# Adult client capacity checklist

## Purpose of checklist:

* This tool is intended to support lawyers when there is a need to make an assessment as to their client’s capacity to provide instructions and to participate in proceedings. It may assist with recording information, decisions made and possible action to address incapacity.
* This tool is designed as a prompt only and is not proscriptive or exhaustive.
* In using this checklist, refer to key principles and suggested approaches for lawyers in determining capacity, as set out in the [LIV Capacity Guidelines and Toolkit](https://www.liv.asn.au/PDF/For-Lawyers/Submissions-and-LIV-Projects/2054_LPP_CapacityGuidelines_FINAL_WEB)
* Completing this checklist fully and accurately will help to demonstrate that you have met:
	+ the duties of competence and standard of care expected of a lawyer, and
	+ VLA’s expectations of practitioners undertaking legally aided work, articulated in the [Practice Standards and Practice Standards Measures](http://www.legalaid.vic.gov.au/information-for-lawyers/doing-legal-aid-work/panels/panels-conditions).

## Using this document:

* Complete the checklist as soon as concerns about capacity arise. Consider completing another checklist as a subsequent ‘snapshot’ of the client’s capacity if their presentation changes.
* Complete electronically, including date of interview, PDF the document when completed, print completed plan and retain on file.

## Note:

* Capacity is presumed, unless there is a trigger that raises a question about the client’s ability to instruct
* Capacity is fluid and decision-specific
* Base assessment on more than client appearance
* This document may be considered a client document and provided to the client upon request (rule 14 Australian Solicitors’ Conduct Rules).

## Formatting instructions:

* This document contains hidden text prompts. Hidden text is identified by the blue colour and the dots below the text and does not print. To have access to the prompts as you fill out the checklist, you will need to complete the form electronically while interviewing the client.
* If the prompts do not appear in the document, go to File/Options/Display and under the section ‘Always show these formatting marks on the screen’ select the hidden text option. Once this has been set, you can then use the Show/Hide button () (Ctrl + \*) on the Home tab to view or hide the hidden text.
* To select tick boxes, simply click on the relevant box.
* Cells in tables will expand to accommodate your typed content.
* If you require additional rows in the table, click in the relevant cell, go to Table Tools/Layout and select the appropriate command.

# Adult client capacity checklist

**File Name:**       **File Number:**

**Date and time of interview:**             **Time spent with client for assessment:**

**Other people present: (if applicable)**       **Location of interview:**

| Criteria | Details | Action |
| --- | --- | --- |
| List any of the client’s diagnosed illnesses, disabilities or conditions which may impact capacity e.g., intellectual disability, mental illness, acquired brain injury.Aside from these known conditions, this checklist is intended to flag potential capacity issues which may need to be determined by an expert. It does not require a diagnosis on your part. | Consider:* Whether client is registered for services or under any current treatment order
* How client interacts with you. Can they repeat advice or answer questions?
* The views of other witnesses about client’s capacity.
 | Indicate what action can be taken to address any incapacity identified e.g., appointment of a substitute decision maker, such as a litigation guardian (with client’s consent), or measures to support the client’s capacity. Note: substitute decision making is a last resort.Consider obtaining a formal capacity assessment from a medical practitioner where doubts about capacity persist. |
| Known conditions |  |  |
|       | Type text above  | Type text above  |
|       | Type text above  | Type text above  |
| Cognitive function |  |  |
| [ ]  Language or communication problems | Consider* clarity of speech
* ability to focus
* ability to provide consistent details.

Type text above  | Type text above  |
| [ ]  Problems with memory | Consider* consistency in recollection between this and any previous sessions
* information provided by others about memory issues

Type text above | Type text above  |
| [ ]  Problems with comprehension | Consider* ability to understand the reason for court involvement
* ability to understand the material in family and other reports

Type text above  | Type text above  |
| [ ]  Issues with mental flexibility | Consider* ability to consider alternative options
* ability to express preferences if what they want is not achievable

Type text above  | Type text above  |
| Emotional functioning |  |  |
| [ ]  Delusional thinking | Consider* rationality of instructions about the facts
* rationality of instructions about care of the child

Type text above. | Type text above  |
| [ ]  Undue influence by one of the other parties, or by a non-party | Consider * whether client attends interview with others and degree to which client can speak for themselves
* power imbalances in the client’s relationships
* reasons for significant change in instructions

Type text above | Type text above  |
| [ ]  General emotional presentation | Consider visible affect. Type text above  | Type text above  |
| Is incapacity temporary? |  |  |
| [ ]  Any factors that might mean that capacity issues are temporary? | Consider* post-partum condition such as post-natal depression or psychosis
* medication
* extreme fatigue
* unusual medical diagnosis e.g. thyroid issues
* substance use history? Has client previously disclosed substance use or is it alleged in the proceedings?

Type text above  | text above. |
| Legal elements |  |  |
| [ ]  Ability to understand the nature of the proceedings? | Type text above. | Type text above  |
| [ ]  Ability to make and express a preference / decision? | Type text above  | Type text above  |
| [ ]  Ability to understand information relevant to making a decision? | Type text above  | Type text above  |
| [ ]  Ability to understand the reasonably foreseeable consequences of a decision? | Type text above  | Type text above  |
| [ ]  Ability to participate fully in proceedings? | Type text above  | Type text above  |
| [ ]  Reliability of instructions? | Type text above  | Type text above  |

# Supervision

The supervising lawyer has reviewed the completed Adult client capacity checklist

**Supervisor’s Name**:       **Date**:

Attached: Medical authority for client to complete to allow contact with client’s medical practitioner.