

A magistrate may remove a defendant from the MERIT program at any time.

A caseworker's compliance report, or reoffending by the defendant are two factors considered by the magistrate.

Non-compliance can include:

- Failure to attend MERIT appointments
- Failure to engage in drug treatment
- Incidents of aggression or violence towards staff or damage to MERIT property

It is not considered a breach of bail if a defendant is found to be non-compliant with the program.

A defendant can voluntarily withdraw from the MERIT program at any time. In this case, the MERIT team will notify the Court and the magistrate will formally remove the participant from the program.

It is not considered a breach of bail if a defendant withdraws from the program.

As the MERIT program is voluntary, unsuccessful completion should not attract any additional penalty at sentencing.

### **Participating Courts (from the MERIT website, NSW Communities and Justice)**

*Current as at 14 December 2020*

The MERIT program currently operates in the following Local Health Districts (LHDs), with participating Local Courts listed.

Courts marked with "#" offer alcohol services in addition to, but not independently of, services for illicit drugs.

|   |   |   |
|---|---|---|
| <p><b>Albion Park</b></p> <p><a href="#">Illawarra Shoalhaven Local Health District</a><br/>Tel: 4254 2700<br/>Fax: 4254 2771</p> | <p><b>Junee</b></p> <p><a href="#">Murrumbidgee Local Health District</a><br/>Tel: 6923 5761<br/>Fax: 6923 5751</p>             | <p><b>Parramatta</b></p> <p><a href="#">Western Sydney Local Health District</a><br/>Tel: 9840 3474<br/>Fax: 8838 2025</p>        |
| <p><b>Ballina</b></p> <p><a href="#">Northern NSW Local Health District</a><br/>Tel: 6620 7650<br/>Fax: 6621 6212</p>             | <p><b>Katoomba</b></p> <p><a href="#">Nepean Blue Mountains Local Health District</a><br/>Tel: 4734 2131<br/>Fax: 4734 3145</p> | <p><b>Penrith</b></p> <p><a href="#">Nepean Blue Mountains Local Health District</a><br/>Tel: 4734 2131<br/>Fax: 4734 3145</p>    |
| <p><b>Bankstown</b></p> <p><a href="#">South Western Sydney Local Health District</a><br/>Tel: 8778 0700<br/>Fax: 8778 0768</p>   | <p><b>Kempsey</b></p> <p><a href="#">Mid North Coast Local Health District</a><br/>Tel: 6586 6030<br/>Fax: 6586 6040</p>        | <p><b>Picton</b></p> <p><a href="#">South Western Sydney Local Health District</a><br/>Tel: 8788 0700<br/>Fax: 8788 0768</p>      |
| <p><b># Bathurst</b></p> <p><a href="#">Western NSW Local Health District</a><br/>Phone: 6369 2070<br/>Fax: 6361 4629</p>         | <p><b>Kiama</b></p> <p><a href="#">Illawarra Shoalhaven Local Health District</a><br/>Tel: 4254 2700<br/>Fax: 4254 2771</p>     | <p><b>Port Kembla</b></p> <p><a href="#">Illawarra Shoalhaven Local Health District</a><br/>Tel: 4254 2700<br/>Fax: 4254 2771</p> |

|   |   |   |
|---|---|---|
| <p><b>Blacktown</b></p> <p><a href="#">Western Sydney Local Health District</a><br/>Tel: 9840 3474<br/>Fax: 8838 2025</p>             | <p><b>Kyogle</b></p> <p><a href="#">Northern NSW Local Health District</a><br/>Tel: 6620 7650<br/>Fax: 6621 6212</p>            | <p><b>Port Macquarie</b></p> <p><a href="#">Mid North Coast Local Health District</a><br/>Tel: 6586 6030<br/>Fax: 6586 6040</p>     |
| <p><b>Blayney</b></p> <p><a href="#">Western NSW Local Health District</a><br/>Phone: 6369 2070<br/>Fax: 6361 4629</p>                | <p><b>Lismore</b></p> <p><a href="#">Northern NSW Local Health District</a><br/>Tel: 6620 7650<br/>Fax: 6621 6212</p>           | <p><b>Queanbeyan</b></p> <p><a href="#">Southern NSW Local Health District</a><br/>Tel: 6299 1725<br/>Fax: 6299 1426</p>            |
| <p><b># Broken Hill</b></p> <p><a href="#">Far West NSW Local Health District</a><br/>Tel: (08) 8088 7199<br/>Fax: (08) 8087 8970</p> | <p><b>Liverpool</b></p> <p><a href="#">South Western Sydney Local Health District</a><br/>Tel: 8778 0700<br/>Fax: 8778 0768</p> | <p><b>Raymond Terrace</b></p> <p><a href="#">Hunter New England Local Health District</a><br/>Tel: 4016 4656<br/>Fax: 4016 4661</p> |
| <p><b>Burwood</b></p> <p><a href="#">Sydney Local Health District</a><br/>Tel: 9515 7611<br/>Fax: 9515 3722</p>                       | <p><b>Maclean</b></p> <p><a href="#">Northern NSW Local Health District</a><br/>Tel: 6620 7650<br/>Fax: 6621 6212</p>           | <p><b>Singleton</b></p> <p><a href="#">Hunter New England Local Health District</a><br/>Tel: 6543 2677<br/>Fax: 6541 4004</p>       |
| <p><b>Byron Bay</b></p> <p><a href="#">Northern NSW Local Health District</a><br/>Tel: (07) 5506 7010<br/>Fax: (07) 5506 7022</p>     | <p><b>Maitland</b></p> <p><a href="#">Hunter New England Local Health District</a><br/>Tel: 4016 4656<br/>Fax: 4016 4661</p>    | <p><b>Sutherland</b></p> <p><a href="#">South Eastern Sydney Local Health District</a><br/>Tel: 9540 7464<br/>Fax: 9540 7579</p>    |
| <p><b>Campbelltown</b></p> <p><a href="#">South Western Sydney Local Health District</a><br/>Tel: 8778 0700<br/>Fax: 8778 0768</p>    | <p><b>Manly</b></p> <p><a href="#">Northern Sydney Local Health District</a><br/>Tel: 9462 9199<br/>Fax: 9439 2973</p>          | <p><b>Tamworth</b></p> <p><a href="#">Hunter New England Local Health District</a><br/>Tel: 6766 8081<br/>Fax: 6766 8083</p>        |
| <p><b>Casino</b></p> <p><a href="#">Northern NSW Local Health District</a><br/>Tel: 6620 7650<br/>Fax: 6621 6212</p>                  | <p><b>Milton</b></p> <p><a href="#">Illawarra Shoalhaven Local Health District</a><br/>Tel: 4422 5822<br/>Fax: 4422 9684</p>    | <p><b>Toronto</b></p> <p><a href="#">Hunter New England Local Health District</a><br/>Tel: 4016 4656<br/>Fax: 4016 4661</p>         |

|  |   |   |
|--|---|---|
| <p><b>Cessnock</b></p> <p><a href="#">Hunter New England Local Health District</a><br/>Tel: 4016 4656<br/>Fax: 4016 4661</p>         | <p><b>Mt DrUITt</b></p> <p><a href="#">Western Sydney Local Health District</a><br/>Tel: 9840 3474<br/>Fax: 8838 2025</p>           | <p><b>Tweed Heads</b></p> <p><a href="#">Northern NSW Local Health District</a><br/>Tel: (07) 5506 7010<br/>Fax: (07) 5506 7022</p> |
| <p><b># Coffs Harbour</b></p> <p><a href="#">Mid North Coast Local Health District</a><br/>Tel: 6650 0126<br/>Fax: 6650 0098</p>     | <p><b>Mullimbimby</b></p> <p><a href="#">Northern NSW Local Health District</a><br/>Tel: (07) 5506 7010<br/>Fax: (07) 5506 7022</p> | <p><b>Wagga Wagga</b></p> <p><a href="#">Murrumbidgee Local Health District</a><br/>Tel: 6923 5761<br/>Fax: 6923 5751</p>           |
| <p><b>Cooma</b></p> <p><a href="#">Southern NSW Local Health District</a><br/>Tel: 6299 1725<br/>Fax: 6299 1426</p>                  | <p><b>Murwillumbah</b></p> <p><a href="#">Northern NSW Local Health District</a><br/>Tel: 6620 7650<br/>Fax: 6621 6212</p>          | <p><b>Wauchope</b></p> <p><a href="#">Mid North Coast Local Health District</a><br/>Tel: 6586 6030<br/>Fax: 6586 6040</p>           |
| <p><b>Downing Centre</b></p> <p><a href="#">South Eastern Sydney Local Health District</a><br/>Tel: 9332 8788<br/>Fax: 9332 8789</p> | <p><b>Muswellbrook</b></p> <p><a href="#">Hunter New England Local Health District</a><br/>Tel: 6543 2677<br/>Fax: 6541 4004</p>    | <p><b>Waverley</b></p> <p><a href="#">South Eastern Sydney Local Health District</a><br/>Tel: 9211 9277<br/>Fax: 9281 5490</p>      |
| <p><b># Dubbo</b></p> <p><a href="#">Western NSW Local Health District</a><br/>Tel: 6881 4064<br/>Fax: 6885 4577</p>                 | <p><b>Newcastle</b></p> <p><a href="#">Hunter New England Local Health District</a><br/>Tel: 4016 4656<br/>Fax: 4016 4661</p>       | <p><b># Wellington</b></p> <p><a href="#">Western NSW Local Health District</a><br/>Tel: 6884 7089<br/>Fax: 6885 4577</p>           |
| <p><b>Fairfield</b></p> <p><a href="#">South Western Sydney Local Health District</a><br/>Tel: 8778 0700<br/>Fax: 8778 0768</p>      | <p><b>Newtown</b></p> <p><a href="#">Sydney Local Health District</a><br/>Tel: 9515 7611<br/>Fax: 9515 3722</p>                     | <p><b># Wilcannia</b></p> <p><a href="#">Far West NSW Local Health District</a><br/>Tel: (08) 8088 7199<br/>Fax: (08) 8087 8970</p> |
| <p><b>Forbes</b></p> <p><a href="#">Western NSW Local Health District</a><br/>Phone: 6369 2070<br/>Fax: 6361 4629</p>                | <p><b>Nowra</b></p> <p><a href="#">Illawarra Shoalhaven Local Health District</a><br/>Tel: 4422 5822<br/>Fax: 4422 9684</p>         | <p><b>Wollongong</b></p> <p><a href="#">Illawarra Shoalhaven Local Health District</a><br/>Tel: 4254 2700<br/>Fax: 4254 2771</p>    |

|  |   |  |
|--|---|--|
| <p><b>Gosford</b></p> <p><a href="#">Central Coast Local Health District</a><br/> Tel: 4320 3057<br/> Fax: 4320 2423</p>   | <p><b>Oberon</b></p> <p><a href="#">Western NSW Local Health District</a><br/> Tel: 6392 6800<br/> Fax: 6392 6805</p>     | <p><b>Woy Woy</b></p> <p><a href="#">Central Coast Local Health District</a><br/> Tel: 4320 3057<br/> Fax: 4320 2423</p> |
| <p><b>Grafton</b></p> <p><a href="#">Northern NSW Local Health District</a><br/> Tel: 6620 7650<br/> Fax: 6621 6212</p>    | <p><b># Orange</b></p> <p><a href="#">Western NSW Local Health District</a><br/> Phone: 6369 2070<br/> Fax: 6361 4629</p> | <p><b>Wyong</b></p> <p><a href="#">Central Coast Local Health District</a><br/> Tel: 4356 9300<br/> Fax: 4356 9305</p>   |
| <p><b>Hornsby</b></p> <p><a href="#">Northern Sydney Local Health District</a><br/> Tel: 9462 9199<br/> Fax: 9439 2973</p> | <p><b>Parkes</b></p> <p><a href="#">Western NSW Local Health District</a><br/> Phone: 6369 2070<br/> Fax: 6361 4629</p>   |  |

## Balund-a Residential Diversionary Program

The Balund-a Program is a diversionary program for Aboriginal and non-Aboriginal adult male offenders.

Balund-a is not a drug and alcohol focused rehabilitation centre. Rather, it has been developed as an intensive residential diversionary program that runs over a six month period, with courses aimed at teaching life skills, to help break the cycle of offending.

The Balund-a facility is managed by Community Corrections and is located within the Bundjalung Nation, 25km south of Tabulam, 80 km south west of Casino, situated on a rural working cattle property of 534 hectares. There is ordinarily a total of 45 beds available for residents.

### Purpose

The Balund-a Program aims to:

- Provide a range of programs that target issues related to offending behaviour. For example: drug and alcohol misuse, anger management and family violence;
- Deliver activities and programs that increase educational, vocational skills and employability;
- Recognise and restore cultural links;
- Undertake enterprises and activities that utilise the property's natural resources.

### Eligibility criteria

To be **eligible**, the offender must:

- Be a male, over the age of 18;
- Undergo a comprehensive risk and suitability assessment;
- If deemed necessary, undergo a detoxification program if dependent on drugs and/or alcohol;
- Not pose a serious risk to self or others; and
- Have a risk rating (LSI-R) of medium or above.

If they have mental health or physical health issues, those health issues must be stable, as they will need to be self-managed while in the program.

The offender **must not**:

- Have a current or historical conviction for a sex offence as an adult or juvenile (unless approval has been given by Balund-a Manager and/or Director); or
- Have a history of serious violent offences that may pose a serious risk to staff or other residents; or
- Be a participant in the methadone program or other opiate replacement therapy program.

### Entry criteria

To be considered for the program, one or more of the following factors must be applicable:

- The offender must be referred to participate in the program by a District Court Judge or Magistrate under section 11 of the *Crimes (Sentencing Procedure) Act 1999* (after a finding of guilt) which allows deferral of sentencing for rehabilitation and other purposes.
- Participation in the program is a condition of the offender's Parole Order or, subject to SPA's consideration, a condition of an existing Parole Order following rescinding of a revocation; or
- The offender is being supervised by Community Corrections on either a Community Corrections Order, Intensive Correction Order, or Parole Order and, in the course of supervision by Community Corrections, the offender is assessed as requiring intensive residential intervention.

### **Referral process**

A legal practitioner cannot, by themselves, make a referral to Balund-a. In the Local Court, the practitioner can request the magistrate to order a Special Purpose Sentencing Assessment Report ('SPSAR') from the local Community Corrections office. The matter is then adjourned for an assessment to occur.

During this adjournment period, the offender is interviewed by a Community Corrections officer and the relevant documentation is completed and forwarded to Balund-a.

Balund-a then either accepts or declines the referral, and advises the Community Corrections officer of the outcome, or completes a written direction. The Community Corrections officer will then prepare the Special Purpose Sentencing Assessment Report for the Court.

If accepted, the offender (through their legal representative) will need to make a release (or variation) application to be bailed to the program.

If the offender is accepted to the program but there are no beds presently available, Balund-a can place the offender on a waitlist.

### **Transfer to facility on acceptance**

If the offender is in custody, Corrective Services will transfer the offender to Clarence Correctional Centre (approximately 12.5km south-east of Grafton). The offender will remain here until a staff member from Balund-a attends the Correctional Centre to collect them for transfer to the Balund-a facility.

If the offender is already in the community, the offender will be required to make their own arrangements to travel to the local area near Balund-a. Staff from Balund-a will then liaise with them about providing a local transfer, for example, from Casino Railway Station.

The obligation is on the offender, if in the community, to contact Balund-a to make those transfer arrangements.

### **Standard bail conditions**

If bail is granted or varied for the offender to participate in Balund-a, the standard conditions are to be as follows:

- *(If in custody)* Bail to be entered into at the Clarence Transitional Centre.
- *(If in custody)* Not to be released other than into the custody of Balund-a Program staff and then to travel as directed to the Balund-a Program with those staff.
- Reside and accept all conditions of the Balund-a Program, as directed by the Manager of the centre, including participation in all programs.
- Reside at the Balund-a Program so long as accepted by the Manager.
- Abstain from the use of alcohol and/or illicit drugs and the misuse of prescription drugs. Only take prescribed medication as directed by a medical practitioner.
- Accept regular and random alcohol and other drug screening.
- Should he leave or be discharged from the centre he is to immediately present to the Officer in Charge of Police at Tenterfield/Casino.
- To appear at court on the adjourned date.
- *(Such other condition that facilitates the offender's entry to the program.)*

### **Participation in program**

On entry to the Balund-a Program, a comprehensive assessment will take place over 2 weeks including preparation for participation in group work. The Court will only be advised should this further assessment result in the offender being considered unsuitable for participation.

The offender will be allocated two key workers who will guide them through the induction process, help develop their case plan and support them through the program. Residents are expected to participate fully in the program which includes structured daily activities. These activities can include the EQUIPS program (Foundations, Addictions, Aggression, Domestic Abuse), TAFE courses, etc.

### **Completion of program**

On completion of the Program a report will be provided to the Court outlining the offender's progress while at Balund-a and an assessment of suitability for community-based sentencing options.

### **Removal or withdrawal from the program**

If an offender is removed or withdraws from the program, Balund-a will notify the local Police station. Balund-a will also notify Community Corrections, who will then notify the Court where the matter is listed.

### **Contact details**

Address: 186 Welsh Rd, Mookima Wybra NSW 2469

Phone: 02 6660 8600

Email: [balunda-rf@dcj.nsw.gov.au](mailto:balunda-rf@dcj.nsw.gov.au)

## **Client Assessment and Referral Service (CARS)**

Client Assessment & Referral Services (CARS) is an independent, in-house Legal Aid service which provides referrals, case plans, psychosocial reports and other reports to Legal Aid clients. The CARS team consists of social work consultants, a Community Liaison and Referral Officer and administration support.

The CARS team have expertise in mental health, child protection, substance misuse, sexual assault, domestic violence, parenting, trauma, cognitive impairment, and child development.

CARS provide assistance across NSW to clients in:

- Civil
- Criminal
- Care and Family Law

### **Services provided by CARS**

CARS consultants can prepare 2 kinds of reports in the context of criminal law:

- Psychosocial reports; and
- Section 32 case plans.

In the Local court, psychosocial reports can be used at sentence or in support of a section 32 application.

The term 'psychosocial' refers to a person's psychological development and how this interacts with the social environment. This can cover issues such as childhood development, child protection issues and trauma, family of origin, education, employment, physical and mental health, cognitive capacity, addiction and other disadvantages. A psychosocial report will assess clients, looking at both the psychological and social aspects of their circumstances and how this leads to and compounds their legal problem.

In the course of preparing a psychosocial report or case plan, the CARS consultant may make any number of referrals to appropriate services, depending on the client's individual needs.

### **Referral process**

CARS accept referrals from Legal Aid solicitors and the Aboriginal Legal Service. For information or to discuss a possible referral, you can call CARS on 9219 5751 or go to the CARS Team page on the Legal Aid Intranet for more details on the CARS consultants.

To refer a client, Legal Aid solicitors can fill out the CARS referral form on the Legal Aid Intranet. The form requires detailed referral information, police facts, criminal history, and any other supporting medical or psycho-social information.

To make a community referral, legal representatives can email [CRIS@legalaid.nsw.gov.au](mailto:CRIS@legalaid.nsw.gov.au) directly.

It is recommended that all referrals are made at least 6 weeks in advance to provide enough time for referrals to be made and a report to be prepared. Where there are complex client issues this can sometimes take longer, and this will be discussed with the solicitor.

## **NSW Statewide Community & Court Liaison Service (Justice Health & Forensic Mental Health Network)**

The NSW Statewide Community & Court Liaison Service (SCCLS) is run by the Justice Health & Forensic Mental Health Network. The SCCLS has been developed to address the prevalence of serious mental illness in the criminal justice system.

The objectives of court liaison and court diversion are to provide court-based mental health assessments in the Local Court. This can include, where appropriate, diverting defendants with mental health conditions from the criminal justice system, e.g. under s.32 of the *Mental Health (Forensic Provisions) Act 1990 (MH(FP)A)* and minimising their involvement with the criminal justice system. It can also include identifying defendants who may be mentally ill, and therefore taken to a mental health facility under s.33 of the *MH(FP)A*.

The service also aims to ensure that people with mental health conditions have access to psychiatric and psychological treatment and can link them with appropriate psychiatric services in prisons, hospitals or in the community.

The SCCLS services 22 courts in metropolitan and regional areas, including:

- Bankstown
- Blacktown
- Burwood
- Campbelltown
- Central Sydney
- Coffs Harbour
- Downing Centre
- Dubbo
- Gosford
- Kempsey
- Lismore
- Liverpool
- Milton/Nowra
- Parramatta
- Penrith
- Port Macquarie
- Sutherland
- Tamworth
- Wagga Wagga
- Wollongong
- Wyong

Currently (as at December 2020), SCCLS is conducting a pilot to expand the service to Aboriginal people in rural and remote communities. The aim is to provide diversion services to Aboriginal people appearing before Broken Hill, Forbes and Parkes Local Courts. The Dubbo clinical consultant nurse can conduct mental health assessments via audio-visual link with eligible defendants at these courts.

### **Eligibility criteria**

To be eligible for referral to the SCCLS, a defendant must be:

- 18 years or over;
- Charged with an offence(s) that can be dealt with summarily; and
- Have a mental illness, mental disorder, cognitive impairment, or suspected to have a mental health condition.

### **Referral process**

Referrals can be made directly to the Court Liaison Officer, who is usually on-site at Court. Referrals to the SCCLS can be made by the following people or services:

- Self-referrals;
- Family and carers;

- Magistrates;
- Court personnel;
- Legal practitioners (private and legal aid);
- Corrective Services NSW;
- Court welfare services and disability services;
- Forensic medical officers and nurses from Justice Health & Forensic Mental Health Network;
- Non-government organisations; or
- Community treatment providers including Local Health Districts.

### **Services provided by SCCLS**

The services provided by the SCCLS can include:

- The clinical nurse consultant provides a triage and screening service for newly arrested custodies, remand and out of custody referrals
- Psychiatric assessment for possible mental illness or mental disorder. This may include individuals with co-morbid drug/alcohol issues, intellectual disabilities and acquired brain injury
- Assessment for the likelihood of the need for psychiatric treatment, management, follow up and care options
- Providing advice to the court to prioritise mentally ill individuals for psychiatric treatment in the community, prison and hospital system
- Assistance in the development of conditions for various community-based court orders, including treatment or support plans

The relevant information will be placed in a Court report, addressed to the Magistrate. Depending on the purpose and urgency of the report, it can be prepared on the same day or a future court date. Where appropriate, a clinic nurse consultant may provide the Magistrate with an oral report in court.

Where a report is requested for a future date for a defendant already in custody, the clinical nurse consultant may arrange an assessment by audio-visual link. An adjournment for this purpose should account for the time required for this to occur.

If a defendant remains in custody, the Court Liaison Officer will arrange a referral to the Justice Health & Forensic Mental Health Network, Mental Health Services, within the custodial environment.

**Further information and contact details for the SCCLS Head Office and local SCCLS offices can be found in the attached brochure.**

## Justice Advocacy Service (JAS) /

## Intellectual Disability Rights Service (IDRS)

The Justice Advocacy Service (JAS) is a service run by the Intellectual Disability Rights Service (IDRS).

JAS supports young people and adults with cognitive impairment in contact with the NSW criminal justice system, including as victims, witnesses and suspects/defendants to exercise their rights and fully participate in the process. The service is available across NSW including in rural, regional and remote areas.

JAS aims to use an individual advocacy approach by arranging a support person to be with victims, witnesses and suspects/defendants when they are in contact with police, courts and legal representatives. This help is to ensure that people with cognitive impairment understand legal advice, court orders and their obligations.

### Eligibility criteria

JAS is available to victims, witnesses and suspects/defendants in contact with the NSW criminal justice system who may have a cognitive impairment. A potential client **does not need to provide evidence of cognitive impairment** to access the service.

As per the *Mental Health (Forensic Provisions) Act 1990* cognitive impairment includes any of the following:

- intellectual disability;
- borderline intellectual functioning;
- dementia;
- acquired brain injury;
- drug or alcohol related brain damage, including foetal alcohol spectrum disorder; or
- autism spectrum disorder.

### Referral process

A referral to JAS can be made at any stage by a legal representative, correctional officer, court or police. There does not need to be a current criminal charge for a client to be referred.

A referral can be made by emailing a completed Intake Form to [intakeJAS@idrs.org.au](mailto:intakeJAS@idrs.org.au).

A referral can also be made by calling JAS on 1300 665 908 or using the online form at <https://idrs.org.au/jas/jas-online-referral/>

### Services provided

Once a referral is made, JAS can arrange for a trained 'advocate' or volunteer to attend Court to support the client with cognitive impairment. The advocate or volunteer can also support the client during legal conferences and appointments with Community Corrections.

JAS is also available to provide support for clients on the phone, for example, for legal conferences conducted over the phone.

Depending on each client's needs, JAS advocates and volunteers are able also to make referrals to other IDRS services such as the NDIS Appeals team and other external service providers.

Further information and contact details for the IDRS can be found in the attached brochure.

## Drug Court

The Drug Court of NSW is a specialist court that attempts to address underlying drug dependency which has resulted in criminal offending.

The Drug Court sits at the Downing Centre, Parramatta and Toronto, and is available in three areas:

- City of Sydney;
- Sydney West and South Western regions; and
- the Hunter region.

### Which District and Local Courts must make referrals?

The following Courts are referring Courts:

The **District Court** at Campbelltown, East Maitland, Newcastle, Parramatta, Penrith, and Sydney.

The **Local Court** at Bankstown, Belmont, Blacktown, Burwood, Campbelltown, Central, Cessnock, Downing Centre, Fairfield, Kurri Kurri, Liverpool, Maitland, Mount Druitt, Newcastle, Newtown, Parramatta, Penrith, Raymond Terrace, Toronto, Waverley and Windsor.

### Eligibility criteria

There are six basic eligibility criteria, as set out in section 5 of the *Drug Court Act 1998*:

- 1) Offences involving violent conduct (unless it is minor), sexual assault, or strictly indictable supply drugs charges cannot be referred to the Drug Court, but all other offences can be.
- 2) The person has pleaded guilty or indicated an intention to plead guilty;
- 3) It is highly likely that, if convicted, the person would serve a sentence of full-time imprisonment;
- 4) The person appears to be dependent on the use of prohibited drugs;
- 5) The person's usual place of residence is within the Local Government Areas of Canterbury-Bankstown, City of Blacktown, City of Campbelltown, City of Cessnock, City of Fairfield, City of Hawkesbury, City of Lake Macquarie, City of Liverpool, City of Maitland, City of Newcastle, City of Parramatta, City of Penrith, City of Sydney, Cumberland, Port Stephens and The Hills Shire;
- 6) The person is at least 18 years of age.

### Referral process

Those **referring courts have a duty** to:

- Ascertain whether the person appears to be an **eligible** offender;

- Ascertain whether the person is **willing** to be referred to the Drug Court to be dealt with for the offence;
- And if so, **refer** the person to the Drug Court.

As the number of referrals each week may exceed the number of Drug Court Program places available, a ballot is held to determine who can be referred from the District or Local Court to the Drug Court. The ballot for Parramatta and Sydney Drug Courts is held at 1pm on Thursdays, and for Toronto at 1pm on Mondays.

The steps for referring an offender are:

- 1) An eligible offender may be identified on any day of the week, so the Judge or Magistrate at the referring Court should direct that the offender be “*referred to Drug Court Ballot*” and adjourn the matters, for mention only, to the next available ballot day. At this stage the matters remain at the referring court. Bail is dealt with in the usual way.
- 2) The Court Officer will then ring the Drug Court registry for the Drug Court closest to where the offender resides - some details are provided, and the offender is placed in the ballot. The relevant Drug Court registry must receive the offender’s details not later than 3.30pm on the working day before the ballot day.
- 3) After the ballot has been conducted at 1pm on ballot day, the Drug Court registry will fax a message to the referring Court notifying as to whether the offender was successful in the ballot or not.
- 4) If the offender was successful, the offender’s charges should be adjourned to the Drug Court at the location and on the day specified in the fax message. Bail is determined in the usual way.

If the offender was UNSUCCESSFUL in the ballot, then the matters remain in the District or Local Court to be finalised there.

### Contact details

- Registry Parramatta                      02 8688 4525
- Registry Toronto                         02 4935 8338
- Registry Sydney                         02 9287 7305

## Compulsory Drug Treatment Correctional Centre (Drug Court)

The Compulsory Drug Treatment Correctional Centre at Parklea provides compulsory treatment and rehabilitation for recidivist male drug offenders. Prisoner entry is achieved by the referral of apparently eligible prisoners to the Drug Court for the making of a Compulsory Drug Treatment Order “CDTO”.

### Which Local Courts must make referrals?

The following Local Courts are referring Courts:

Bankstown, Blacktown, Burwood, Camden, Campbelltown, Central, Downing Centre, Fairfield, Hornsby, Liverpool, Manly, Mt Druitt, Newtown, Parramatta, Penrith, Sutherland, Waverley and Windsor.

Those Local Courts have a **duty** to ascertain “as soon as practicable” after a person is sentenced to imprisonment as to whether there are grounds upon which the Drug Court **might** find the person to be an “eligible convicted offender”. If the sentencing court is of that view, then the sentencing court **must** refer the person to the Drug Court, which will then determine if the prisoner is eligible and suitable for a CDTO.

A plea of guilty is **not** required, nor is consent, and neither the prosecution nor the offender has a right to object to referral. The “recidivism” requirement regarding prior convictions in the last five years has been removed from the legislation.

### Eligibility criteria

There are a number of basic criteria that must be met for eligibility. The sentencing court should consider the following:

1. Must be a male over 18 years of age;
2. The person has been sentenced to a term of full time imprisonment, and, at the time of sentence, the **unexpired** non-parole period is at least 18 months, and the **unexpired** total sentence is not more than 6 years;
3. A person is not an eligible convicted offender if the offence for which the person has been convicted involved the use of a firearm or if the person has been convicted at any time of an offence involving the violent use of a firearm;
4. The person must **not** have been convicted at **any** time of some specified offences. These include murder, attempt murder, manslaughter, sexual assault of an adult or child, or a sexual offence involving a child, or offences involving the supply or manufacture of a commercial quantity of a prohibited drug;
5. The person’s usual place of residence must be within the broader Sydney region, extending as far as the Hawkesbury, Hornsby, Northern Beaches, Sutherland, Camden and Penrith Local Government Areas;
6. The matter is not within the Children’s Court’s jurisdiction and the person must be over 18 years of age.

The following eligibility criteria will be considered at the Drug Court:

7. The person has a long-term dependency on the use of prohibited drugs;
8. The facts of the offence for which the person has been sentenced, together with his antecedents, indicate that the offence was related to the person's long-term drug dependency and associated lifestyle;
9. The person must not suffer from a mental illness or disorder that is "serious" or "leads to the person being violent", and the illness or condition could prevent or restrict the person's active participation in a drug treatment program.

### **Referral process**

As soon as practicable after sentencing an apparently eligible offender the court file should be endorsed "*referred to Drug Court – CDTCC referral*". The Local Court Registrar will then have a responsibility to immediately forward the court file to the Registrar of the Drug Court.

### **New and further sentences**

All sentencing courts will have a duty to refer to the Drug Court offenders who are convicted and sentenced to a new sentence while on a current CDTO, providing the new sentence is concurrent or partly concurrent with the sentence grounding the CDTO. The Drug Court may then vary the CDTO so as to apply it to the new sentence or revoke the CDTO.

### **Contact details**

- Parramatta Drug Court Registry - 8688 4525