

Meeting clients, taking instructions and giving advice

Guidance for criminal legal aid lawyers

Introduction

Client interviews enable you to give appropriate advice and explanations to the client so they can make an informed decision about their charges.

Legal aid lawyers must conduct client interviews in accordance with the [practice standards](#).

Setting the scene at interviews

The initial client interview can help to put the client at ease and build their confidence in you. It's important to create a good impression by being prepared and giving the client opportunities to speak and actively listening to them.

Once you've been assigned the case, you should meet with the client as soon as you are able - preferably before the first court appearance. If the client is in custody, your first meeting may be immediately before the court appearance.



When communicating with the client, try to use language they can understand – avoid using jargon and acronyms; explain legal concepts clearly.

Take care that the interview is private, cannot be overheard and is not interrupted. Explain that your role is to give advice and their role is to tell you what you want them to do to help you. Tell the client that you will not discuss the case with anyone else unless they say you can.

Conduct yourself in a way that respects the parties involved. Avoid actions that could increase distrust, hostility or animosity between the parties.

Explain to the client what is going to happen – the more they know about the process the easier it will be for them and you.



Gathering client information

Gather the client's details, including their:

- contact information, an emergency contact, email, phone number, and place of residence
- family/home environment
- source of income or support, financial situation
- occupation and employment status, including how bail conditions could impact them
- citizenship, residency, or visa status and English language ability
- interim name suppression status
- educational qualifications, or number of years they attended school
- disability, medical, or mental health history, including any addictions
- history of treatment or counselling
- history of criminal offences and if they are currently serving a sentence or are subject to any orders
- consequences arising from the alleged offending, such as loss of vehicle.



Disclosure, advice and instructions

Begin by going through the charges. Use plain language to describe what the charges mean. Elicit basic facts and circumstances of the case. Check that the client agrees with the summary of facts and watch any video evidence that is available.

Before the client enters any election or plea, obtain relevant disclosure from the prosecution, and discuss this with the client. Also advise the client of defence disclosure obligations.

You will be able to provide the best advice for your client if you do the relevant research on the elements of the charges, legislation commentary and case law. This will enable you to identify if there is a defence to the charges and advise the client of this.

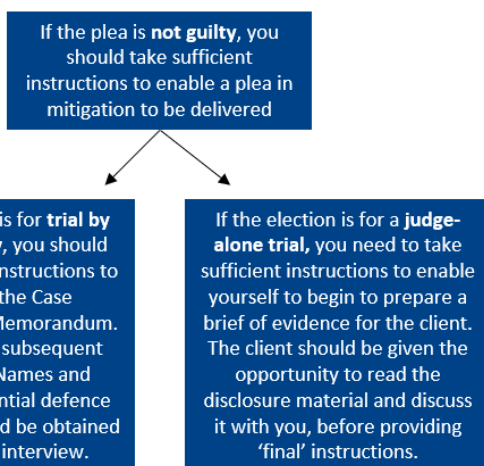
Provide the client with advice on potential sentencing outcomes and/or the risks and benefits of resolution or taking a charge to trial. Explain the difference between a judge-alone trial and a jury trial. Explain the possibility of seeking a sentence indication.

Advise the client of their right to give and/or call relevant and admissible evidence in the form of affidavit, brief of evidence, oral evidence or some other form.

If the client elects to plead not guilty, you should discuss, after having reviewed the disclosure, the strengths and weaknesses of the prosecution case, risks and benefits of going to trial, electing judge-alone or jury trial and any benefits for an early guilty plea.

If the client is to plead guilty, you should provide advice on likely sentencing outcomes, any counselling or how to prepare for sentencing, options for restorative justice, sentencing reports, affidavits and support letters.

Ensure the client understands your advice and signs a written record of their instructions relating to plea and election of trial type.



Summarise and clarify the next steps. Ask the client if they have any questions before ending the interview.

The purpose of a subsequent interview is to expand on the information you have gathered in the initial interview.

If the charges are likely to go to trial, this will involve obtaining further information from the client that supports your theory of the case.

If the client is likely to resolve the charges or has pleaded guilty, the subsequent interview will be focused on preparing for sentencing.

Keeping good written records

It's important to keep your files organised so that another lawyer could easily work out how you are managing the case if they had to take over.

Make sure you keep good written records of:

- all contact and correspondence with clients that shows you have kept them updated
- a signed brief of evidence of affidavit of the client's account of the events
- client comments on the evidence
- all instructions given by the client
- all advice given to the client (except when the client advises otherwise).



It might not be appropriate to provide advice in writing if there is a risk the documents could be accessed by unintended recipients, there are literacy, comprehension or mental health difficulties there is no known address, or there is not sufficient time.

Further advice

1. Taking notes allows you to control the pace of the conversation, helps you recall the discussion and protects you should there be any complaint from your client.
2. Use an interview template that prompts admissions, denials, evidential leads (including potential witnesses), alibi evidence, health, especially mental health issues, character, welfare, and other 'background' issues, provocation, self-defence, and mitigating and extenuating circumstances.
3. Asking the client to repeat back to you what you've said in their own words is a good way to check their language and cognitive ability, and if you are speaking in plain English.
4. Consider whether you need an interpreter or communication assistance, or whether you need to use simpler language to ensure your client understands what's happening.
5. Keep the client informed of the progress of the matter, including advising the client of the stages through which a matter progresses and the opportunity a stage might provide to resolve matters.