# Summary Criminal Law Checklist

## Use this checklist for:

# Duty work

# Local Court defended hearings

# Local Court sentence matters

# District Court appeals

# Supreme Court bail

## Using this checklist:

* Insert the client’s full name, Legal Aid NSW File/ID number and CJEP/CAN
* Print this checklist and attach it to each Summary Criminal Law file
* Complete the checklist as the matter progresses
* Ensure compliance with Legal Aid NSW policy and guidelines, including the Duty Solicitor Scheme Guidelines and Back Up Duty Scheme Guidelines (as relevant)

## 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 practitioner acting in a Summary Criminal Law matter
* Demonstrate that you have met Legal Aid NSW 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 practitioner in the event they need to quickly identify the progress you have made with this matter
* If you are audited by Legal Aid NSW

## Note:

* This tool is designed as a prompt only. It does not proscribe how a 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

## Appendices

* At Appendix A you will find documents that may be of assistance when preparing for a Local Court defended hearing
* At Appendix B you will find documents that may be of assistance when preparing for a Local Court sentence

## Part One- Duty

## Step One - Attending the Court

| **Task** | **Details/Date Done** |
| --- | --- |
| On rostered list days the duty practitioner should arrive at the time required by the Duty Solicitor Scheme Guidelines or in accordance with the Back Up Duty Scheme Guidelines.  |  |
| Ascertain whether there are fresh custodies that require your attention. Priority should be given to clients in custody.  |  |

## Step Two - Conferencing Clients

| **Task** | **Details/Date Done** |
| --- | --- |
| Obtain the Facts Sheet and criminal record of the client from the police prosecutor, along with any other relevant documentation. |  |
| Complete a duty application form and have the client sign that form. If the client is in custody, the declaration should be read out to the client and you should write ‘I/C’ for In Custody in the signature form to show you have witnessed the client’s verbal acceptance of the declaration. Each form must be retained by the practitioner for Legal Aid NSW audit purposes |  |
| Read the police facts to the client and advise the client of:* The nature of the charge(s)
* The elements of each charge
* The maximum penalties for each charge
* The purpose of/reason for the proceedings today, and their possible outcomes
* obtain instructions on how the client wishes to plead to each charge
* advise on discounts for early pleas
* advise on diversionary programs such as MERIT which is pre-plea, or the Drug Court which has strict eligibility criteria and requires an indication of a plea of guilty (i.e. don’t have to formally enter PG for a referral to the ballot)
 |  |
| If your client is in custody, provide advice on the merits of a release/bail application and obtain instructions as necessary. |  |
| Consider your client and whether there are any issues of mental illness or developmental disability that need to be investigated – see s 32 and s 33 *Mental Health (Forensic Provisions) Act* |  |
| Advise the client remanded in custody of their rights to a bail review and to lodge a Supreme Court bail application when appropriate  |  |
| Where the client has been charged with an offence which is Strictly Indictable, explain the EAGP process to the client.Where your client is charged with a Table offence and an election by the ODPP seems likely, advise your client accordingly  |  |
| Ensure that the client is aware that they are receiving a duty service, and that they may apply for a grant of legal aid for a casework service if the matter is ongoing. Ensure client is aware of the need to provide verification. Get them to complete and sign the Centrelink authority on the duty form. |  |
| Submit a grant via Grants Online if one is required (for example, you have satisfied yourself that the matter is either a defended hearing, an EAGP matter, or a matter that requires any expenditure). (NB: If appearing as part of the Back Up Duty Scheme, you do not need to apply for a grant but should make a note on the file or duty form that a grant is required.) |  |
| Explain to the client what a grant of aid means, the basis of representation and the confidential nature of the lawyer/client relationship and need for verification  |  |
| In situations where a matter has been adjourned for plea/sentence and no expenditure is anticipated, the client should be asked for verification at court (if it is more convenient) or handed a request for verification. The application form should clearly mark that verification has been sighted and details should be recorded. If a written request has been handed to the client, this should be recorded |  |

## Step Three - Court Appearances

| **Task** | **Details/Date Done** |
| --- | --- |
| Duty practitioners must represent all clients who qualify for legal aid in the following matters:* Sentence hearings for State or Commonwealth summary matters and indictable matters which may be dealt with summarily
* Annulment applications
* Release applications, bail variations and detention applications
* Mentions and adjournments (including the entering of pleas of guilty or not guilty; and replies to brief mentions)
* Section 32 applications (or s20BQ Cth applications) where no expenditure is required.
 |  |

## Step Four - Appearing in EAGP Matters as an Agent

| **Task** | **Details/Date Done** |
| --- | --- |
| When requested by a Legal Aid NSW in-house practitioner to mention EAGP matters you must:* Confirm your availability in writing
* Retain any notes or relevant documents from the attendance
* Provide a written update to the Legal Aid NSW in-house practitioner with carriage of the matter within two business days of the mention
* Claim for this time as part of the Duty Solicitor Scheme via Grants Online.
 |  |

## Step Five - After a Duty Appearance

| **Task** | **Details/Date Done** |
| --- | --- |
| Record the outcome of the proceedings on the duty application  |  |
| Speak to the client immediately following the court appearance and confirm they understand the outcome. |  |
| Inform the client when a matter is not completed on the first appearance that verification of the client’s means is required on the next occasion  |  |
| Explain appeal rights and processes, advise on prospects and ensure that the client is aware that a separate application for legal aid for an appeal (if required) must be lodged  |  |
|  |  |
| Compile the client’s documents incorporating:* The duty application
* A copy of the facts
* A copy of the client’s record
* Notes of the client’s instructions
* Any other documents obtained from the client or the prosecutor at court
 |  |
| Where it is considered appropriate, write to the client confirming the outcome of proceedings, any future court dates and contact details for the practitioner or relevant Legal Aid NSW office  |  |
| Where approval has been given by Legal Aid NSW, maintain continuity in subsequent adjournments and appearances  |  |

## Step Six - After a Duty Day

| **Task** | **Details/Date Done** |
| --- | --- |
| If appearing as part of the Back Up Duty Scheme, ensure that all application forms and relevant documents are returned to the Legal Aid NSW office within three days of the duty appearance. Representations must also be drafted and provided with the file to the office.  |  |
| Submit duty invoices through Grants Online as soon as possible, preferably the same week of the duty appearance. |  |

## Part Two- Defended Hearings

## Step One - Obtain a Grant of Legal Aid

| **Task** | **Details/Date Done** |
| --- | --- |
| Obtain financial verification of income and assets from the client. |  |
| Open and retain a file for the client with copies of:* Verification documents
* Court Attendance Notices
* Police Facts
* Criminal history of the accused
* Brief of evidence
* Other relevant documentation
 |  |
| Submit an application for legal aid on the client’s behalf, giving appropriate consideration to the ‘Defended Hearing’ Policy 4.3.2 (is there a real possibility of a term of imprisonment being imposed if convicted, or are there exceptional circumstances?) |  |
| Ensure that a grant of aid has been formally approved. |  |
| Advise the client in writing of the hearing date. |  |

## Step Two - Preparation

| **Task** | **Details/Date Done** |
| --- | --- |
| Check the commencement date of the proceedings. Note that there is a time limit for commencing some summary prosecutions (s 179 of the *Criminal Procedure Act 1986* |  |
| Thoroughly read the sections of the *Crimes Act 1900* or any other act that the offence is brought against  |  |
| Be thoroughly familiar with the elements of the offence and request particulars if appropriate  |  |
| Consider what evidence may be inadmissible; prepare objections and grounds of the objections  |  |
| Prepare a chronology of important dates. These dates include the dates of the arrest, CAN, ERISP/statements of accused and witnesses  |  |
| Go on a view if this will assist. In appropriate cases, take photographs |  |
| Identify the real issues in the hearing and disregard matters that are not relevant  |  |

## Step Three - Pre-Hearing Conferences with Client and Witnesses

| **Task** | **Details/Date Done** |
| --- | --- |
| Advise the client on the evidence in the brief and whether there is sufficient evidence to prove a prima facie case, and on the strength of the Crown case. |  |
| Show your client any relevant CCTV, DVEC, video, Body-worn camera footage or ERISP |  |
| Advise the client of any relevant defences available to the charges faced by the client |  |
| Get full instructions: get signed and dated instructions from your client and consider whether you need to take further written instructions during the course of the hearing  |  |
| Get signed and dated statements from defence witnesses  |  |
| Remind your client of the impacts of maintaining a plea of not guilty and the likely penalty if found guilty, as well as the likely impact of any plea of guilty and the likely consequences of doing so. |  |

## Step Four- Considerations Before the Hearing

| **Task** | **Details/Date Done** |
| --- | --- |
| See s 183- s 188 of the *Criminal Procedure Act 1986* as to requirements for police briefs of evidence. Subject to any regulations the copy of the brief of evidence is generally to be served at least 14 days before the hearing |  |
| Consider s 33 of the EA in relation to police officers reading statements and ensure the evidence complies with this section |  |
| Consider issuing subpoenas (Part 3 of the *Criminal Procedure Act 1986* and Part 7 of the *Local Court Rules*) for production of documents or calling of defence witnesses. |  |
| Consider s 177 of the *Evidence Act 1995* if you wish to serve an expert report or if you are served one.  |  |
| Consider potential challenges to the prosecution case as a result of the conduct of the police by reviewing the following parts of the *Law Enforcement (Powers and Responsibilities) Act 2002*:* Search without warrant – Part 4
* Search with warrant – Part 5
* Search etc regarding domestic violence offences – Part 6
* Emergency Powers – Public Disorder – Part 6A
* Arrest – Part 8
* Investigations/questioning – Part 9
* Use of In-Car Video Equipment – Part 8A
* Drug Detection Powers – Part 11

S 138 if the *Evidence Act 1995*: discretion to exclude improperly or illegally obtained evidence  |  |
| Consider admissibility of admissions by the accused: s 81- s 90 and s 139 of the *Evidence Act 1995* and s 281 of the *Criminal Procedure Act 1986* |  |
| Consider also the admissibility of any evidence obtained by forensic procedures against the accused. See the *Crimes (Forensic Procedures) Act 2000*  |  |

## Step Five- Running the Hearing

| **Task** | **Details/Date Done** |
| --- | --- |
| Consider whether to make an opening address. |  |
| Have examination in chief and cross–examination prepared before starting. Keep questions and language simple |  |
| Consider the importance of putting relevant instructions in cross–examination with consideration given to:* *Browne v Dunn* (1893) 6 R 67
* Section 46 of the *Evidence Act* *1995*
* *R v Birks* (1990) 19 NSWLR 677
* *R v MWJ* [2005] HCA 74
 |  |
| Be prepared to object to impermissible questions by the prosecution, such as ‘why would the complainant lie?’  |  |
| Consider the first and second limbs of *May v O’Sullivan* (1955) 92 CLR 654:* First limb: no evidence regarding one or more of the elements of the offence. i.e. no prima facie case.
* Second limb: evidence available regarding each element of the offence but not sufficient to satisfy the court beyond reasonable doubt.
 |  |
| Only raise character with caution- see s 110 of the *Evidence Act 1995* |  |

## Step Six- After the Hearing

| **Task** | **Details/Date Done** |
| --- | --- |
| Speak to the client immediately and confirm they understand the outcome and the Magistrate’s reasons. |  |
| If convicted, advise on appeal prospects and, if appropriate, take instructions to file a Notice of Appeal. Take instructions on appeal bail if sought/relevant.  |  |
| If the matter has finalised, submit a File Outcome to the Grants Division |  |

## Part Three- Sentence Matters

##

## Step One - Conference the Client

| **Task** | **Details/Date Done** |
| --- | --- |
| Open and retain a file for the client with copies of:* Charge sheet
* Police Facts
* Criminal history of the accused
 |  |
| Obtain financial verification of income and assets |  |
| In pleas of guilty, read to the client, or have the client read, the agreed police facts. It is recommended that the client sign these facts and confirm in writing the instructions to enter a plea of guilty. Advise the client of the effect of their plea of guilty  |  |
| Advise the client on the charges, the maximum penalties, and the likely penalties including additional orders such as license disqualification or place restriction orders  |  |
| Obtain instructions from the client for the plea in mitigation. See Appendix B which highlights important areas for instructions to be taken on and submissions to be prepared |  |
| 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  |  |

## Step Two - Preparation

| **Task** | **Details/Date Done** |
| --- | --- |
| Review the purposes of sentencing (s 3A *Crimes (Sentencing Procedure) Act* *1999*) |  |
| Consider the circumstances and context to the offence:* The factual basis of the sentence
* Level of impulsivity/planning
* Degree of participation
* Level of culpability displayed
* Place of the offence in the range of objective seriousness
 |  |
| Determine whether it is appropriate in the circumstances to request a Sentencing Assessment Report  |  |
| Determine what material should be tendered on sentence and obtain the material after obtaining an appropriate grant of aid where expenditure is required  |  |
| Consider:* The application of the *Evidence Act 1995* to sentencing – see s 4(2)
* The onus and standard of proof – matters of aggravation must be proved beyond reasonable doubt; matters in mitigation proved on the balance of probabilities
* Matters on which evidence should be called (rare in a busy Local Court list)
* Use of written submissions (rarely required in a busy Local Court list)
 |  |
| Consider the subjective features of the client:* Personal
* Age
* Education/employment
* Developmental/physical condition
* Health
* Disadvantaged background
* Character
* Motivation in committing the offence
* Possible effects of the sentence on the client or others
 |  |
| Consider whether any of the sentencing principles relating to certain types of offenders applies- eg severe disadvantage: *Bugmy* principles |  |
|  Consider if the threshold in s 5 *Crimes (Sentencing Procedure) Act 1999* has been crossed, and if there are alternatives to full time imprisonment  |  |
| Consider issues in relation to imprisonment:* Commencement date of sentence
* Non-parole period
* Interaction with parole orders
* Concurrent and cumulative sentences, aggregate sentences, totality
* Special circumstances
 |  |
| Consider potential consequential orders:* Non–association and place restriction orders
* Restitution
* Confiscation and forfeiture
* Mandatory ADVO following conviction for domestic assault
* Victim’s compensation
* Sex Offenders Register or other post-conviction order
* Other consequences of conviction (such as on firearms licences, employment in certain professions, and overseas travel)
* Driving related orders including licence disqualification and Habitual Traffic Offenders declaration
 |  |

## Step Three - The Sentence

| **Task** | **Details/Date Done** |
| --- | --- |
| Ensure that the facts tendered by the prosecution contain any agreed changes. Do not allow your client to sign the facts that are to be tendered.  |  |
| Make submissions on behalf of the client |  |

## Step Four - After the Sentence

| **Task** | **Details/Date Done** |
| --- | --- |
| Speak to the client immediately and confirm they understand the outcome |  |
| Where appropriate, advise the client about the appeal process, appeal prospects and time limits for appeal. Explain the Legal Aid NSW policy in respect to obtaining legal aid for an appeal (merit test)If instructed, file a Notice of Appeal, and list an application for appeals bail. |  |
| Submit a File Outcome to the Grants Division |  |

## Part Four- District Court Appeals

## Step One - Conference the Client

| **Task** | **Details/Date Done** |
| --- | --- |
| Open and retain a file for the client with copies of:* The application for legal aid signed by the client
* Verification of means
* Notice of Appeal
* Court Attendance Notices
* Police Facts
* Criminal history of the accused
* Bail conditions
* The brief
* Client instructions
 |  |
| Consider whether the appeal has reasonable prospects of success |  |
| If the Notice of Appeal has not been filed, assist the client to do so. Be aware of strict time limits in *Crimes (Appeal and Review) Act 2001* |  |
| Take the client’s instructions on a bail application, if relevant. File application for appeals bail if instructed to do so. Check which jurisdiction. |  |
| Obtain instructions from the client and give advice about the law and the likely outcome on appeal. |  |
| Obtain instructions from the client about their objective and subjective circumstances, including whether they are on any medications and/or they have been or are being treated for any psychiatric, psychological or medical issues |  |

## Step Two - Obtain a Grant of Legal Aid

| **Task** | **Details/Date Done** |
| --- | --- |
| . Complete an application for legal aid. Ensure that:* The application is signed by the client (or you can write ‘client in custody’ in the signature box)
* the information entered into the application reflects the correct appeal lodged at court
* All financial verification is provided (if applicable)
 |  |
| Submit an application for a grant of legal aid on the client’s behalf, giving appropriate consideration to policy 4.6.1 (Merit Test A) |  |

## Step Three - Preparation

| **Task** | **Details/Date Done** |
| --- | --- |
| In conviction appeals, consider whether an application is required for leave to give fresh evidence (see s 18 of the *Crimes (Appeal and Review) Act 2001*). File a Notice of Motion seeking leave to adduce fresh evidence, and/or seeking a direction that certain witnesses attend to give evidence in person. Accompany this with affidavit evidence concerning the reasons for the application, and in particular why the witnesses were not called or cross-examined in the Local Court |  |
| Consider whether you will tender further material (psychiatric reports, testimonials, etc) and obtain the material after obtaining an appropriate grant of aid where expenditure is required |  |
| Refer to the relevant JIRS statistics and consider if they will assist your client |  |
| Consider the sentencing options that were available to the Local Court at the time (s 71 of the *Crimes (Appeal and Review) Act 2001*) |  |

## Step Four - The Appeal

| **Task** | **Details/Date Done** |
| --- | --- |
| Run the appeal in accordance with instructions from the client  |  |
| If you have successfully appealed against conviction, sentence or refusal to grant annulment, consider applying for costs |  |

## Step Five - After the Appeal

| **Task** | **Details/Date Done** |
| --- | --- |
| Speak to the client immediately and confirm they understand and the outcome |  |
| Advise the client in writing of the result of the appeal |  |
| Submit a File Outcome to the Grants Division |  |

## Appendix A















## Appendix B



