

PROBLEM SOLVING



What is Problem Solving?

This document describes the Problem Solving Process at the NJC that is used to assist people with charges in the Criminal Division of the Magistrates' Court. Problem Solving is a voluntary out-of-court process, designed to assist people to address the underlying causes of their offending and obstacles they are experiencing in their progress through the justice system.

The key event in this process is a structured meeting convened by an independent facilitator. The process provides full protection of a referred person's legal rights. It is inspired by therapeutic jurisprudence principles and "the fundamental hypothesis that people are happier, more cooperative and more likely to make positive changes in behaviour when authorities do things with them, rather than to them or for them"¹.

This process has been operating at the Neighbourhood Justice Centre (NJC) since 2007 and is most suited to people who have a range of co-existing psychosocial issues and who are at high risk of serving a custodial sentence.

Who can use Problem Solving?

Any person who has matters listed in the NJC Court can access Problem Solving, including:

- an accused person in a criminal case (adult or children's jurisdiction)
- an offender who has been found guilty and sentenced to a community-based disposition, or upon release from custody.

To be eligible, a person must have the capacity to participate in the process, that is, to meet a threshold of personal stability that would allow them to take part meaningfully in Problem Solving. In general, Problem Solving is not used where an accused person is pleading not guilty.

Who can request Problem Solving?

The following people can request Problem Solving:

- a person who has court matters listed, their legal representative, family member, support person or community elder
- the Magistrate
- a social service or community worker or other professional supporting the referred person
- police, Community Corrections or Youth Justice staff

The referred person's consent (permission) is essential for any referral. Where a person's matters are pre-sentence, the request for a referral to Problem Solving usually occurs in Court via the Magistrate. Post-sentencing, people are often referred directly to the convenor or during Judicial Monitoring sittings.

Which kinds of issues are suited to Problem Solving?

Where there are underlying issues, or where there are obstacles standing in the way of a person making progress through the justice system, Problem Solving can be useful.

When can Problem Solving be used?

Problem Solving generally happens around the time of bail hearings, during an adjourned period or prior to sentencing. It can also be conducted after a person is sentenced where problems arise in their undertaking of a Community Corrections Order. A Problem Solving meeting (PSM) may occur just once, or there may be a series of meetings, depending on the situation. A member of a Problem Solving group may request the group re-convene for additional meetings if needed.

How is a Problem Solving meeting organised?

Once the convenor receives a referral to Problem Solving, he or she arranges an assessment with the referred person in the presence of the person's legal representative. At assessment, the referred person is informed about the process and assessed as to his or her ability to understand and undertake Problem Solving. The referred person and his or her legal representative are then invited to discuss the referral in private before informing the convenor whether or not they'll proceed.

Once advised that a referred person wishes to proceed with Problem Solving, the convenor arranges and facilitates the Problem Solving Meeting and the follow-up.

Who attends a Problem Solving meeting?

Attendance at PSMs is arranged with the agreement of all parties and the referred person's consent. The referred person, their legal representative and support person(s) attend, along with any relevant professional, such as a social or community worker, a Corrections or Youth Justice worker. A member of Victoria Police involved in the case may also be invited to participate.

What happens at the PSM?

At the PSM, the parties come together and the convenor facilitates the meeting using plain language. The meeting follows procedural principles similar to those used in a restorative justice conference. The referred person is invited to speak about the problem he or she is facing. Other group members contribute and discussion leads towards the development of realistic, achievable options to assist the referred person. The options are considered and, where possible, agreed upon by the group. All parties are provided with a copy of the outcomes at the meeting's completion.

What happens after the PSM?

After the PSM the convenor reports back to the Court on the outcomes of the meeting, including a short statement of the main problem, the options agreed to and a brief comment on how the meeting went. All parties must agree to what is reported to the Court. Other than the report, nothing said at the meeting is reported back to the Court unless the Court grants leave in exceptional circumstances or all parties consent.

What are the benefits?

Problem Solving:

- provides a more informed context for magistrates' decision-making and a tool for judicial monitoring
- can act as a "circuit breaker" and motivator to help people confront and change persistent patterns of behaviour
- strengthens relationships between the Court, justice agencies and community services
- is an opportunity to explore issues and options related to a person's court matters, through a structured group process
- assists people to access relevant services and supports to change their behaviour
- helps build the referred person's problem-solving and decision-making skills
- generates a set of concrete, plain language actions that can be enacted without delay
- builds unity and consistency among parties to the process

How do PSMs differ from case conferencing, restorative justice and mediation?

Problem Solving Meeting (Action-oriented)	A meeting of the referred individual, their legal representative, relevant service providers, family/supporters. Aims to address the underlying causes of the referred person's offending and current obstacles the person is experiencing in their progress through the justice system.
Case conferencing (Decision-oriented)	A meeting of service providers, sometimes with the client and family or supporters present (although this is not usually required). The aim is to coordinate services across providers and to reduce duplication.
Restorative justice (Relationship-oriented)	Any process that seeks primarily to address or repair the harm caused by an incident or offence. Parties are usually a perpetrator(s) and a victim(s).
Mediation (Resolution-oriented)	A meeting of parties who are in dispute and are seeking to reach a mutually accepted agreement, with the assistance of a neutral mediator.

Case Study One²

“Dinh” came to Australia from Vietnam as an unaccompanied minor, having spent two years in a refugee camp. He had a lengthy history of offending, mainly for drug offences, and had received numerous community corrections orders and suspended sentences, none of which had been successfully completed.

He appeared at the NJC charged with possessing heroin, but his initial attendance at meetings with support services was sporadic and his compliance with treatment was poor. Dinh’s lawyer referred him to Problem Solving. An assessment by a mental health clinician was arranged. A Problem Solving meeting was delayed for two months while Dinh received treatment and his health stabilised.

During the two-hour PSM, Dinh spoke about an overwhelming sense of personal failure, having failed to achieve what so many other Vietnamese migrants had achieved since arriving in Australia. He wanted to break out of the pattern in which feelings of failure led him to use drugs in an effort to forget his problems.

He gave a commitment that when disturbing thoughts and feelings occurred, he would take them to professionals who could help him, and follow their advice.

Parties to the PSM also agreed on a support and communication strategy for Dinh. When he returned to Court, Dinh received an 18-month Community Based Order with 100 hours of community work. He requested a follow-up PSM after sentencing, as he said he liked that way of working. He completed his community work four months early and during Judicial Monitoring Magistrate Fanning described his progress as “exceptional”. Dinh completed his order and has not reoffended since.

Notes

¹ McCold, T and Wachtel, P, From Restorative Justice to Restorative Practices: Expanding the Paradigm, 2004

² Evaluation of the Neighbourhood Justice Centre: Final Report, Dec 2009, p.205

³ Victoria Legal Aid Lawyer, 2009

⁴ A CBO is a Community Based Order, now referred to as a Community Correction Order (CCO). A CCO is a sentence served in the community rather than in prison.

Case Study Two³

I have a young client with complex needs. He had a range of charges. The Magistrate deferred his sentence. My client didn’t engage well with services – he was willing to talk but not to follow through. During his deferral he had a Problem Solving Meeting. The experience of having so many people around the table, all working with him, rather than telling him what to do, had a profound impact on him. From memory, he said, ‘I’ve never had so many people put so much into me’. He realised that maybe he could change his situation.

He was sentenced to a CBO⁴ and I saw him improve over a 6-8 month period. Despite a recent medical diagnosis, he has kept it together and is much more stable now. Before, he would have fallen apart. He’s proactive and motivated now. He wants to engage with a financial counsellor to do some family financial planning. He now recognises the need for structure in his life, with time for his kids and partner. This is a big change as previously his life was in chaos. He’s sustained his improvements. It’s nice to see people effect change with enough support. We may have broken the wheel that he’s been on.