# Indictable Criminal Law Checklist

## Use this checklist for:

* Representing a client in an indictable criminal law matter in the Local, District or Supreme Court of New South Wales

**Using this checklist:**

* Write client’s full name, Legal Aid File/ID number and CJEP/CAN/JusticeLink Number
* Print and attach to all indictable criminal law files
* Complete the checklist as the matter progresses

**Purpose of checklist:**

Completing this checklist fully and accurately will help:

* Demonstrate that you have met the duties of competence and standard of care expected of a lawyer acting for a legally aided client in indictable criminal law matters
* Demonstrate that you have met Legal Aid’s expectations of practitioners undertaking legally aided work, articulated in the [Quality Standards](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0012/41511/Quality-Standards.pdf)
* Another solicitor in the event they need to quickly identify the progress you have made with this matter
* If you are audited by Legal Aid

## Note:

* This tool is designed as a prompt only. It does not proscribe how an indictable criminal law matter should be conducted and is not exhaustive
* This document could potentially be considered a client document and provided to the client upon request (rule 14 Australian Solicitors’ Conduct Rules) or as a result of a GIPA request

## Non-Complex Matters

## Part One- Committal Proceedings

## Step One- Conference the Client

| **Task** | **Details/Date Done** |
| --- | --- |
| Open and retain a file for the client with copies of:* Court Attendance Notices
* Police Facts
* Criminal history of the accused and main civilian witnesses in the case
* ERISP
* Custody records
 |  |
| Conference the client, obtain financial verification of income and assets  |  |
| Conduct a conflict check |  |
| Obtain instructions from the client:* and give advice about the law, the defences and partial defences that may be available, the benefits of an early plea of guilty, maximum penalties, whether there is a Standard Non-Parole Period and the legal process and procedure
* including personal history, medical history, psychiatric diagnoses, admissions to psychiatric hospitals, psychological assessments, drug and alcohol history, attempts at rehabilitation, family background and immigration status
* if he or she intends to plead guilty
 |  |
| Advise the client:* of the strengths and weaknesses of the Crown case
* about strictly indictable charges, Table 1 and Table 2, and the consequences of an election
* of defences, penalties and pleas, and prospects of negotiating an alternative charge
 |  |
| Keep the client well informed of the progress of the matter including speaking to the client before each court mention. Give realistic advice about the brief service orders, depending on the nature of the evidence the brief is expected to contain.  |  |
| Determine if there is an issue of Fitness to Stand Trial, a defence of “Not Guilty Mental Illness,” or an intellectual disability requiring assessment by a psychiatrist or psychologist and seek approval from Legal Aid NSW to arrange such assessments. The report of the psychiatrist or psychologist may need to be served on the DPP; however, counsel briefed in the matter should be consulted before service |  |
| Obtain signed authorities to release copies of reports from e.g. Justice Health, and community health centres |  |

## Step Two- Obtain a Grant of Legal Aid

| **Task** | **Details/Date Done** |
| --- | --- |
| Make an application for a grant of legal aid on the client’s behalf |  |
| If required, advise the client in writing that the matter has been assigned, the terms of the grant of aid and the next court date  |  |

## Step Three- Briefing Counsel for Committal

| **Task** | **Details/Date Done** |
| --- | --- |
| Prior to briefing counsel for Committal, consider whether to enter into any preliminary negotiations with DPP with respect to alternative charges and/or jurisdiction |  |
| Contact the Clerk of Chambers immediately following receipt of the grant letter to ascertain the availability of a Public Defender |  |
| If a Public Defender is not available, retain a copy of the Non-acceptance of Brief Form on the file |  |
| If a Public Defender is not available, the lawyer will brief Junior Counsel on the Indictable Criminal Barrister Panel |  |
| Promptly provide briefs and instructions to Counsel in writing, including where practicable the following legible documents:(i) A back sheet; (ii) an index of documents contained in the brief; (iii) observations on the facts to Counsel sufficient to assist Counsel in appreciating the issues, and the background of the matter; (iv) such other observations as the lawyer may regard as being useful to Counsel; (v) a copy of the charge certificate; (vi) client’s instructions;(vii) criminal history of the client; (viii) medical and expert reports (both Crown and defence reports); (ix) statements of Crown witnesses; (x) statements of defence witnesses; (xi) transcript of Local Court proceedings; and (xii) copies of any subpoenas issued |  |
| Ensure that the original brief along with any additional material served throughout the proceedings are sent to Counsel as soon as they are received |  |
| Promptly reassign the Grants Online invoice for Counsel’s fees to Counsel, to enable Counsel to claim his or her fees directly from Legal Aid NSW |  |

Step Four- Case Conferencing- Conference the Client

| **Task** | **Details/Date Done** |
| --- | --- |
| Advise the client:* on the objectives of case conferencing contained in s70 of the *Criminal Procedure Act 1986*
* on the procedure for the initial case conference and any subsequent case conference
* that any offers made by the defence or the prosecution during the case conference will be recorded on a case conference certificate
* that matters specified in a case conference certificate are to be treated as confidential
 |  |
| Obtain instructions from the client concerning matters to be dealt with in the case conference prior to participating in the case conference |  |

Step Five- Attendance at Case Conference

| **Task** | **Details/Date Done** |
| --- | --- |
| Comply with the principles set out in the current version of the Best Practice Guide to Case Conferencing co-authored by Legal Aid NSW, the NSW Office of the Director of Public Prosecutions and the Commonwealth Director of Public Prosecutions |  |
| Ensure that: * You are sufficiently familiar with the matter and the case conferencing processes and procedures to be able to properly advocate for the client at the case conference
* You maintain a record on file of the name of any person who attends the case conference
 |  |
| Prior to the completion and filing of the case conferencing certificate advise the client, or ensure that Counsel advises the client where Counsel is briefed, of:(i) The effect of the case conferencing scheme to the sentencing discount applied under Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for a plea of guilty to an offence(ii) The penalties applicable to the offences certified in the charge certificate and to any other offences the subject of offers made on behalf of the client or by the prosecutor in the committal proceedings(iii) The effect on the applicable penalty if any such offence is accepted or rejected, including the effect of acceptance at different stages of the proceedings for the offence |  |
| When submitting the claim to the Grants Division for attendance at the case conference the lawyer must complete the case conference outcome form  |  |
| Obtain signed instructions from the client if he or she intends to plead guilty, these should be obtained prior to arraignment |  |

##

## Part Two- District Court Trial Proceedings

## Step One- Preparation

| **Task** | **Details/Date Done** |
| --- | --- |
| Obtain all relevant prosecution evidence including the Indictment, the full brief of evidence including post-mortem reports, results of forensic investigations, other expert reports and the client’s criminal record |  |
| After obtaining approval from the Grants Division obtain any necessary expert report on behalf of the client |  |

## Step Three- Briefing Counsel for Trial- District Court

| **Task** | **Details/Date Done** |
| --- | --- |
| At the conclusion of the committal proceedings, wherever possible that counsel briefed at committal, whether a Public Defender or private counsel, will continue to be briefed for the trial and or sentence proceedings |  |
| Ensure that Counsel is briefed prior to the arraignment |  |
| If the lawyer was not assigned the matter for the committal proceedings, or if Counsel was not briefed at the committal, contact the Clerk of Chambers immediately following receipt of the grant letter to ascertain the availability of a Public Defender |  |
| If a Public Defender is not available, retain a copy of the Non-acceptance of Brief Form on the file and brief private Junior Counsel on the Indictable Criminal Barrister Panel |  |
| Promptly provide briefs and instructions to Counsel in writing, including where practicable the following legible documents:(i) A back sheet; (ii) an index of documents contained in the brief; (iii) observations on the facts to Counsel sufficient to assist Counsel in appreciating the issues, and the background of the matter; (iv) such other observations as the lawyer may regard as being useful to Counsel; (v) a copy of the charge certificate; (vi) client’s instructions;(vii) criminal history of the client; (viii) medical and expert reports (both Crown and defence reports); (ix) statements of Crown witnesses; (x) statements of defence witnesses; (xi) transcript of Local Court proceedings;(xii) copies of any subpoenas issued; and(xiii) copy of the Case Conferencing certificate  |  |
| Ensure that the original brief along with any additional material served throughout the proceedings are sent to Counsel as soon as they are received |  |
| Ensure Counsel advises the client as to the benefits of an early plea pursuant to s 22 of *Crimes Sentencing Procedure Act 1999* |  |
| Promptly reassign the Grants Online invoice for Counsel’s fees to Counsel, to enable Counsel to claim his or her fees directly from Legal Aid NSW |  |

Step Four- Court Appearances- District Court

| **Task** | **Details/Date Done** |
| --- | --- |
| Comply with any relevant Practice Notice issued by the Chief Judge |  |
| Ensure that:* Any lawyer (or clerk in exceptional circumstances) that appears is sufficiently familiar with the case and the duties of an instructing lawyer and be competent to carry out the functions of an instructing lawyer
* You maintain a record on file of the name of any person who attends court on your behalf or as their agent, including dates and times they instructed Counsel
* The client and the court are not disadvantaged by the delegation to another lawyer or agent
 |  |

Step Five- Instructing Counsel at Trial- District Court

| **Task** | **Details/Date Done** |
| --- | --- |
| Order a transcript of trial proceedings on the prescribed application. Legal Aid NSW will not fund the cost of obtaining the transcript. Lawyers can make an application to the Court Reporting Service for the transcript by way of a brief letter setting out the fact that the accused is indigent, legally aided and that a transcript is necessary to prevent procedural unfairness |  |
| Take proper notes, and record exhibits; so that those exhibits can be easily identified, when required |  |
| Provide Counsel with copies of witnesses’ statements, when Counsel is cross-examining. Arrange defence witnesses and otherwise assist counsel as required |  |
| Respond to the advice of Counsel in a timely manner including advice as to the preparation of the case |  |

## Part Three- District Court Sentence Proceedings

## Step One- Obtain a Grant of Legal Aid

| **Task** | **Details/Date Done** |
| --- | --- |
| Make an application for a grant of legal aid or an extension for sentence funding on the client’s behalf |  |
| Ensure the matter is ready to proceed and that a grant of aid has been formally approved before setting it down for sentence  |  |
| Ensure compliance with Chief Judge’s Practice Note 20 on Sentence Proceedings throughout sentence proceedings |  |

## Step Two- Conference with the Client

| **Task** | **Details/Date Done** |
| --- | --- |
| Obtain prior instructions. Have the client sign their instructions |  |
| Read to the client, or have them read, the agreed facts |  |
| Advise the client on the law, procedure and practice that applies to their case, including the potential penalties  |  |
| Obtain a personal history from the client, including medical history, psychiatric diagnoses, psychological assessments, drug and alcohol history, attempts at rehabilitation, family background, and immigration status (see Appendix A) |  |

## Step Three- Preparation

| **Task** | **Details/Date Done** |
| --- | --- |
| Advise the Court in advance if the facts are in dispute  |  |
| Consider the discount that may be applied for a guilty plea (s 22 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) |  |
| Obtain an up to date criminal history  |  |
| Obtain a current custodial history report  |  |
| Consider whether any reports which will assist the court sentence the client will be beneficial or useful. In deciding this issue, consider the client’s criminal record, any previous breaches of parole, bond, and community service orders. Consider the current offence and whether a non-custodial sentence is likely or possible |  |
| Prepare a chronology  |  |
| Obtain previous reports including pre-sentence reports, sentencing assessment reports and juvenile background reports |  |
| Determine what material needs to be tendered on sentence for the client and:* If possible, obtain past psychologist or psychiatrist reports; or
* Obtain approval from the Grants Division to obtain new psychologist or psychiatrist report
* Obtain a fresh psychologist or psychiatrist report
 |  |
| GIPA information as required  |  |
| Consider the status of any co-accused |  |
| Calculate the pre-sentence detention at date of the sentence  |  |
| Consider if any standard non-parole periods apply  |  |
| Consider any victim impact statements  |  |
| Consider any assistance the client provided to authorities, and facilitate any assistance the client wishes to provide to authorities  |  |
| Consider any potential sentence consequences:* Victims compensation
* Child Protection Register
* Confiscation/pecuniary penalty
* Forfeiture/destruction
* Visa cancellation
* Parole
 |  |
| Make a preliminary assessment of the applicable aggravating and mitigating factors (s 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) |  |
| Consider calling character witnesses or obtaining written character references  |  |
| Consider if there is a need for a non-publication/suppression order |  |
| Collate comparable sentencing cases and statistical material  |  |
| Obtain any relevant guideline judgments  |  |
| Consider whether or not you are going to call evidence from the client  |  |
| Consider whether the principles in *Bugmy v The Queen* (2013) 249 CLR 571 and *R v Fernando* (1992) 76 A Crim R 58 apply |  |

## Step Four- Briefing Counsel

| **Task** | **Details/Date Done** |
| --- | --- |
| Contact the Clerk of Chambers to ascertain the availability of a Public Defender  |  |
| If a Public Defender is not available, retain a copy of the non-acceptance of brief form on the file |  |
| If a Public Defender is not available brief private Junior Counsel |  |
| Promptly provide instructions to counsel in writing, including where practicable, the following documents:1. A back sheet
2. An index of documents contained in the brief
3. Observations on the facts to counsel sufficient to assist counsel in appreciating the issues and the background of the matter
4. Such other observations as the lawyer may regard as being useful to counsel
5. Relevant legislation, statistics and cases
6. Charge certificate and case conference certificate
7. Client’s instructions
8. Criminal history of the client
9. Medical and export reports
10. Copies of any subpoenas issued
11. Case Conferencing certificate
12. Copy of agreed facts
 |  |
| Promptly reassign the Grants Online invoice for counsel’s fees to counsel, to enable counsel to claim his or her fees directly from Legal Aid NSW |  |

## Step Five- The Sentence Proceedings

| **Task** | **Details/Date Done** |
| --- | --- |
| Ensure that the court attendance is noted on the file with:1. Coram
2. Date and venue of court appearance
3. The name of the lawyer and the name of counsel appearing on behalf of the legally aided person
4. Details of other parties’ representative/s
5. Summary of any orders or directions made
6. Start and finish time/s of court attendance
7. The date proceedings have been adjourned to or the outcome of the matter
 |  |
|  Make notes of the submissions made  |  |

## Step Six- After the Sentence

| **Task** | **Details/Date Done** |
| --- | --- |
| Speak to the client immediately and confirm they understand the proceedings and the outcome |  |
| Speak to the client about parole if relevant  |  |
| Advise on appeal prospects and, if appropriate, take instructions on an appeal  |  |
| Once a matter has finalised, submit a File Outcome to the Grants Division |  |

## Complex Matters

## Part One- Committal Proceedings

## Step One- Conference the Client

| **Task** | **Details/Date Done** |
| --- | --- |
| Open and retain a file for the client with copies of:* Court Attendance Notices
* Police Facts
* Criminal history of the accused and main civilian witnesses in the case
* ERISP
* Custody records
 |  |
| Conference the client, obtain financial verification of income and assets  |  |
| Conduct a conflict check |  |
| Obtain instructions from the client:* and give advice about the law, the defences and partial defences that may be available, the benefits of an early plea of guilty, maximum penalties, whether there is a Standard Non-Parole Period and the legal process and procedure
* including personal history, medical history, psychiatric diagnoses, admissions to psychiatric hospitals, psychological assessments, drug and alcohol history, attempts at rehabilitation, family background and immigration status
* if he or she intends to plead guilty
 |  |
| Advise the client:* of the strengths and weaknesses of the Crown case
* about strictly indictable charges, Table 1 and Table 2, and the consequences of an election
* of defences, penalties and pleas, and prospects of negotiating an alternative charge
 |  |
| Keep the client well informed of the progress of the matter including speaking to the client before each court mention. Give realistic advice about the brief service orders, depending on the nature of the evidence the brief is expected to contain |  |
| Determine if there is an issue of Fitness to Stand Trial, a defence of “Not Guilty Mental Illness,” a partial defence of Substantial Impairment or an intellectual disability requiring assessment by a psychiatrist or psychologist and seek approval from Legal Aid NSW to arrange such assessments. The report of the psychiatrist or psychologist may need to be served on the DPP; however, counsel briefed in the matter should be consulted before service |  |
| Obtain signed authorities to release copies of reports from e.g. Justice Health, and community health centres |  |

## Step Two- Obtain a Grant of Legal Aid

| **Task** | **Details/Date Done** |
| --- | --- |
| Make an application for a grant of legal aid on the client’s behalf |  |
| Advise the client in writing that the matter has been assigned, the terms of the grant of aid and the next court date  |  |

## Step Three- Briefing Counsel for Committal

| **Task** | **Details/Date Done** |
| --- | --- |
| Prior to briefing counsel for Committal, consider whether to enter into any preliminary negotiations with DPP with respect to alternative charges and/or jurisdiction |  |
| Contact the Clerk of Chambers immediately following receipt of the grant letter to ascertain the availability of a Public Defender |  |
| If a Public Defender is not available, retain a copy of the Non-acceptance of Brief Form on the file |  |
| If a Public Defender is not available, the lawyer will brief Junior Counsel on the Complex Criminal Barrister Panel |  |
| Promptly provide briefs and instructions to Counsel in writing, including where practicable the following legible documents:(i) A back sheet; (ii) an index of documents contained in the brief; (iii) observations on the facts to Counsel sufficient to assist Counsel in appreciating the issues, and the background of the matter; (iv) such other observations as the lawyer may regard as being useful to Counsel; (v) a copy of the charge certificate; (vi) client’s instructions;(vii) criminal history of the client; (viii) medical and expert reports (both Crown and defence reports); (ix) statements of Crown witnesses; (x) statements of defence witnesses; (xi) transcript of Local Court proceedings; and (xii) copies of any subpoenas issued |  |
| Ensure that the original brief along with any additional material served throughout the proceedings are sent to Counsel as soon as they are received |  |
| Promptly reassign the Grants Online invoice for Counsel’s fees to Counsel, to enable Counsel to claim his or her fees directly from Legal Aid NSW |  |

Step Four- Case Conferencing- Conference the Client

| **Task** | **Details/Date Done** |
| --- | --- |
| Advise the client:* on the objectives of case conferencing contained in s70 of the *Criminal Procedure Act 1986*
* on the procedure for the initial case conference and any subsequent case conference
* that any offers made by the defence or the prosecution during the case conference will be recorded on a case conference certificate
* that matters specified in a case conference certificate are to be treated as confidential
 |  |
| Obtain instructions from the client concerning matters to be dealt with in the case conference prior to participating in the case conference |  |

Step Five- Attendance at Case Conference

| **Task** | **Details/Date Done** |
| --- | --- |
| Comply with the principles set out in the current version of the Best Practice Guide to Case Conferencing co-authored by Legal Aid NSW, the NSW Office of the Director of Public Prosecutions and the Commonwealth Director of Public Prosecutions |  |
| Ensure that:* You are sufficiently familiar with the matter and the case conferencing processes and procedures to be able to properly advocate for the client at the case conference
* You maintain a record on file of the name of any person who attends the case conference
 |  |
| Prior to the completion and filing of the case conferencing certificate advise the client, or ensure that Counsel advises the client where Counsel is briefed, of:(i) The effect of the case conferencing scheme to the sentencing discount applied under Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for a plea of guilty to an offence(ii) The penalties applicable to the offences certified in the charge certificate and to any other offences the subject of offers made on behalf of the client or by the prosecutor in the committal proceedings(iii) The effect on the applicable penalty if any such offence is accepted or rejected, including the effect of acceptance at different stages of the proceedings for the offence |  |
| When submitting the claim to the Grants Division for attendance at the case conference the lawyer must complete the case conference outcome form  |  |

## Part Two- District or Supreme Court Trial Proceedings

## Step One - Preparation

| **Task** | **Details/Date Done** |
| --- | --- |
| Obtain all relevant prosecution evidence including the Indictment, the full brief of evidence including post-mortem reports, results of forensic investigations, other expert reports and the client’s criminal record |  |
| After obtaining approval from the Grants Division obtain any necessary expert report on behalf of the client |  |

## Step Three- Briefing Counsel for Trial

| **Task** | **Details/Date Done** |
| --- | --- |
| At the conclusion of the committal proceedings, wherever possible that counsel briefed at committal, whether a Public Defender or private counsel, will continue to be briefed for the trial and or sentence proceedings |  |
| Ensure that Counsel is briefed prior to the arraignment |  |
| If the lawyer was not assigned the matter for the committal proceedings, or if Counsel was not briefed at the committal, contact the Clerk of Chambers immediately following receipt of the grant letter to ascertain the availability of a Public Defender |  |
| If a Public Defender is not available, retain a copy of the Non-acceptance of Brief Form on the file and brief private Junior Counsel on the Complex Criminal Barrister Panel |  |
| Promptly provide briefs and instructions to Counsel in writing, including where practicable the following legible documents:(i) A back sheet; (ii) an index of documents contained in the brief; (iii) observations on the facts to Counsel sufficient to assist Counsel in appreciating the issues, and the background of the matter; (iv) such other observations as the lawyer may regard as being useful to Counsel; (v) a copy of the charge certificate; (vi) client’s instructions;(vii) criminal history of the client; (viii) medical and expert reports (both Crown and defence reports); (ix) statements of Crown witnesses; (x) statements of defence witnesses; (xi) transcript of Local Court proceedings; and (xii) copies of any subpoenas issued(xiii) copy of the Case Conference certificate  |  |
| Ensure that the original brief along with any additional material served throughout the proceedings are sent to Counsel as soon as they are received |  |
| Ensure Counsel advises the client as to the benefits of an early plea pursuant to s 22 of *Crimes Sentencing Procedure Act 1999* |  |
| Promptly reassign the Grants Online invoice for Counsel’s fees to Counsel, to enable Counsel to claim his or her fees directly from Legal Aid NSW |  |

Step Four- Court Appearances

| **Task** | **Details/Date Done** |
| --- | --- |
| Comply with any relevant Practice Notes  |  |
| Ensure that:* You retain personal control over the conduct of the case, including responsibility for making forensic decisions such as the number and nature of witnesses to be called or cross examined
* The client and the court are not disadvantaged by the appearance of another lawyer or agent
* You maintain a record on file of the name of any person who attends court on their behalf or as their agent, including dates and times they instructed Counsel
 |  |

Step Five- Instructing Counsel at Trial

| **Task** | **Details/Date Done** |
| --- | --- |
| Order a transcript of trial proceedings on the prescribed application. Legal Aid NSW will not fund the cost of obtaining the transcript. Lawyers can make an application to the Court Reporting Service for the transcript by way of a brief letter setting out the fact that the accused is indigent, legally aided and that a transcript is necessary to prevent procedural unfairness |  |
| Take proper notes, and record exhibits; so that those exhibits can be easily identified, when required |  |
| Provide Counsel with copies of witnesses’ statements, when Counsel is cross-examining. Arrange defence witnesses and otherwise assist counsel as required |  |
| Respond to the advice of Counsel in a timely manner including advice as to the preparation of the case |  |

## Part Three- District or Supreme Court Sentence Proceedings

## Step One- Obtain a Grant of Legal Aid

| **Task** | **Details/Date Done** |
| --- | --- |
| Make an application for a grant of legal aid or an extension for sentence funding on the client’s behalf |  |
| Ensure the matter is ready to proceed and that a grant of aid has been formally approved before setting it down for sentence  |  |
| Ensure compliance with any sentence proceeding practice notes  |  |

## Step Two- Conference with the Client

| **Task** | **Details/Date Done** |
| --- | --- |
| Obtain prior instructions. Have the client sign their instructions |  |
| Read to the client, or have them read, the agreed facts |  |
| Advise the client on the law, procedure and practice that applies to their case, including the potential penalties  |  |
| Obtain a personal history from the client, including medical history, psychiatric diagnoses, psychological assessments, drug and alcohol history, attempts at rehabilitation, family background, and immigration status (see Appendix A) |  |

## Step Three- Preparation

| **Task** | **Details/Date Done** |
| --- | --- |
| Advise the Court in advance if the facts are in dispute  |  |
| Consider the discount that may be applied for a guilty plea (s 22 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) |  |
| Obtain an up to date criminal history  |  |
| Obtain a current custodial history report  |  |
| Consider whether any reports will be beneficial or useful. In deciding this issue, consider the client’s criminal record, any previous breaches of parole, bond, and community service orders. Consider the current offence and whether a non-custodial sentence is likely or possible |  |
| Prepare a chronology  |  |
| Obtain previous reports including pre-sentence reports, sentencing assessment reports and juvenile background reports |  |
| Determine what material needs to be tendered on sentence for the client and:* If possible, obtain past psychologist or psychiatrist reports; or
* Obtain approval from the Grants Division to obtain new psychologist or psychiatrist report
* Obtain a fresh psychologist or psychiatrist report
 |  |
| GIPA information as required  |  |
| Consider the status of any co-accused |  |
| Calculate the pre-sentence detention at date of the sentence  |  |
| Consider if any standard non-parole periods apply  |  |
| Consider any victim impact statements  |  |
| Consider any assistance the client provided to authorities, or facilitate any assistance the client wishes to provide authorities |  |
| Consider any potential sentence consequences:* Victims compensation
* Child Protection Register
* Confiscation/pecuniary penalty
* Forfeiture/destruction
* Visa cancellation
* Parole
 |  |
| Make a preliminary assessment of the applicable aggravating and mitigating factors (s 21A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) |  |
| Consider calling character witnesses or obtaining written character references  |  |
| Consider if there is a need for a non-publication/suppression order |  |
| Collate comparable sentencing cases and statistical material  |  |
| Obtain any relevant guideline judgments  |  |
| Consider whether or not you are going to call evidence from the client  |  |
| Consider whether the principles in *Bugmy v The Queen* (2013) 249 CLR 571 and *R v Fernando* (1992) 76 A Crim R 58 apply |  |

## Step Four- Briefing Counsel

| **Task** | **Details/Date Done** |
| --- | --- |
| Contact the Clerk of Chambers to ascertain the availability of a Public Defender  |  |
| If a Public Defender is not available, retain a copy of the non-acceptance of brief form on the file |  |
| If a Public Defender is not available brief private Junior Counsel |  |
| Promptly provide instructions to counsel in writing, including where practicable, the following documents:* A back sheet
* An index of documents contained in the brief
* Observations on the facts to counsel sufficient to assist counsel in appreciating the issues and the background of the matter
* Such other observations as the lawyer may regard as being useful to counsel
* Relevant legislation, statistics and cases
* Charge certificate and case conference certificate
* Client’s instructions
* Criminal history of the client
* Medical and export reports
* Copies of any subpoenas issued
* Copy of Case Conference certificate
* Copy of the Agreed Facts
 |  |
| Promptly reassign the Grants Online invoice for counsel’s fees to counsel, to enable counsel to claim his or her fees directly from Legal Aid NSW |  |

## Step Five- The Sentence Proceedings

| **Task** | **Details/Date Done** |
| --- | --- |
| Ensure that the court attendance is noted on the file with:1. Coram
2. Date and venue of court appearance
3. The name of the lawyer and the name of counsel appearing on behalf of the legally aided person
4. Details of other parties’ representative/s
5. Summary of any orders or directions made
6. Start and finish time/s of court attendance
7. The date proceedings have been adjourned to or the outcome of the matter
 |  |
|  Make notes of the submissions made  |  |

## Step Six- After the Sentence

| **Task** | **Details/Date Done** |
| --- | --- |
| Speak to the client immediately and confirm they understand the proceedings and the outcome |  |
| Speak to the client about parole if relevant  |  |
| Advise on appeal prospects and, if appropriate, take instructions on an appeal  |  |
| Once a matter has finalised, submit a File Outcome to the Grants Division |  |

## Annexure A

