

CLIENT MANAGEMENT & SELF-CARE

A guide for pro bono lawyers



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DISCLAIMER

This Guide is provided for your information and interest only. It does not constitute, and must not be relied on, as legal advice. You must seek specific advice tailored to your circumstances. The authors and editors do not take any responsibility for the way in which these materials are used and adapted.

HOW TO USE THIS GUIDE

Client management and self-care – A guide for pro bono lawyers (Guide) has been developed by a number of experienced pro bono coordinators. The purpose of the Guide is to help equip pro bono lawyers with the skills they need to effectively work with vulnerable clients, while looking after their own wellbeing.

Part A provides guidance on the practical steps that pro bono lawyers can take to work effectively with their clients.

Part B assists pro bono lawyers to be mindful of their own wellbeing.

Part C includes a number of role play scripts that illustrate the commentary in Part A.

Part D includes a template for Mental Health Services Cards that provide the details of health services to assist clients in distress, and also services that pro bono lawyers can access to debrief and seek support. Firms may wish to produce these cards for their pro bono lawyers to use.

The Guide is intended to be a dynamic resource so firms are free to tailor and adapt the material contained in the Guide to meet the training needs of their lawyers. In a number of places, identified by square brackets and yellow highlighting (ie [example text]), the firm will need to provide specific information about its pro bono program or policies. Where this occurs, delete the material in yellow highlighting and replace it with the relevant information in ordinary text.

Some ways in which the Guide can be used include:

- providing new starters with a tailored hard copy;
- developing the material in the Guide into a stand-alone training module; or
- the role plays could be incorporated into face-to-face pro bono or client management training sessions.

CONTENTS

Part A	General Client Management	1
1	<i>Introduction</i>	3
2	<i>Treat clients with respect</i>	3
3	<i>Understand your client's physical and cognitive capabilities</i>	4
4	<i>Assess your client's legal capacity</i>	5
5	<i>Managing client expectations</i>	11
6	<i>Communications with the client</i>	11
7	<i>Cultural awareness and sensitivities</i>	13
8	<i>Working with interpreters</i>	15
9	<i>Managing communication challenges</i>	17
10	<i>Common mental health problems</i>	20
11	<i>Managing difficult behaviour</i>	25
12	<i>Threats of harm</i>	27
13	<i>Mental health services to recommend to your clients</i>	31
14	<i>Other resources</i>	31
Part B	Self-Care	35
15	<i>The impact of pro bono work on your wellbeing</i>	37
16	<i>Consequences of working on traumatising cases</i>	37
17	<i>Recognising symptoms in yourself and your colleagues</i>	37
18	<i>Being aware of triggers — knowing what affects you</i>	38
19	<i>How to look after yourself</i>	38
20	<i>Services available</i>	39
21	<i>Other resources</i>	39
Part C	Role-plays	41
Part D	Mental health services cards	53
1	<i>Client support card</i>	55
2	<i>Staff support card</i>	56

Part A

GENERAL CLIENT MANAGEMENT



1 Introduction

Law firms usually limit the pro bono legal services they offer to individuals:

- who are **marginalised** or **disadvantaged** and can demonstrate a need for legal assistance but cannot obtain Legal Aid, be assisted by community legal centres or other legal assistance services or access the legal system in other ways without incurring significant financial hardship; or
- whose matters raise an issue of **public interest**.

Many pro bono clients, therefore, are individuals experiencing high levels of vulnerability or disadvantage. For example, they may have physical, cognitive or psychosocial disabilities, other health issues, low levels of education, and/or they may be single parents, migrants or refugees (with non-English speaking backgrounds), be unemployed, homeless or at risk of homelessness. Clients may have also experienced trauma, which may trigger certain behaviours and increase their level of vulnerability and/or disadvantage.

About [firm to insert percentage]% of our pro bono legal work involves work for people experiencing disadvantage or marginalisation. For example, [firm to insert some examples of their work].

Working with pro bono clients can be very rewarding. Lawyers cite numerous benefits of pro bono involvement, such as the development of their skills and confidence, and the opportunity to “give back”.

However, working with clients experiencing disadvantage can require unique client management skills which lawyers may not have developed through their commercial practice.

A commitment to deal sensitively with the requirements of pro bono clients is an essential component of this work. Many pro bono clients are unfamiliar with legal processes. Some may feel uncomfortable speaking with lawyers.

It is important to ensure that you are confident and capable of creating a professional relationship with pro bono clients. This will allow you to obtain appropriate instructions and give clear, easily understood advice in a way suited to the client's particular needs.

2 Treat clients with respect

The most important thing to remember when advising pro bono clients is that they should be treated with exactly the same high standard of client and professional service that is provided to commercial clients. Even though you may sometimes need to adopt slightly different techniques when communicating with pro bono clients, you should extend the same level of professionalism, diligence and commitment to them. This does not mean you should ignore or be insensitive to pro bono clients' particular needs. Rather, it provides you with a foundation upon which certain skills, techniques and tools may be adopted, to ensure that you represent your pro bono clients effectively.

3 Understand your client's physical and cognitive capabilities

The Australian Bureau of Statistics reports that approximately 18.5% of the Australian population has a disability of some kind.¹ Some clients have disabilities that may affect their cognitive capacity and impact on their ability to work with a lawyer. You may become aware at the initial referral stage that a client has a disability because they have disclosed this disability or because they receive a Disability Support Pension.²

It is not always possible to neatly categorise disabilities, but most fall within the following broad categories: physical, psychiatric, intellectual, neurological or sensory disabilities. Some people have multiple disabilities across different categories. Some new sub-categories are emerging, such as behavioural disabilities.

It is not necessary for you to have an extensive knowledge of disabilities in order to provide legal assistance to a person with a disability. You just need to be aware that some clients may be living with a disability which can affect their physical or cognitive capabilities.

Clients may also be experiencing other circumstances that affect their physical and cognitive capacity. A person with a mental health issue may have limited cognitive capacity from time to time, for example when they are in a manic state. Similarly, a person affected by drugs or alcohol may have limited capacity for a period of time.

When assisting a pro bono client, consider how accessible different modes of communication are (e.g. in person, by phone or email). You should determine whether your client has the capacity to understand your advice and provide instructions both upon referral and as the matter progresses.

Cognitive disabilities – some examples

When someone has a “cognitive disability” it can relate to a number of different diagnoses. This is a brief explainer to help you understand the sub-categories that make up “cognitive disabilities”. For further information, please consult the Mental Health First Aid Australia’s *Mental Health First Aid Guidelines*.³

Psychiatric disabilities include bi-polar and schizophrenia.

Intellectual disabilities include Downs syndrome and cerebral palsy.

Neurological disabilities include epilepsy and dementia.

¹ Australian Bureau of Statistics, *Disability, ageing and carers: summary of findings 2012*, 2012, at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0> as cited in the Australian Pro Bono Centre, *The Australian Pro Bono Manual*, LexisNexis, Sydney, 2016.

² A typical recipient of the disability support pension will need to demonstrate a physical, intellectual or psychiatric impairment. They must be unable to work or be retained for work for 15 hours or more per week, at or above the relevant minimum wage, within the next two years because of their impairment (refer Department of Human Services, Australian Government, *Eligibility for Disability Support Pension*, Australian Government: Department of Human Services, <https://www.humanservices.gov.au/customer/services/centrelink/disability-support-pension> (accessed 11 November 2015) as cited in the Australian Pro Bono Centre, *The Australian Pro Bono Manual*, LexisNexis, Sydney, 2016.)

³ <https://mhfa.com.au/resources/mental-health-first-aid-guidelines>.

4 Assess your client's legal capacity

Capacity is essential for your client to be able to understand legal matters and provide you with instructions. A client without capacity cannot instruct a lawyer. A lawyer should not take instructions from a client without capacity, and be mindful of their legal and ethical duties in this respect. It is also important to be aware that capacity can change over time.

Assessing a client's capacity is challenging. You should always seek support from your supervisor or pro bono coordinator in these cases, and refer to any firm policies on this issue.

There are comprehensive guides available that address legal capacity, such as The Capacity Toolkit developed by the NSW Attorney-General's Department and the Queensland Handbook for Practitioners on Legal Capacity. The intention of this Guide is not to replicate that information here. However, we recommend you seek out the resources most applicable to you, many of which are listed at the end of this Part.

Key principles for assessing capacity

The Capacity Toolkit developed by the NSW Attorney-General's Department and the Queensland Handbook for Practitioners on Legal Capacity (**Queensland Handbook**) both, by and large, refer to the following key principles when assessing capacity:

- **Always presume a person has capacity.** Under common law you must presume that a person has capacity to make all their own decisions, unless there is evidence to rebut this presumption.
- **Capacity is decision-specific.** Apply the presumption of capacity for every decision a person makes. If a client can make some but not all decisions, then they have a right to make as many decisions as possible.
- **Capacity is fluid.** A person's capacity can fluctuate over time or in different situations, so you will need to assess their capacity for each decision whenever there is doubt about capacity. This may be the case for a client with a mental illness. Similarly, a client who is affected by drugs or alcohol may not have capacity at that time.

Even where a client lacked the ability to make a specific decision in the past, they might be able to make that decision later on. Clients might also regain, or increase, their capacity, for example, by learning new skills or taking medication.

Other factors such as stress, grief, depression, reversible medical conditions or hearing or visual impairments may also affect a person's decision-making capacity.

- **Do not make assumptions that a person lacks capacity because of their age, appearance, disability or behaviour.** A person's capacity should not be assessed solely on the basis of their appearance, the way they present, the way they communicate, any impairments they may have or the way they act or behave.
- **Assess a person's decision-making ability — not the decision they make.** A client cannot be assessed as lacking capacity merely because they make a decision you think is unwise, reckless or wrong. Individuals have their own values, beliefs, likes and dislikes, and the majority of people take chances or make "bad" decisions occasionally.
- **Respect a person's privacy.** Assessing a person's capacity means dealing with personal information about them. There are a variety of legislative and ethically based privacy

principles which are involved. In most cases, a client must consent to their personal information being provided to others.

- **Substitute decision-making is a last resort.** A client may be able to make a particular decision at a certain time because they have support during the decision-making process (assisted decision-making). Before concluding there is a lack of capacity, ensure that everything possible has been done to support the client to make a decision. Only seek the appointment of a substitute decision-maker, such as a tutor, guardian or financial manager, as a last resort.

Steps for assessing capacity

The following steps are in line with those set out in the Queensland Handbook and we have included their flowchart below (see page [X]). We recommend that each of these steps are taken when assessing capacity:

- **Identify the client.** In most cases, the client will be the person giving you instructions. Where a substituted decision maker has been appointed to or by the client, he/she may have the exclusive ability to provide you with instructions.
- **Identify the particular decision the client is seeking to make and the relevant legal test for capacity that applies to that decision.** There is no single legal definition of capacity. Rather, the legal definition of capacity depends on the type of decision which is being made or the type of transaction involved. You should ascertain the test that applies in your circumstances, depending on the nature of the decision being made and the jurisdiction.
- **Consider any warning signs.** If the client has been referred to you, for example by a community legal centre, you might be given some background information which could trigger concerns about the client's capacity. While this information is helpful, it is important that you independently assess your client's capacity before commencing to act for them.

Consider whether there are key warning signs or "red flags" that may prompt you to examine a client's capacity more closely. These include when:

- a client demonstrates difficulty with recall or has memory loss;
- a client has ongoing difficulty with communications;
- a client is showing signs of significantly low or disturbed moods;
- a client demonstrates a lack of mental flexibility;
- a client has problems with simple calculations which they did not have previously;
- a client is disoriented;
- there is a sense that "something about the client has changed," including deterioration in personal presentation, mood or social withdrawal;
- a client is in hospital or a residential aged care facility when instructions are taken;
- a client has changed solicitors several times over a short period of time, particularly if there has been a change from a solicitor who has advised the client for many years;
- a client is accompanied by a friend, family or carers to interviews with the solicitor but is not given the chance to speak for themselves;
- a client shows a limited ability to interact with the solicitor; or
- a client shows a limited ability to repeat advice to the solicitor and ask key questions about the issues.

The existence of one or more of these warning signs should not be used to immediately draw the conclusion that there is a lack of capacity. Rather, the existence of these factors points to a need to further investigate whether your client has capacity.

- **Determine whether a substituted decision maker has been appointed for the client.** This may include a guardian or administrator, or litigation guardian. Review the terms of any document effecting such appointment to ensure it is still in force and the decision to be made falls within its scope. If so, instructions can be taken from the substituted decision maker.
- If you have identified warning signs and no substituted decision maker has been appropriately appointed, **take steps to maximise the client's capacity.** What steps are appropriate will invariably depend on the particular client, but in general the Queensland Handbook recommends the following steps:
 - meet with client in person and alone;
 - focus on the client as an individual and consciously put to one side biases and assumptions based on age, mental health, intellectual impairments, emotional distress or eccentricities;
 - establish the client's trust and confidence by emphasising the duties that the lawyer owes to the client, in particular the duties of loyalty and confidence;
 - adapt your communication style to the client (deal with simple issues first, take breaks, allow the client time to think, ask open ended questions, provide memory cues and explain matters exhaustively);
 - ensure any necessary interpreters, non-verbal communication tools, visual and auditory aids are available for the client to use;
 - ensure the meeting environment is quiet, well-lit, comfortable and familiar to the client (the lawyer may consider dressing more casually);
 - consider the timing of decision making (eg, a morning appointment may better suit the client) and whether gradual decision making (over a series of meetings) or delayed decision making (to a time when the client is lucid) would increase capacity; and
 - seek the assistance of third parties such as friends, family or caregivers but only with the prior consent of the client. However, this must also be weighed against the potential influence these parties may have on the client.
- Once the client's capacity has been maximised, **conduct a preliminary assessment of the client's capacity** having regard to the relevant legal test to be applied. This will usually involve asking the client questions (tailored to their circumstances) that seek to establish whether the client:
 - understands the facts and issues underlying the decision, the different options available to them (including making no decision) and the consequences and implications of those options for the client and others;
 - has the ability to manipulate that information to make an informed decision and can articulate a reasoning process behind the conclusion and decisions they make;
 - expresses consistent and stable desired outcomes, conclusions and decisions; and
 - is aware of their own abilities and limitations.

- In instances of doubt, or if you have not had to assess the capacity of a client before, it may be useful to have a second lawyer attend the preliminary assessment.
- In all cases, lawyers should maintain **thorough, comprehensive and contemporaneous file notes** of any consultation with the client and relevant interactions with third parties (such as medical professions and information volunteered by third parties). These file notes may be relied on by others later if a question arises around the client's capacity at the time of giving instructions. A lawyer's file notes may also be of assistance to any professional clinician who is engaged to undertake a professional assessment of the client's capacity.
- **Referring your client for a capacity assessment.** If you suspect that your client does not have capacity to instruct you, you may wish to refer the client to a medical professional for a capacity assessment. Generally, either a psychologist or psychiatrist will be able to carry out a capacity assessment. If the client has incurred a brain injury, they may need to be referred to a neurologist or neuropsychologist.

For guidance on what to include in a referral letter for a capacity assessment, refer to the Law Society's [When a client's mental capacity is in doubt - A Practical Guide for Solicitors](#).

Having a conversation with your client in relation to their capacity is challenging. This can be particularly difficult if there is some urgency in the matter or if the client has taken considerable time and effort to attend the interview. The loss of capacity is frightening and stigmatising for many people. Clients can become offended, angry and defensive.

This conversation may be easier if you start by explaining to the client the need to ensure their capacity is adequate as part of the legal procedures. You could suggest an assessment of capacity is a kind of "insurance" to protect against possible future legal challenges to the validity of the instructions or wishes that they have communicated to you.

- **Making a judgment when a clinical capacity assessment is available.** A clinical capacity assessment report may conclude that the client is or is not capable of engaging with the particular legal matter at hand. It must be remembered that these findings are only clinical opinions, as distinct from a legal determination by a Court. The report is only one source of evidence regarding capacity which the solicitor must consider before forming their own decision about the client's capacity.

You should take the time to thoroughly read and understand the report, and to clarify any technical terms or language with the author if necessary. You should consider any firm policies on this issue and discuss it with your supervisor or pro bono coordinator.

The clinical report could also be used to discuss clinical intervention or treatment options with the client or their family.

When to seek the appointment of a substitute decision-maker

If a client is incapable of providing instructions or making a legal decision, it may be appropriate for a substitute decision-maker to be appointed who can advocate for their best interests.

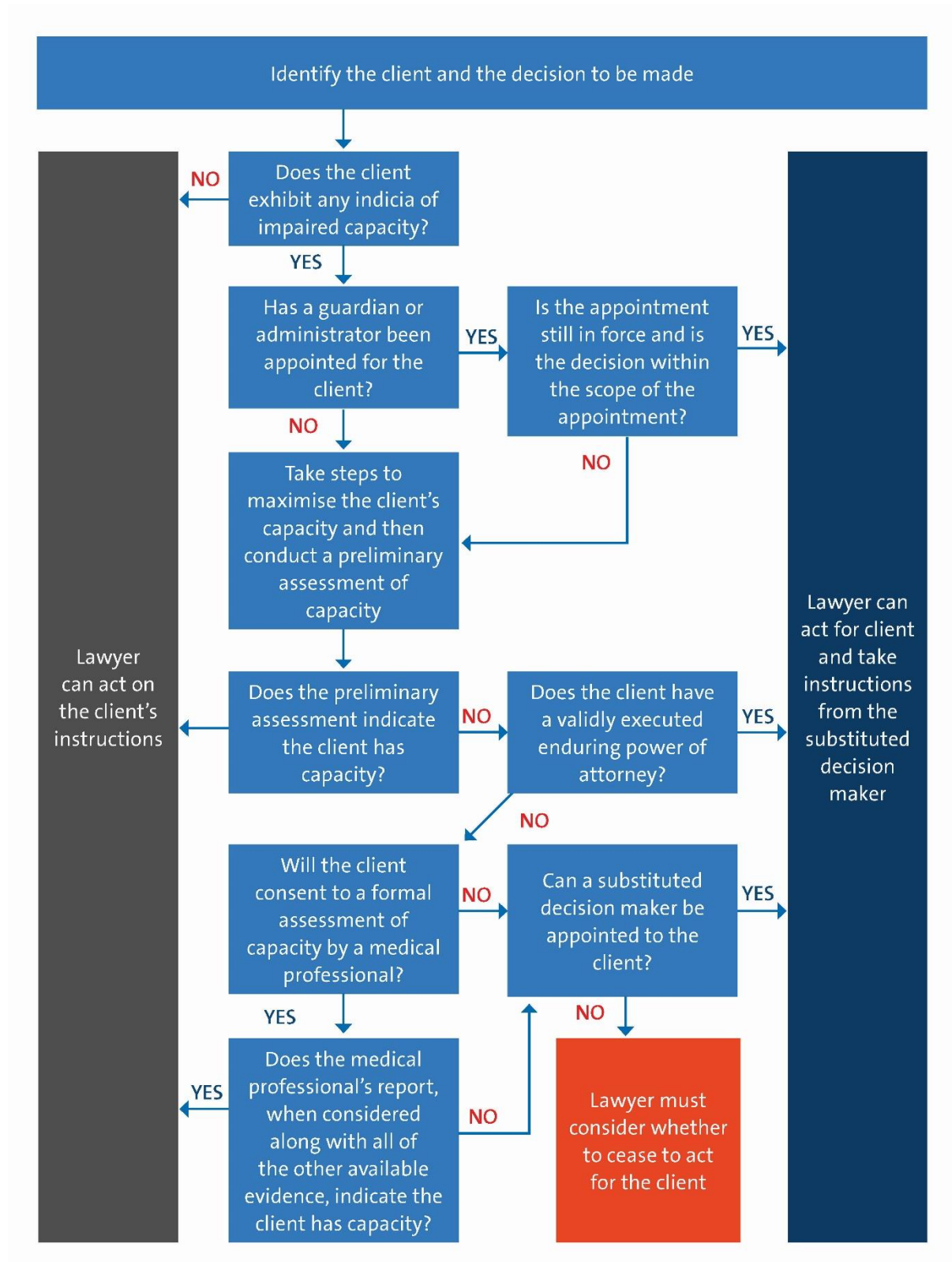
There may be ethical issues involved when a solicitor makes an application for a financial manager or a guardian to be appointed for their client. The Supreme Court has commented that it is undesirable for a solicitor to make this type of application for their client. This is because making a financial management order effectively deprives a person of the authority to make decisions about their

finances, property and legal rights.⁴ It is therefore preferable that a family member or health care professional make the application.

⁴ *P v R* [2003] NSWSC 819 (9 September 2003); *McD v McD* [1983] 3 NSWLR 1.

Figure 1: Assessing a client's capacity

This diagram is from the Queensland Handbook and shows a step by step general conceptual framework for lawyers to assess client's capacity and deal with capacity related issues in practice.



5 Managing client expectations

As with all lawyer/client relationships, managing the expectations of pro bono clients is immensely important. It is not only important to manage your client's expectations from the outset, but also as the matter evolves and progresses.

Here are some tips to best manage your client's expectations:

- Ensure your engagement letter is specific and sets out the scope of the work you are undertaking. Try to make your retainer as specific as possible. For example, if your initial retainer is to provide advice only, then make this clear. Make sure you follow up the letter with a conversation in person or by phone to ensure that the client has understood the scope of your work.
- Keep your client up to date as the matter progresses. Provide ongoing merits advice. If something occurs which may negatively impact on your client's prospects in a matter, communicate this to the client as soon as possible.
- Give the client a realistic estimation of the amount of time it will take to progress their matter to various stages.
- Try to avoid providing advice to a client when they are agitated or upset. They are less likely to absorb the information in these circumstances.
- It is your role to provide your client with frank and sound legal advice, not to say things that they want to hear.

6 Communications with the client

Irrespective of how you are communicating with your client, it is important to ensure that your communications are clear, succinct and in plain English.

Below are some tips for communicating effectively with your client:

- **Be guided by the client as to their preferred form of communication.** Do not make assumptions about how a client would prefer to be communicated with. At the start of any matter, ask the client how they would prefer you to communicate with them. For example, there is no point sending the client emails if they do not have access to a computer and cannot check their emails. Some clients who have trouble hearing prefer to receive emails and letters than to speak on the telephone.

Also be aware of any safety issues associated with your proposed method of communication. For instance, a client who has experienced family violence may not want you to communicate with them by post or email address, or leave any voicemail messages on their phone for fear of a perpetrator accessing those communications. You may wish to pre-arrange that your client call you on a regular basis, or obtain your client's consent to call a friend or family member if you need to get in contact.

- **Try to meet with the client at least once during the matter.** This may not always be possible, especially if the client is located in a remote or regional area. However, if the client is geographically close, aim to meet with them at least once during the course of the matter. It is much easier to establish trust and rapport when you have met with a client in person. Meeting a client in person may also make it easier to establish a client's capacity, level of

comprehension and English skills. It can also make it easier to assess whether they have any particular disabilities or requirements that need to be accommodated.

- **Telephone communication is the quickest method in most cases.** While not all clients will want to communicate this way, speaking over the telephone is generally the quickest way to obtain instructions from the client and provide them with an update on their matter. It is also an easy way to develop the trust and rapport that you may have established in the initial client meeting. Of course, it is important that you keep detailed file notes of any phone conversations you have with the client, particularly where the client has provided you with instructions. If the client is difficult to reach by telephone, then email or written correspondence by post may be the best way to communicate. Remember that some people may not have sufficient credit on their phone to retrieve voice mails or return calls. Some clients may lose their phone or change numbers frequently. SMS can be a more effective method of getting your message through than calling.
- **Try to agree upfront with your client on the best ways to contact them if you think that they may be difficult to contact.** For example, if your client lives in a remote area and does not have reliable phone access, you may want to agree with them that you can contact the local Legal Aid commission, community legal centre or even the post office in order to communicate with them. It is best to agree this upfront for confidentiality reasons.

It's also a good idea to have contact details for a support person who sees the client frequently but you must get the client's approval to contact them about the client.

- **Always confirm advice or key developments in writing.** If you are about to deliver a key piece of advice or information to the client, work out a rough outline of what you propose to say and attempt to deliver the advice by telephone initially. Once the advice is delivered by telephone, always follow it up with written advice and invite the client to call you if they have any questions or concerns. This is an effective way of ensuring that all advice to the client is well documented. Remember to ensure your written advice is in plain English and make sure your client is able to read in English.

When fact gathering, try to ask open-ended questions rather than questions which can be answered with "yes" or "no". Try not to ask leading questions which suggest an answer. For example, "You probably would rather have someone in your family look after your money rather than a public official, wouldn't you?" would be a leading question. Instead you could ask "Who do you want to look after your money?"

- **It is important to ensure that you are getting instructions and information from your client.** The client may have a support person, advocate or family member sitting in on the interview with them. While that person can provide support directly to the client, it is important that they are not speaking on behalf of the client.
- **General safety.** It is also important to be aware of your general safety while advising clients who may be distressed, or who you are meeting for the first time. Some practical tips include: always sit by the door, keep the door open (where appropriate), bring someone else with you to meet your client, only have essential items in the meeting room, and wear closed shoes particularly when meeting a client at a community legal centre or other public venue.

7 Cultural awareness and sensitivities

When advising clients from culturally and linguistically diverse (**CALD**) and Aboriginal and Torres Strait Islander backgrounds it is important to be aware of cultural practices and sensitivities which may impact on how they interact, communicate and absorb information.

CALD is a broad and inclusive descriptor for communities with diverse language, ethnic background, nationality, dress, traditions, food, societal structures, art and religious characteristics.⁵

Do not assume by a person's appearance they are not an Aboriginal or Torres Strait Islander person. If a person identifies as an Aboriginal or Torres Strait Islander person and is accepted by their community as such, it is not your role to challenge this.⁶

It is important not to assume that someone of a particular cultural or ethnic background will behave or respond in a certain way. There are, however, things that you can be mindful of when advising someone from a CALD or Aboriginal or Torres Strait Islander background so that you can respond appropriately if the situation arises.

Below are some matters you may wish to consider when advising a client from a CALD or Aboriginal or Torres Strait Islander background:

- As a courtesy, ask the client what the correct pronunciation of their name is. This is a simple thing to do which will signal to your client that you respect them.
- Take the time to build trust and rapport with the client by asking where they are from (eg who is their community?). If possible, try to establish common relationships or connections to a particular area (eg "Your surname is Reid, I know Danny Reid from Dubbo, is he part of your family?" "You are from Dubbo, my aunty is from there too.") All of this will assist in building rapport. Recognise that you may not get all the information you need straight away as it can take some time to build trust with the client. A collaborative approach involving local organisations and respected community leaders rather than a top-down approach is essential as a means to foster trust and rapport, and establish sustainable relationships.
- Be mindful of kinship and family ties. Family may include many people and not just those who are blood-related, although they may be referred to as "aunty", "cousin", "uncle" and so on. This may be important when, for example, drafting wills or family agreements.
- It may be worthwhile inviting your client to have a support person or interview friend along with them to your appointments to increase their level of comfort and ease.
- Seek advice as to whether it is culturally appropriate in the circumstances for a male lawyer to advise a female client and vice versa. In some cultures, clients may feel more comfortable dealing with a lawyer of the same gender. For example, it is often inappropriate for a female lawyer to engage with a male Aboriginal and Torres Strait Islander prisoner about his legal matters, especially where they involve sexual assault matters. Failure to identify cultural protocols and practices can cause offence and result in a client who is unwilling to engage.
- Be mindful that Aboriginal and Torres Strait Islander peoples are not a homogenous group. Remember that there is diversity within Aboriginal and Torres Strait Islander communities and acknowledge that members of different Countries or Nations will have different linguistic, historical and cultural experiences. This applies in the same way to all CALD clients.

⁵ Ethnic Communities' Council of Victoria, ECCV Glossary of Terms, 23 October 2012.

⁶ See *Shaw v Wolf & Ors* (1998) FCA 20 April 1998 per Merkel J.

- Use direct and simple language. Where possible, try to avoid using figures of speech, as someone whose first language is not English may not understand these phrases. For example, refer to “expenses” or “costs” rather than “disbursements.”
- Regularly check in with the client to see if they understand what you are saying and what is happening by asking them to summarise their understanding of what you have advised. This is a good way to gauge whether you are communicating in a manner that the client can understand. If you ask “Do you understand?” a client who does not feel comfortable revealing a lack of understanding may just say “yes”.
- Where appropriate, ask the client to write things down. For clients who are not familiar with the English language, writing things down can be easier than spelling or verbalising them.
- In general, try to avoid asking questions that invite a yes or no answer. Sometimes a client who does not understand you may answer “yes” or “no” to be polite.
- If in doubt, ask. The best way to find out a client’s preferred method of communication or interaction, is to ask.
- Be mindful of history. Aboriginal and Torres Strait Islander clients have lived through many government and social policies that have fundamentally impacted on their identity and way of life. As a result, they may be slow to trust non-Indigenous people. Be mindful of this, exercising sensitivity and empathy.
- CALD and Aboriginal and Torres Strait Islander clients may prefer less direct approaches to communication.
 - They may find direct questioning confronting. Instead of interrogating the client, establish a dialogue where there is a mutual exchange of information.
 - Respect that in some cultures individuals may be uncomfortable with direct eye contact.
 - Be aware that many people from Aboriginal and Torres Strait Islander cultures utilise silence in conversation far more than in some other cultures. Make sure that you give Aboriginal and Torres Strait Islander clients plenty of time to reply to something you have said. While in a conversation between two people of a non-Indigenous background, a silence may be considered awkward, when speaking with Aboriginal and Torres Strait Islander clients, silences can be considered a sign of comfort or respect, and give time for a person to think over their answer before speaking.
- Where possible, try to wear more casual attire particularly when meeting with clients in regional, rural or remote areas as it helps to foster a more relaxed atmosphere. Also be conscious of creating a safe and welcoming environment for your client. It is preferable that you meet the client at the office of a community organisation (such as a community legal centre) that they are familiar with, as opposed to in your office in a private law firm.
- Be careful with the language you use and if in doubt, simply ask the client how they prefer to talk about certain matters. For example, when drafting wills for Aboriginal and Torres Strait Islander clients you should be mindful that the words ‘death’ or ‘dead’ are often avoided in Aboriginal cultures. Words such as ‘passing’ (for death) or ‘sorry business’ (for funerals) are preferred.
- When working with Aboriginal or Torres Strait Islander clients where possible, do not to use the first names of deceased persons. Use instead Mr [surname], or a description of the person eg “your grandfather who lived in Dubbo.”

- If there appears to be a language barrier consider using diagrams or pictures to explain any difficult concepts.⁷

8 Working with interpreters

In some instances, you may need to engage an interpreter to speak to a CALD, Aboriginal and Torres Strait Islander or hearing impaired client. Do not make assumptions about whether or not a client requires an interpreter to communicate. The best way to determine the client's ability to communicate is by speaking to the client. Start with basic introductions and questions.

If the client simply provides "yes" or "no" answers to your questions without being able to elaborate, this may suggest that they do not understand English well.

Sometimes it is quickest to simply ask a client whether they feel they need an interpreter. While this can be a useful gauge, it should not be the only thing you consider when determining whether an interpreter is needed. Some clients do not want to admit that they have difficulty understanding you. This means they may say they do not need an interpreter, even if they do.

Where it is clear that an interpreter is required, it is important to remember that:

- The use of a qualified interpreter is preferable, rather than a family member or friend. Using a relative or friend to interpret may cause conflicts and undermine the client's confidentiality. It may also be difficult to gauge how competent the relative or friend is at relaying what you have said. If you have no option but to use a friend or family member to interpret, you should ensure that they do not unduly influence your client. If possible you should try to confirm the instructions taken in this context with an independent interpreter when you next meet with your client.
- You may need to consider certain sensitivities when requesting an interpreter, such as:
 - The gender of the interpreter. For example, a female victim of domestic violence or sexual harassment might prefer a female interpreter.
 - The ethnic background of the interpreter. For example, the client may not feel comfortable having an interpreter from a certain ethnic background because of historical conflicts.
 - Whether the client knows the interpreter in the community. Some ethnic communities have a small representation in Australia. A client may not want to use an interpreter they know from their community. A client may have concerns about that interpreter finding out about their legal issues.

Interpreting and translation services are available on the following websites:

- **NAATI** (National Accreditation Authority for Translators and Interpreters) - <https://www.naati.com.au/>

NAATI is the peak body which sets standards for interpreters and translators. It provides accreditation to interpreters who pass their rigorous testing standards. You can search for individual interpreters on the NAATI website.

⁷ You can also access the Working with Aboriginal clients at Kingsford Legal Centre, Service Provision Manual on the UNSW Australia website (<http://www.klc.unsw.edu.au/news/2011/11/working-aboriginal-clients-kingsford-legal-centre-service-provision-manual>). This manual equips service providers with cultural awareness about local Aboriginal and Torres Strait Islander communities and tips on how to provide effective service delivery to them. It was first published in October 2014.

- **TIS National** (Translating and Interpreting Service) - <https://www.tisnational.gov.au/>

TIS services are available throughout Australia. They provide both telephone and on-site interpreting services. A higher rate is charged for on-site and after hours interpreting.

- **Oncall Interpreters & Translators** - <http://oncallinterpreters.com.au/>

When you require an interpreter for a matter it is also important that you are aware of how any costs incurred will be paid. This should be outlined in the retainer and will also likely be addressed in your firm's pro bono policy. Contact your pro bono coordinator if you are unsure.

Interpreters in courts and tribunals

Generally, interpreters are provided to defendants in criminal matters as a matter of right when attending a court.

However, in civil matters, the provision of interpreters varies between different courts and tribunals. If your client requires an interpreter in upcoming court or tribunal proceedings, it is important that you contact the court or tribunal registry to find out:

- whether an interpreter will be provided free of charge;
- if not, what the cost of obtaining an interpreter is; and
- how far in advance an interpreter must be booked.

Basic principles of working with interpreters

There are many resources about best practice when working with interpreters. They range from detailed manuals to educational videos involving scenarios featuring interpreters.

While working with interpreters can be challenging, you can ensure that your session with an interpreter and client is effective by following a few key principles:⁸

- allow time prior to the interview to brief the interpreter so they have an understanding of the purpose of the session;
- have a private area where the session can take place organised;
- arrange seating in a triangular form to allow for easy communication between the interpreter and the client;
- ideally position yourself so that the non-English speaking client is directly facing you and the interpreter is sitting to the side;
- ensure the interpreter knows what type of telephone you are using and whether they are on speaker phone;
- briefly confirm at the start of the session that your client and the interpreter understand each other well;
- always speak in first person and speak directly to the non-English speaker;
- allow the interpreter to clarify information if necessary;
- use clear language and short sentences;

⁸ TIS National, "Working with TIS National Interpreters" - <https://www.tisnational.gov.au/en/Agencies/Help-using-TIS-National-services/Working-with-TIS-National-interpreters>

- avoid using jargon, slang, idioms or proverbs;
- include a pause after each sentence so that the call participants do not talk over each other or cut each other off;
- if the call goes for a long time, the interpreter may require a few minutes break on the half hour; and
- clearly indicate the end of the conference call to everyone involved.

Remember that an interpreter is not there to stand in for your client or to speak on their behalf. Their role is to ensure that your client can communicate with you. Working with interpreters becomes easier with practice.

9 Managing communication challenges

Loss of contact with the client

If you have been unable to get in touch with, or obtain instructions from, your client for a prolonged period of time you should:⁹

- Call the phone numbers recorded in the client's records, including their personal, case worker and alternate contacts' numbers.
- Write the client a letter addressed to their last known address. Request that they contact you by a specified date to give instructions about their matter.
- If you have previously agreed alternative methods to contact a client (such as through Legal Aid, the local community legal centre or post office), you may attempt to contact your client through these organisations.
- Indicate to the client that if they do not establish contact by a specified time, this will result in a termination of the retainer. This process should be outlined in your initial letter to the client.
- If you have previously agreed with the client that you can access their information through the following methods, you could:
 - If the client came through a legal support centre, such as the Homeless Persons Legal Service, and you have the client's permission, you can try to contact the Public Interest Advocacy Centre to see whether your client's contact details are recorded on their database.
 - If your client is homeless and you have signed authority from your client, you can email the Centrelink Homeless and Social Inclusion Team at homeless.socialinclusion.syd@humanservices.gov.au. If you request a copy of your client's Centrelink Income Statement, it should have a record of their current address.
 - If there is a chance that your client is in custody, you can email Sentence Admin to find out whether they are in custody at sentence.admin@dcs.nsw.gov.au or by calling Corrective Services and asking for Sentence Admin on (02) 8346 1333. If your client is located outside of New South Wales contact the relevant jurisdiction's equivalent body.

⁹ Adapted from the Homeless Persons' Legal Service "Guide to Locating a Homeless Client".

- If you are aware of any homeless services which your client regularly attends, this service could be contacted and asked whether your client has been seen. Mail can also be left at these services for your client.
- If your client has been sleeping rough in the Sydney area, Public Space Liaison Officers can be contacted at the City of Sydney Council on 9265 9667. Officers can be asked whether your client has been seen. They may recognise your client by name or be able to ask other rough sleepers if they know of your client's location. If your client is located elsewhere, contact the local Council to see if they have an equivalent team.
- If your client has been subject to court or tribunal orders recently, the court or tribunal registrar can be emailed and asked for a copy of the orders which may contain your client's current address. Ensure that you keep a record of all attempts made to contact your client.

What qualifies as a 'prolonged period of time' will depend on the circumstances. You should consider your need to communicate with your client in relation to court deadlines, limitation periods and filing dates.

There are privacy considerations associated with the collection of personal information about an individual from a source other than the individual (ie from the Public Interest Advocacy Centre). As an Australian Privacy Principle entity that is an organisation, the firm must only collect personal information about an individual from the individual, unless it is unreasonable or impracticable to do so (per Australian Privacy Principle 3.6(b)).

If you have tried all available methods of contacting the client and have not been able to contact them (over a period of time that is considered reasonable in the circumstances), then it can be said that it is impracticable to collect additional personal information directly from the client and it is necessary to collect it from an alternative source. It is not strictly necessary to have the client's consent to collection from other sources in these circumstances, but it will be helpful to have that consent as it's relevant that the client was made aware that their personal information may be collected from other sources.

Additionally, the source that you are seeking personal information from (ie the Public Interest Advocacy Centre) may have its own privacy obligations and may be hesitant to disclose personal information about the client to us. If that occurs, then it may assist to provide that source with a copy of any written consent we have from the client, agreeing that we may obtain personal information about them through alternative means. If the source continues to have concerns about disclosing personal information to us, you may wish to speak to a privacy law expert within the firm.

Clients who call frequently

Some clients may have unrealistic expectations regarding communication with you. They may call or email you on a daily basis for an update on their matter.

Bear in mind that often this can be symptomatic of the client's own anxieties and personal circumstances. A client who calls regularly for matter updates might be fixated on the matter and may require counselling or psychological support. Alternatively, the client may be lonely and wanting to speak to you because this is their only form of communication with others.

While it can be easy to get frustrated with a client who is calling incessantly, try to be empathetic. This does not mean that you should spend unnecessary time on the phone with the client when there is nothing to report. Rather, you should think about what recommendations or information you can give the client to make them less likely to call you back.

Some things you may say to a client are:¹⁰

- "Some of the things you are saying to me suggest that you just need someone to speak to. I am not a qualified counsellor and cannot give you the support that you need. Have you thought about speaking to a counsellor or your local doctor?"
- "Unfortunately there have been no developments with your matter since we last spoke. I understand that you might be anxious for an outcome, but there is nothing more that can be done at the moment. As soon as I have an update I will call you immediately."
- "The [court/legal] process takes a long time. It will probably be a few [weeks/months] before we hear anything further on your matter. I will call you as soon I have an update."

If you feel that the frequency of your client's calls has become extreme you should talk to your pro bono coordinator or supervisor about an appropriate response.

Clients who want to vent or offload

Clients may also call you because they simply want someone to vent to or to talk through their problems with.

It is important to remember that you are not the client's counsellor and are not trained to provide psychological support. This does not mean you shouldn't express empathy towards a client. However, if a client starts talking to you at length about their feelings and it is clear that they really need to speak to a qualified counsellor, you should politely say to the client:

- "It sounds as though there is a lot going on in your life at the moment. Have you thought about speaking to a counsellor?" or
- "I understand you are very upset, but I am not a qualified counsellor and can't really offer you the support and assistance you need. Perhaps you should speak to your GP/doctor about referring you to a counsellor."

It can be difficult to interject when a client is expressing their feelings. It is important to find a suitable moment to direct the client towards appropriate counselling support. You should do so at the earliest appropriate opportunity to ensure that the conversation stays on the topic of the legal matters at hand.¹¹ You may also consider telling the client at the start of the phone call the amount of time you have available to speak with them, as this may help them to focus on the key issues.

Refusal by client to accept advice

If you have advised a client on a particular course of action and your client does not want to accept your advice, it may be appropriate to terminate your retainer. Be aware that your rights to terminate a retainer may differ in civil and criminal matters. You should get advice from the appropriate person in your firm before you take this action.

Terminating your client's retainer is not a decision that should be made lightly, but only after all factors have been considered. The termination should also be consistent with the terms of your engagement letter with the client.

If you have delivered advice to a client that was unpleasant for them to hear, give them time to absorb the advice. Tell them that you understand that they may be feeling shocked or disappointed. Also tell

¹⁰ For information about counselling and support services which you can refer clients, see section 13 **Mental health services to recommend to your clients.**

¹¹ Ibid.

them they should take some time to think about your advice and get in touch with you when they are ready.

Breaking bad news

Sometimes you may need to inform a client that their matter has no prospects of success or you may need to give the client bad news about the outcome of their matter. Below are some tips on how to make this difficult part of your role a bit easier:¹²

- When you know that you need to break bad news make sure you schedule in time. You could also suggest to the client that they may want to bring a support person to your meeting or teleconference.
- If you are giving the news by telephone you cannot see the client's reaction so you need to leave space and time for them to absorb what they are hearing.
- Remember that the client is upset at the news you are giving them. They are not upset with you.
- Deliver the news calmly and in such a way that it is clear what the message is.
- Allow the client to have whatever emotional reaction he or she needs to have. Do not take the reaction personally. You are the messenger.
- Once you have given the bad news, you may need to debrief with a colleague or your referral contact.

10 Common mental health problems

Overview

You may be advised about factors that could affect a client's behaviour during the referral process or prior to meeting with the client. At other times, you will not have this information. For example, a client may have a mental health or behavioural problem but it may not have been picked up during their initial intake interview. Some clients may avoid disclosing that they have mental health or behavioural problems.¹³

It is useful to know some key signs or symptoms of common mental health issues. You should also be aware of some strategies to respond to or manage difficult client behaviour, such as what to do when a client is experiencing a mental health crisis or trauma.

Be aware that alcohol and other drug issues often interact with mental health issues, and some types of behaviours and symptoms can be mistaken for intoxication. A more detailed discussion on responding to clients who appear to be affected by alcohol and/or other drugs is contained in the next section.

¹² This section is sourced from the Cancer Council NSW eLearning modules, 2016.

¹³ Content for this section is largely derived from the Mental Health First Aid Manual, Third Edition (July 2014) Mental Health First Aid Australia.

Depression, Anxiety and Trauma — symptoms and how to respond

Depression

Depression is usually associated with a person's sad or down mood. However, clinical depression lasts for a long period of time and affects a person's ability to engage in work, usual daily activities and satisfying personal relationships. Symptoms of depression can affect a person's physical, psychological and behavioural wellbeing. You may notice symptoms of depression which affect client behaviour.

Symptoms of depression

- a consistently "sad" mood or crying;
- a lack of energy or tiredness, and loss of motivation;
- a lack of emotional responsiveness;
- mood swings, angry outbursts or irritability;
- excessive worry;
- impaired memory and concentration, and difficulty making decisions;
- neglect of their responsibilities;
- signs of non-suicidal self-injury;
- talking about death or suicide; or
- abuse of alcohol or drugs.

Anxiety

Everyone experiences anxiety at some time. When people describe their anxiety they may use terms such as anxious, stressed, uptight, nervous, frazzled, worried or tense. Anxiety can vary in severity from mild uneasiness through to a terrifying panic attack. Anxiety can also vary in how long it lasts, from a few moments to many years.

There are many different types of clinically diagnosable anxiety disorders. You may notice symptoms of anxiety in clients who have experienced trauma themselves or witnessed something terrible happen to someone else. Like depression, symptoms of anxiety can affect a person's physical, psychological and behavioural wellbeing. You may notice the following symptoms which affect client behaviour.

Symptoms of anxiety

Like depression, symptoms of anxiety can affect a person's physical, psychological and behavioural wellbeing. You may notice symptoms which affect client behaviour such as:

- unrealistic or excessive worry;
- decreased concentration and memory;
- indecisiveness;
- irritability or anger;
- confusion;
- distress;
- increased use of alcohol or drugs; or
- symptoms of a panic attack.

Trauma

A traumatic event involves a person being exposed to actual or threatened death, serious injury or sexual violation. Examples of traumas include involvement in war, accidents, assaults, mugging, robbery and family violence.

The traumatic event may not necessarily have been experienced by your client. The person might have witnessed someone experience a traumatic event or learnt about someone close to them having experienced trauma. The person may be exposed to repeated or extreme details of the event.

Post-traumatic stress disorder is considered a form of anxiety that can develop as a result of traumatic events that threaten a person's life or safety, or that of others around them. Common symptoms include reliving the traumatic event through unwanted recurring memories, being overly alert or wound up, avoiding reminders of the event and feeling emotionally numb.

Someone who has experienced a traumatic event may have difficulty properly recalling that event and may be distressed when talking about what happened.

Sometimes the memories of traumatic events trigger certain behaviours in clients. Regardless of the amount of time which has passed since the event, be conscious that your client may still be feeling traumatised.

Responding to Depression, Anxiety or Trauma

At all times it is important to remember your role as the client's lawyer. You should resist the urge to try to come up with answers to your client's non-legal problems and instead, refer them to services where these problems will be best resolved.

If you notice signs of mental illness or trauma in your client, you could encourage your client to seek support from their family and friends, or from a health professional (e.g. GP, psychologist, social worker) or support service (e.g. Lifeline, BeyondBlue, Kids Helpline).

There are also some simple things you can do to respond to signs of depression or anxiety, or when talking to a client who has experienced trauma. These things can develop your relationship with the client with the goal of providing them with the legal assistance they require. The following things can improve interactions with a client:

- Acknowledge a client's trauma and feelings; do not ignore them.
- It is more important to be genuinely caring than to say all the "right" things. Choose your words carefully to avoid causing any offence. Do not apply a label to your client, such as "mentally ill" or "drug addict".
- Empathise with the person and acknowledge how difficult the event must have been for them to experience and remember. Do not tell them that you understand what they are going through, unless you have experienced the same thing as them.
- Communicate in simple language as an equal, rather than as a superior or expert. You may need to repeat yourself if the client has difficulty understanding your advice.
- Listen and communicate non-judgementally. Do not criticise or trivialise their feelings or experience. Their depression, anxiety or reaction to trauma is not due to weakness or laziness; the person is trying to cope.
- When meeting the client in person, ask them if there is anything you can do to make them feel comfortable. Have tissues handy if you think they may be needed. Let the client take a break when they need one. Offer for the client to bring a support person to meetings.

- Give them time to think about your advice before they give you instructions.
- Put your advice in a simply worded letter if it was given verbally.
- Be genuine and ensure that your body language reflects this.
- Maintain a comfortable level of eye contact and an open body position (e.g. do not cross your arms or turn away from them).
- If it is safe, sit alongside the client rather than directly opposite them.
- Avoid distracting gestures such as fidgeting with a pen, glancing at other things or tapping your feet or fingers.
- Remember that pauses or silences during a conference are okay. Consider whether the silence is awkward or if it is just awkward for you.
- Be patient, including when the client may not be communicating well, is repetitive or speaking slowly.
- Continually be mindful of their cognitive capacity and check that they understand your advice.
- If it will be useful for their legal matter, get them assessed by a psychologist.
- If you are struggling to progress with the legal matter at hand, suggest that you reconvene the meeting at a later time.
- Behaviour such as withdrawal, irritability and bad temper may be a response to the client's trauma or experience, so try not to take this personally. Try to be friendly, even if the person is being difficult.
- In some circumstances the person may not be as distressed as you would expect them to be about a situation. That is fine. Do not tell them how they should be feeling. Remember that everyone deals with trauma in their own way and at their own pace.
- Be aware of cultural differences that may influence the way some people respond to a situation. For example, in some cultures expressing vulnerability or grief around strangers is considered to be inappropriate.

Panic attacks – symptoms and how to respond

A person with anxiety may also experience a panic attack, which is the feeling of sudden onset intense apprehension, fear or terror. These attacks can begin suddenly and develop rapidly. These intense feelings are usually an inappropriate reaction to the circumstances at the time. The client's symptoms may seem similar to those of a heart attack such as rapid and shallow breathing, shortness of breath, sweating, blushing, trembling or shaking, dizziness or light-headedness.

If you suspect that someone is experiencing a panic attack, you should first ask them if they know what is happening and whether they have experienced a panic attack before. If they indicate that they are having a panic attack and have had one before, ask them what help they need and give it to them. Remain calm and speak to the person reassuringly. Be patient. Invite the person to sit down somewhere comfortable. Do not belittle the person's experience. Acknowledge that their terror feels very real, but reassure them that while a panic attack is frightening, it is not life threatening and the symptoms will pass.

If the person is uncertain whether they are having a panic attack or if they are unable to respond to you, you should:

- help the person into a supported sitting position (eg in a chair or against a wall);
- notify an ambulance immediately;
- check if the person is wearing a medical alert bracelet or necklace and follow the available instructions; and
- get help from someone who knows how to perform physical first aid in case the person loses consciousness.

Psychosis — symptoms and how to respond

Psychosis is a general term which describes a mental health problem in which a person has lost some contact with reality, such as schizophrenia or severe cases of bi-polar. In these circumstances there will be severe disturbances in the person's thinking, emotions and behaviour. Psychotic disorders are quite uncommon but you may come across a client who has symptoms of psychosis. You will usually notice this in the initial client interview.

Symptoms of psychosis

- difficulties with concentration or attention;
- inability to communicate clearly;
- blunt, flat or inappropriate emotions such as speaking in a monotone voice, lack of facial expressions or gestures, lack of eye contact or reacting with anger or laughter when these are not appropriate responses;
- delusions, hallucinations, disorganised thinking or some level of paranoia;
- irritability;
- suspiciousness; or
- a lack of self-care.

If you notice signs of psychosis, you should bring the meeting to an end, in a manner that does not compromise your own safety.¹⁴ For example, you could maintain a positive tone of voice, thank the client for what they have told you and explain that you are unable to assist them with their matter. You might want to refer them to a support service.

If you notice signs of psychosis, you should speak to person in a slow, calm tone and repeat if necessary, ensuring your own personal safety at all times. Try not to act alarmed, horrified or embarrassed by the person's delusions. Do not laugh, confront, criticize or blame the person, or take their delusional comments personally. While the delusions may seem bizarre to you, they are very real to the client.

Think about what they are telling you and consider whether it is a good idea to continue your discussions with them.

- Do they have a genuine legal issue?
- Are they busy dealing with their delusions and unable to participate in a useful discussion with you?
- Do they have the capacity to understand your advice?

¹⁴ Consider the guidance provided in relation to general lawyer safety in section [IX](#) above.

11 Managing difficult behaviour

Rude behaviour

If a client is being rude or making accusations that may not be accurate, it is best not to engage in further conversation. Depending on what is driving the client's behaviour, it may not be possible to reason with them. For example, if the client is having a mental illness episode or is under the influence of alcohol, it is unlikely that you will be able to reason with them.

The best approach in these situations is to:

- acknowledge the client is upset or frustrated; and
- say that you will speak to them at another time, when they are not feeling so upset.

For example, you could say: "I understand you are frustrated/upset. At the moment you are speaking to me rudely and I am not going to continue our conversation any further. We can talk again later if you speak to me politely" and end the conversation.

Aggressive behaviour

If a client becomes aggressive, remain as calm as possible. Try to de-escalate the situation by doing the following:

- speak to the person slowly and confidently with a caring tone of voice;
- do not respond in a hostile, disciplinary or challenging manner;
- be aware that the person may overreact to negative words. Therefore, use positive words such as "stay calm", instead of negative words such as "don't fight";
- avoid nervous behaviour such as shuffling your feet, fidgeting or making abrupt movements;
- do not restrict the person's movement (eg if they want to pace up and down the room);
- consider asking the person to sit down if they are standing;
- suggest that you take a break from the conversation to give the person a break; or
- verbally empathise with whatever is frustrating them and try to get them focused on assisting you with a resolution for the issue.

You should seek outside help immediately if you are frightened. If the client's behaviour does not subside within a reasonable period of time or following your reasonable course of action, you should leave the room immediately. You should notify your pro bono coordinator or supervisor, or call security or the police. When notifying the police or security, it is useful to let them know if you suspect that the person's aggression is related to a mental health problem or associated with intoxication from alcohol or drugs.

You should never put yourself at risk. If you are concerned about a client's potentially aggressive behaviour or have never met a client before, bring someone else with you to the meeting, leave the meeting door open, try to sit close to the open door and ensure that the client is not sitting between you and the exit. Inform another person in the office to be aware of what is happening so there is someone ready to call for help if it is needed. Always ensure you have unobstructed access to an exit.

Sexual advances and inappropriate comments

Sometimes a client might also ask personal questions about your relationship status or sexuality. You should not feel compelled to answer and it is often advisable that you do not respond. If a client makes sexual advances towards you or inappropriate sexual comments, it is best to tell that client that you do not feel comfortable with their behaviour. You may also wish to terminate the meeting or phone call and cease acting for the client.

One approach to these situations is to say: “You are making me feel uncomfortable and I would like you to stop. I do not think your behaviour is appropriate and I am not going to continue our conversation / meeting any further. We can talk again once you agree to speak to me politely and respectfully.”

Make sure you notify your pro bono coordinator or supervisor and have a discussion with them about whether you feel comfortable continuing to act for the client.

Client under the influence of alcohol or drugs

Common signs that your client is affected by drugs or alcohol include:

- bloodshot eyes, pupils larger or smaller than usual;
- lack of personal hygiene or grooming;
- unusual smells on breath, body or clothing; and
- tremors, slurred speech or impaired coordination.

It will usually be very obvious to you if your client is affected by alcohol or drugs, but this can be less obvious when you are conferring with them by telephone rather than in person.

If you feel at any time that your client does not understand your advice by telephone, suggest that it might not be a good time for the client at that moment and that you can call them back at a later time. Make sure that you check whether they are okay. Ask whether there is someone with them. Suggest that they seek medical assistance if need be.

If you are concerned about their wellbeing, notify your pro bono coordinator and supervisor. Also consider whether you should notify the police or ambulance services and the confidentiality issues associated with that. Rule 9.2.5 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 allow a lawyer to disclose confidential client information if the information is disclosed for the purpose of preventing imminent serious physical harm to the client or another person. If you are located in a jurisdiction other than New South Wales or Victoria, you should clarify the position in your jurisdiction.

If you meet with a client face-to-face who is clearly affected by drugs or alcohol, immediately terminate the meeting and notify your pro bono coordinator and supervisor. Also consider whether you should notify the police or ambulance services and the confidentiality issues associated with that.¹⁵ Medical attention should be sought in circumstances where a person has suffered an injury, including a person who has vomited more than once as they may have suffered a head injury, and in circumstances where it appears the person has decreasing consciousness (ie if a person becomes harder to arouse over time, it may mean their condition is getting worse).

¹⁵ In New South Wales and Victoria, rule 9.2.5 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 allow a lawyer to disclose confidential client information if the information is disclosed for the purpose of preventing imminent serious physical harm to the client or another person

A suggestion for how you can terminate the meeting is to show the client to a meeting room and tell them you have forgotten some of your papers, then quickly alert the appropriate people. If the client is so unwell that they cannot communicate and there is no risk of them being aggressive towards you, tell them you are concerned about their wellbeing and immediately notify the ambulance services.

12 Threats of harm

Throughout your time as a pro bono lawyer you may come across a client who threatens to harm themselves or someone else. While this is not a common occurrence, it is important for you to understand how you should respond in these situations. You should also be aware of the legal issues involved in disclosing confidential client information to authorities.

Suicide

A person may tell you during discussions about their legal concerns that they have had thoughts of committing suicide. As uncomfortable and confronting as this situation can be, it is important to address the issue directly and determine whether the client has definite intentions to take their life. If you are not comfortable talking to the client and you think this option is a safe one in the circumstances, ask the client to hold the line or wait one moment while you get help from your pro bono coordinator or supervisor.¹⁶

Acknowledge their statement and tell the person you are concerned about their wellbeing. Resist the urge to try and resolve all their non-legal problems that may be causing their suicidal thoughts. Ask them directly whether they are having thoughts of harming or hurting themselves, or doing something to end their life. It is important to ask this question without dread and without expressing any negative judgment.

Although some people think that asking about suicide can put the idea into a person's mind, this is not true. Another myth is that someone who talks about suicide is not really serious. Remember that talking about suicide may be a way for the person to indicate to you just how badly they are feeling. You should not ignore this.

If you determine that the client intends to harm themselves, you should try to establish the imminence of harm. Ask them questions like:

- "Have you decided when you will take steps to end your life?"
- "Have you decided how you will harm yourself?"
- "Have you taken any steps towards carrying out your plan?" and
- "Do you have access to the things you need to carry out your plan?"

A higher level of planning indicates a greater risk. Similarly, if a client has indicated they have access to dangerous or lethal resources, this will indicate that a greater risk exists. However, the absence of a plan or access to lethal resources is not enough to ensure the person's safety. All thoughts of suicide should be taken seriously.

To help you weigh up additional risk factors, ask the client questions like whether they have been using drugs or alcohol, and whether they have made an attempt to end their life in the past. A positive

¹⁶ This section draws on the *Mental Health First Aid Guidelines*: <https://mhfa.com.au/resources/mental-health-first-aid-guidelines>.

response to either of these questions means it is more likely that the person will attempt to commit suicide.

The client may tell you that they are not currently having thoughts of suicide but have in the past due to the difficulty of their situation. Acknowledge how difficult their situation has been for them and remind them to seek support from family, friends or professionals if they ever have suicidal thoughts again.

If you think the threat of suicide is imminent, ask the client where they are (eg their address) and if someone is with them. Get their best contact number and if someone is with them, suggest that they stay with this person. Get them to write down the phone numbers of emergency help lines (Lifeline 24 hour service 13 11 14 or suicide call back service 1300 659 467). Suggest they ring these services as they are better qualified to provide support to the client. Tell them that you may have an obligation to notify emergency services to ensure their safety, which will mean providing those services with the client's personal details.

Your pro bono coordinator or supervisor should be notified of all threats of suicide or harm. Make sure you have made a file note of your discussions with the client. You can then collectively decide on the best action to take. If you think an imminent risk of suicide is present, you need to take action to try to keep the person safe.

Schedule 1, part 3, section 6 of the *Privacy Act 1988* (Cth) (**Act**) deals with the use or disclosure of personal information. It prohibits personal information which is held for a particular purpose (eg for the provision of legal advice) from being disclosed or used for another purpose unless:

- the individual consents to the use or disclosure of the information; or
- one of the specific exceptions in subclauses 6.2 and 6.3 apply.

For our purposes, the relevant subsection is 6.2(c) which allows personal information to be used or disclosed in circumstances where a “permitted general situation” exists. A permitted general situation is defined in part 3, division 2, section 16A of the Act to include circumstances where:

- it is unreasonable or impracticable to obtain the individual’s consent to the use or disclosure; and
- you reasonably believe that the use or disclosure is necessary to lessen or prevent a serious threat to the life, health or safety of any individual, or to public health or safety.

Rule 9.2.5 of the Legal Profession Uniform Law Australian Solicitors’ Conduct Rules similarly allows a solicitor to breach confidentiality in order to prevent “imminent serious physical harm to that client or another person”.

Do your best for the client, but remember you are their legal advisor and you are not required to solve all of their problems. Make sure you talk about your experience with someone you trust and seek professional support for yourself if you need it. Take some time out after any difficult interactions with your client to collect your thoughts and get the support you need to maintain your wellbeing.

Threats of harm to someone else

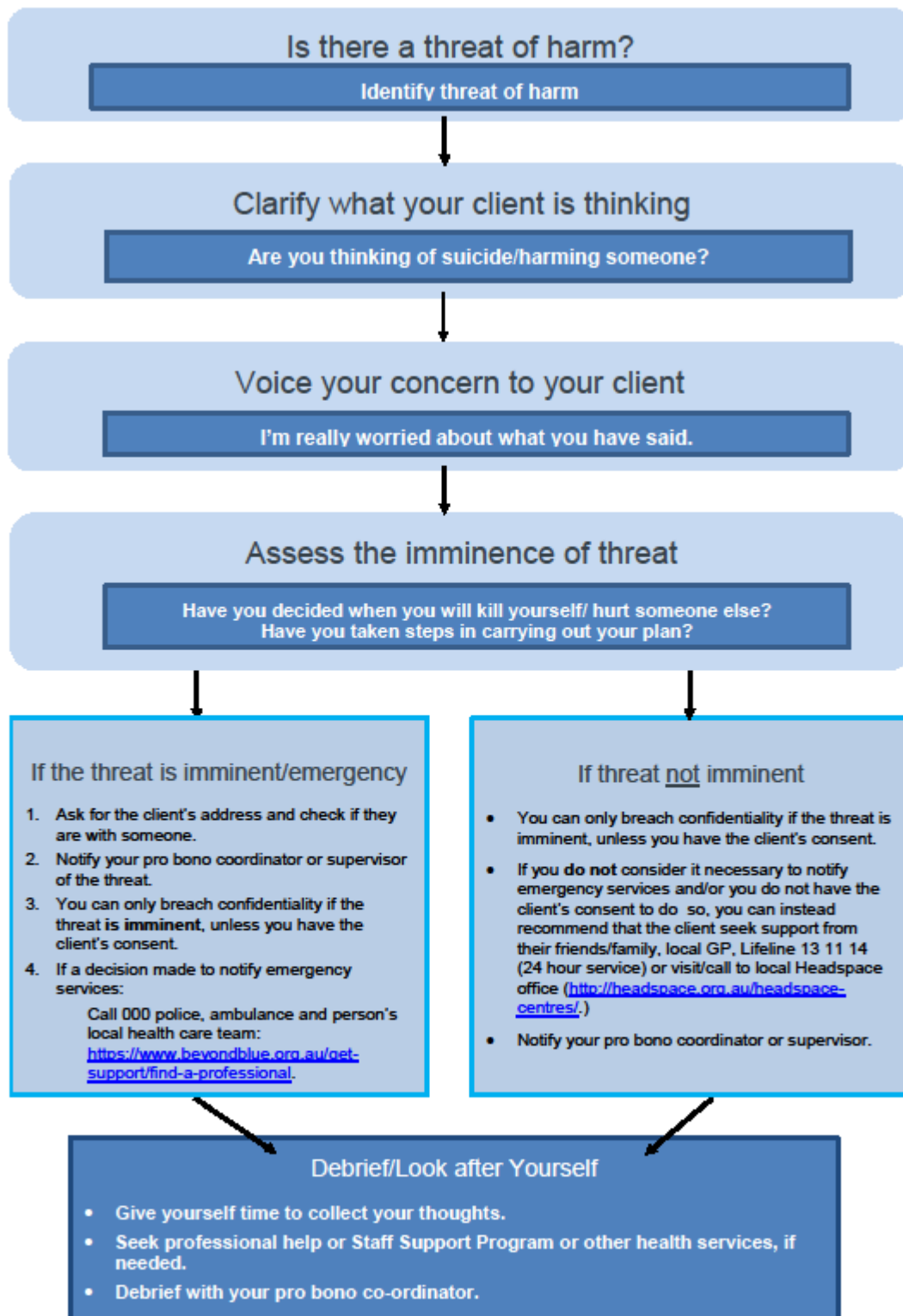
It is less likely that a client will disclose to you that they intend to harm someone else. However, it is important to know how to manage this situation. Your response in these circumstances should be similar to your response to suicidal threats. It is a good idea to warn the client early in your discussion that you may need to notify the police if you consider someone else’s life to be in danger. If the client continues to discuss the situation, address the matter directly. Ask them about their plans and

whether they have taken any steps to put these plans into action. Ask them about when and how they intend to harm this other person.

Your pro bono coordinator or supervisor should be notified of all threats of harm to others. Make sure you have made a file note of your discussions with the client. You can then collectively decide on the best action to take. If you think there is an imminent risk of harm to someone else, you need to take action to keep that person safe by notifying the police.

Figure 2: Responding to a threat of harm

This is a simple flow chart for you to use when faced with a client threatening harm to themselves or someone else.



13 Mental health services to recommend to your clients

You may want to refer your clients to the following mental health services if you are concerned about their wellbeing:

- **LIFELINE:** Lifeline provides access to crisis support, suicide prevention and mental health services. They can be contacted on 13 11 14 or online at www.lifeline.org.au
- **REACH OUT:** ReachOut is anonymous, open 24 hours a day, seven days a week and is filled with lots of information, stories, videos and forums where people can connect with other people experiencing similar difficulties. Their services can be accessed at <http://au.reachout.com/>
- **HEADSPACE:** Headspace is a national youth mental health foundation which helps young people who are going through difficult times. Their services can be accessed at www.headspace.org.au
- **MENSLINE:** MensLine Australia is a unique telephone and online support, information and referral service which helps men to deal with relationship problems in practical and effective ways. They can be contacted on 1300 78 99 78 or online at www.mensline.org.au
- **KIDS HELPLINE:** Kids Helpline is Australia's only free, private and confidential phone counselling service provided specifically for young people between 5 and 25 years of age. They can be contacted on 1800 55 1800 or online at www.kidshelpline.com.au
- **1800 RESPECT:** 1800 Respect is a national Australian sexual assault and domestic family violence counselling service. Professionals are available 24 hours a day, seven days a week on the telephone and online to provide crisis and trauma counselling services. They can be contacted on 1800 737 732 or online at www.1800respect.org.au.

14 Other resources

Client capacity

Evaluation of legal capacity by doctors and lawyers: the need for collaborative assessment:

<https://www.mja.com.au/journal/2014/201/8/evaluation-legal-capacity-doctors-and-lawyers-need-collaborative-assessment>

NSW Capacity Toolkit and Factsheets:

http://www.justice.nsw.gov.au/diversityservices/Pages/divserv/ds_capacity_tool/ds_capacity_tool.aspx

When a Client's Mental Capacity is in Doubt - A Practical Guide for Solicitors:

<http://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1191977.pdf>

Queensland Handbook for Practitioners on Legal Capacity:

https://www.qls.com.au/Knowledge_centre/Ethics/Resources/Client_instructions_and_capacity/Queensl_and_Handbook_for_Practitioners_on_Legal_Capacity

Queensland Client Instructions and Capacity:

http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Client_instructions_and_capacity

Client Capacity & Professional Standards — QLS Elder Law Conference 2009:

[http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Client_instructions_and_capacity/Clare_Endicott - Client Capacity Professional Standards - QLS Elder Law Conference 2009](http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Client_instructions_and_capacity/Clare_Endicott_-_Client_Capacity_Professional_Standards_-_QLS_Elder_Law_Conference_2009)

Confidentiality, termination of retainer and capacity:

[http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Confidentiality/Confidentiality/Ethics_scenario — Confidentiality termination of retainer and capacity](http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Confidentiality/Confidentiality/Ethics_scenario_-_Confidentiality_termination_of_retainer_and_capacity)

Client physical and cognitive capabilities

The Australian Law Reform Commission's 'Equality, Capacity and Disability in Commonwealth Laws Final Report':

https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_124_whole_pdf_file.pdf

Disability, ageing and carers: summary of findings 2012:

<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4430.0>

Disability Support Pension:

<https://www.humanservices.gov.au/customer/services/centrelink/disability-support-pension>

Equality before the Law Bench Book:

<https://www.judcom.nsw.gov.au/publications/benchbks/equality/>

Access to Justice and Legal Needs, A project to identify legal needs, pathways and barriers for disadvantaged people in NSW:

[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public_consultations_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)

Case managing clients with intellectual disabilities:

<http://www.legalaid.nsw.gov.au/about-us/news-and-media/legal-aid-news/legal-aid-news-articles/november-2012/case-managing-clients-with-intellectual-disabilities>

Attorney General's Department of NSW Discussion Paper 'Are the rights of people whose capacity is in question being adequately protected?' A joint response by People with Disability Australia Inc and Blake Dawson Waldron:

<http://www.pwd.org.au/documents/pubs/SB06-Capacity.pdf>

The obligation of disclosure to clients with mental disability:

[http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Client_instructions_and_capacity/The_obligation of disclosure to clients with mental disability](http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Client_instructions_and_capacity/The_obligation_of_disclosure_to_clients_with_mental_disability)

Indigenous identity

Aboriginal Identity: Who is 'Aboriginal'?:

<https://www.creativespirits.info/aboriginalculture/people/aboriginal-identity-who-is-aboriginal>

The Australian Institute of Aboriginal and Torres Strait Islander Studies:

<http://aiatsis.gov.au/>

Australian Human Rights Commission – Questions and Answers about Aboriginal and Torres Strait Islander Peoples:

<http://www.humanrights.gov.au/publications/questions-and-answers-about-aboriginal-torres-strait-islander-peoples>

Defining Aboriginality in Australia:

http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publication

[s_Archive/CIB/cib0203/03Cib10#future](#)

Kinship and Identity – Legal Definitions of Aboriginality:

http://www.alrc.gov.au/publications/36-kinship-and-identity/legal-definitions-aboriginality#_ftnref45

Working with Aboriginal clients at Kingsford Legal Centre:

<http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/UN702-KLC-Aboriginal-Service-Provision-Manual-FA-WEB.pdf>

Protocols for use of 'Aboriginal' and 'Torres Strait Islander':

https://www.health.qld.gov.au/_data/assets/pdf_file/0031/147919/terminology.pdf

Interpreters

The role of the interpreter in legal practice:

<https://www.naati.com.au/news-events/news-events-container/updates/the-role-of-the-interpreter-in-legal-practice/>

Guidelines and Best Practices on working with Interpreters and Translators:

http://ausit.org/AUSIT/About/Ethics_Conduct/Best_Practices/AUSIT/About/Best_Practices.aspx

Interpreter Policies, Practices and Protocols in Australian Courts and Tribunals A National Survey Professor:

<http://www.aija.org.au/online/Pub%20no89.pdf>

Ethnic Communities Council of Victoria:

<http://eccv.org.au/policy/submissions/>

Working with TIS National Interpreters:

<https://www.tisnational.gov.au/en/Agencies/Help-using-TIS-National-services/Working-with-TIS-National-interpreters>

Oncall Interpreters & Translators:

<http://oncallinterpreters.com.au/>

Managing communication challenges

The challenge of dealing with homeless clients:

<http://www.lawyersweekly.com.au/opinion/10752-the-challenge-of-dealing-with-homeless-clients>

Homelessness – Public Interest Advocacy Centre:

<https://www.piac.asn.au/projects/homelessness/>

Reflections of a pro bono coordinator:

<http://www.nationalprobono.org.au/probonomanual/page.asp?sid=1&pid=32>

Privacy fact sheet 17: Australian Privacy Principles:

<https://www.oaic.gov.au/individuals/privacy-fact-sheets/general/privacy-fact-sheet-17-australian-privacy-principles>

Cancer Council eLearning modules available to all pro bono professionals:

<https://www.cancercouncil.com.au/69362/newsletters/cancer-council-pro-bono-e-newsletter-issue-1-%e2%80%93-autumn-2013/#JIH9KC2CkIxK2JXw.99>

Common mental health problems

Mental Health First Aid Guidelines:

<https://mhfa.com.au/resources/mental-health-first-aid-guidelines>

Intellectual Disability Mental Health First Aid Manual:

<https://mhfa.com.au/sites/default/files/2nd-Edn-ID-MHFA-Manual-Sept-2012-small.pdf>

The Mental Health Advocates Practice Kit:

<http://www.legalaid.nsw.gov.au/for-lawyers/policyonline/practice,-procedures-and-directions/3.-the-mental-health-advocates-practice-kit/3.29.-annexure-a-interviewing-the-mentally-ill-client>

Ethical Considerations for Duty Lawyers representing Mentally Impaired Persons:

http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Client_instructions_and_capacity/Ethical_Considerations_for_Duty_Lawyers_representing_Mentally_Impaired_Persons_by_Joseph_Briggs_LAQ

Managing difficult behaviour

Mad, Bad or Dangerous to Know – when can a solicitor report client misconduct, threats or suicide:

http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Confidentiality/Confidentiality/Mad_Bad_or_Dangerous_to_Know_-_when_can_a_solicitor_report_client_misconduct_threats_or_suicide_risk

Can I disclose information for the purpose of preventing imminent serious physical harm to my client or another person?:

http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Confidentiality/Confidentiality/Can_I_disclose_information_for_the_purpose_of_preventing_imminent_serious_physical_harm_to_my_client_or_another_person

My client has threatened to assault someone, and I think they mean it. What should I do?:

http://www.qls.com.au/Knowledge_centre/Ethics/Resources/Confidentiality/Confidentiality/My_client_has_threatened_to_assault_someone_and_I_think_they_mean_it_What_should_I_do

Part B

SELF-CARE



15 The impact of pro bono work on your wellbeing

As lawyers, we often deny that the work we do has an impact on our wellbeing in an attempt to avoid signs of vulnerability and weakness. However, when we are faced with matters which involve serious injury, suicide, child abuse, homelessness, sexual assault and graphic material, we often do not know how to respond. Further, as pro bono lawyers, our work often involves listening to clients' traumatic stories, and reviewing traumatic material in detail.

These events can have a negative impact on our wellbeing. We need to watch out for signs and symptoms of strain in ourselves and our colleagues.

16 Consequences of working on traumatising cases

The impact of working on traumatising cases has been explored in psychology literature. The types of impacts have been classified into different categories, which include compassion fatigue, vicarious trauma and burnout. These conditions typically affect people who are overly conscientious, perfectionists and self-giving. Susceptible individuals include social workers, nurses, doctors, counsellors and lawyers.

Compassion fatigue is recognised as the consequence of being exposed to and showing empathy towards clients who have had traumatic experiences. It is the physical and psychological response to working with or being exposed to traumatic stories and events. The response to these experiences is usually a lessening of compassion over time due to emotional and physical exhaustion from helping others who have experienced or are experiencing trauma. Compassion fatigue can also arise as a result of the feeling of helplessness that is associated with hearing or being exposed to problems arising from trauma that cannot be solved by a lawyer.

Vicarious trauma can be thought of as the mirroring of clients' trauma symptoms, resulting in changes to the effected lawyer's mood, energy levels, sleep patterns and thoughts. Changes to thoughts can include increased concerns about intrusion and vigilance regarding safety.

Burnout is emotional and physical exhaustion which results from being overloaded/sense of helplessness. Burnout doesn't arise exclusively in the context of trauma but can occur in the context of any workplace.

17 Recognising symptoms in yourself and your colleagues

The symptoms of compassion fatigue, vicarious trauma and burnout are different for different people. The symptoms may be triggered by hearing about or seeing the distress of others.

Symptoms may involve physical and psychological reactions, including intrusive thoughts such as re-experiencing the traumatic event with images, thoughts and perceptions; anxiety; sleep disturbances; frequent sick days; disinterest in work; a sense of futility; avoidance – intentional efforts to avoid

thoughts, feelings or activities which may be associated with the trauma; anger; and underreacting or overreacting.

18 Being aware of triggers — knowing what affects you

Triggers can be subtle and difficult to anticipate. They may be people, places or things. It is important to know your own triggers and vulnerabilities.

For example:

- A personal experience might be triggered whilst working on a matter. Lawyers may work on or be drawn to cases with which they share similar life experiences. When working on these cases, lawyers are particularly vulnerable to compassion fatigue, vicarious trauma and burnout.
- A trigger may be a particular type of client rather than the content of their story. It is important to recognise when you have an emotional response to a client.

If you notice a colleague has been affected by a trigger, we recommend that you be patient and give them time to process their feelings. It may take them time to feel comfortable discussing their experience with you.

19 How to look after yourself

Awareness

It is important that you be aware of what compassion fatigue, vicarious trauma and burnout are, so you can recognise their signs and symptoms in yourself and your colleagues if they arise. This will enable you to cope better if they do.

Debriefing

In some circumstances, debriefing may be appropriate. When debriefing, the emphasis is on keeping people safe and promoting back to normal functioning after a traumatic event. It may be helpful to talk to another colleague or your referral contact when an incident occurs because discussing incidents with another person can help you to understand how the incident has affected you. Debriefing should be done within 72 hours of an event occurring. It should consider the details of the event, your reaction to it and your assessment of what happened. It should be noted that several studies have found debriefing can be ineffective and harmful.¹⁷ You need to consider what is right for you in the circumstances.

Balance

We suggest the following methods to best maintain and achieve balance:

- Work on seeing the big picture. As lawyers, we should be proud of what we do because it is meaningful work and has a profound impact on our clients' lives.

¹⁷ <http://bjp.rcpsych.org/content/183/1/12>; <http://www.kcl.ac.uk/kcmhr/publications/assetfiles/deployment/greenberg-psychologicaldebriefing.pdf>.

- Aim to build resilience so that we can bounce back in life from challenges and stressful times.
- Learn stress reduction practices. This may involve taking a break from work, learning breathing exercises, physical exercise and other recreational activities. Walking outside, yoga and meditation are examples of mindfulness based stress reduction activities.
- Establish clear, professional boundaries and know that sometimes successful outcomes are not always achievable in our matters.
- Maintain supportive social networks including colleagues and friends. They can help to protect you, maintain balance and perspective.

20 Services available

If you think professional help may be useful for you, the following services are available and recommended for lawyers:

- The firm's confidential Employee Assistance Program (if one is available): [Firm to insert details].
- Lifeline for Lawyers (1800 085 062): This program is managed by the Law Society of NSW. It is free for members. It offers a 24 hour crisis support services.
- Lawyers Assistance Program (1800 777 662): This program is a free and confidential counselling service. Initially, you will speak to a trained coordinator who is also a solicitor. You may be directed to suitable counsellors, agencies and schemes.
- Law Care (0416 200 788): This is a professional and confidential counselling service which is offered to solicitors and their immediate family members. Counsellors are practising GPs experienced in dealing with difficulties faced by professionals. Initial assessments and referrals by telephone are free.

21 Other resources

How to deal with the trauma of work:

<https://www.liv.asn.au/Staying-Informed/Young-Lawyers-Journal/Young-Lawyer-s-Journal/September/How-to-deal-with-the-trauma-of-work>

Suicide Prevention and Self-Care:

<https://www.lawyersalliance.com.au/opinion/suicide-prevention-and-self-care>

"Feeling heavy" Vicarious trauma and other issues facing those who work in the sexual assault field:

<https://aifs.gov.au/publications/feeling-heavy/what-vicarious-trauma>

"Towards Wellness: Implementing a therapeutic approach to mental health in the Victorian legal profession":

<http://sydsws002.sparke.com.au/cgi-bin/patience.cgi?id=6d40276e-1a51-4f41-95c9-10af3a0ea04e>

Vicarious Trauma: What is it and How Can Legal Culture Make it Worse?:

<https://lawstreetmedia.com/issues/health-science/vicarious-trauma-can-legal-culture-make-worse/>

Victims' suffering spills into lawyers' lives:

<http://www.smh.com.au/articles/2007/12/23/1198344885821.html>

Being Well in the Law – a guide for lawyers:

<http://lawsociety.com.au/about/YoungLawyers/Publications/Beingwellinthelaw/index.htm>

Mental health and wellbeing:

<https://www.lawsociety.com.au/ForSolicitors/professionalsupport/supportingyou/mentalhealthwellbeing/index.htm>

The Wellness Doctrines:

<http://www.thewellnessdoctrines.com/>

The Salvation Army Insight courses:

<http://suicideprevention.salvos.org.au/insight-courses>

Part C

ROLE-PLAYS



1 Aggressive client

Client: The magistrate got it all wrong. The whole thing, I tell you.

Lawyer: Okay, I understand that you are upset about the decision. Do you want to step me through what is worrying you?

Client: [Angry.] Worrying me? I just got charged with GBH [a client would never say “bodily harm”]. How the hell could I have caused that? I'm not that strong anyway. Look at me. I would need some serious weapon to hurt someone like that.

[Client starts rummaging through his bag for a while.]

Lawyer: Okay, I understand you're upset. Who was the lawyer in your matter?

[Client continues rummaging through his bag. Lawyer begins to feel uncomfortable. What is he looking for?]

Lawyer: Are you trying to find something?

[Client continues looking in his bag and ignores the lawyer.]

Lawyer: Do you still want to speak to me about your matter?

Client: Some guy called Nathan. Crap lawyer. [Client continues looking through bag as he responds to the lawyer.]

Lawyer: Give me a second. I just need to grab a document from the next room. I will be back.

[Lawyer goes next door and asks for someone to come and sit with her as she is feeling unsure about the client's behaviour. Lawyer and extra person return to the room and sit close to the exit.]

Client: What? Who are you? You think I am going to hurt you. Scared of an old fella like me? [Client is more agitated but no longer rummaging through his bag.]

Lawyer: This is Julie, one of the social workers from the centre. I thought she might be able to help us get to a place where we can give you some advice. Are you ready to chat to us now? We would like to help you but in order to do so, we will need you to respond to our questions.

Client: Fine. I'll tell you what happened.....

Discussion points

What lawyer did well: Calmly made an excuse and left the room to get some extra support. Sat closer to the door.

What lawyer could do better: N/A

What next: Try to create a trusting and calm environment. Start with trying to get the client to tell his story.

What could you do if there is no social worker available? (a) Terminate the conversation. Discuss examples of how to do this. Eg say you have to get something and leave the room. (b) Ask your supervisor to come in to assist.

What would you do if the client didn't calm down? Terminate the conversation. Eg say you have to get something and leave the room. Report the issue to your supervisor, security, or depending on the severity of the situation, the police.

2 Client doesn't really have a legal problem but wants to chat

Client: Miss, how's your day?

Lawyer: All good, how are you?

Client: Good, I've come to tell you about some stuff.

Lawyer: Well welcome. Tell me about the problem that brings you here today.

Client: I just don't like living around these parts. You know I had a good life when I was a kid. Wouldn't mind just getting back to that life. Where do you live, Miss? You have a good life. I can tell.

Lawyer: I live near the beaches. I have been lucky. It is understandable that you want to return to a time when you felt safer. Do you have a legal problem or have you had a disagreement with someone that you want to tell me?

Client: Do you go to the beach on the weekends? I can tell you go. You look tanned.

Lawyer: You are a perceptive person, that's for sure. Let's get back to the issue at hand. I am here to talk about your legal problem. Do you have one?

Client: Kinda. Well, I dunno. Like one time I left all my stuff in my friend's car and they drove off. I want my stuff back. It had my good Nikes in it. I reckon he nicked it all.

Lawyer: How long ago was that? And do you know who it was?

Client: Two years, I reckon. Name was Ted. Got no idea where he is now. Probably in the lock up. I don't know if he stole it actually. Or just forgot about it. I don't know really. He was a good sort most of the time. Haven't seen him for years. He was an ace drinking mate.

Lawyer: I am not sure if I can help you with that one. It seems like a fair time ago and you are not sure who the person is or if they actually stole your goods. Did you report it to the police?

Client: Nah. I liked the kid. I'm just pissed off now cause I want those shoes. Look at the shoes I have on today. [Client shows the lawyer dirty shoes.]

Lawyer: Can you get some new shoes from the hostel? We could chat to the front office. Why don't you go down and see them now. I have a few more clients that are waiting. [Lawyer stands up in order to encourage the client to leave.]

Discussion points

What lawyer did well: Respectfully engaged with the client's discussions but continued to lead the client back to a more relevant conversation about his legal issues. Once the lawyer realised the client did not have a specific reason to seek advice, the lawyer tried to end the meeting.

What lawyer could do better: N/A

What next: The client should now leave. If he/she doesn't leave, the lawyer should follow the client out to the exit and then return to see the next client. The lawyer should seek help from his/her supervisor if needed.

3 Non-responsive client suffered trauma

Lawyer: Hi. My name is Jodie and I will be taking your statement today. First, could you please tell me your name and date of birth?

Client: Ahmed Mohammed. 25 September 1999.

Lawyer: Tell me why you fear going back to your country.

Client: Things will be bad for me there.

Lawyer: Can you tell me specifically what will be bad for you? What could happen to you if you go back?

Client: Bad things.

Lawyer: Do you think you will be harmed?

Client: Yes.

Lawyer: What kind of harm do you fear?

Client: I don't know.

Lawyer: Who do you fear will harm you?

Client: I don't know.

Lawyer: Have you been harmed in the past?

Client: Yes. Things were bad.

Lawyer: Can you tell me specifically how you were harmed?

Client: [Silence.]

Discussion points

What lawyer did well: Persisted with different ways of asking the same question.

What lawyer could do better: Start with more ice-breaking conversation to put the client at ease so they feel they can open up. Expressly ask the client what he/she could do to make the client feel more comfortable. Ask them if they need a friend or support person in the meeting.

What next: Recognise storytelling is how information is conveyed in many cultures and sensitively ask for the story on what happened on a bad day or at a bad time. The lawyer should explain that he/she understands these questions may be uncomfortable for the client and why he/she needs to ask them. When clients have experienced trauma getting them to open up about their experience may take a number of meetings.

4 Distressed client

Client: [On the phone.] My neighbour called Centrelink and told them I am back with my ex-husband. Now they've cut off my pension. I've got four kids to feed and if I can't get my pension, that's it for us.

Lawyer: Have you got any letters from Centrelink confirming that your payments have been stopped and why?

Client: I just told you. I don't have any money. They cut me off. I haven't fed the dog since last Tuesday. If you don't get me the money I'm just going to drown the puppies. [Starts crying.]

Lawyer: I can hear that you're upset and I want to help you, but I need more information from you to work out how I can help you.

Client: I'm serious. I'm going to put them in a bucket.

Discussion points

What lawyer did well: Acknowledged that the client is upset.

What lawyer could do better: Recognise the client's emotions earlier.

What next: Find out more about the situation and perhaps engage additional support eg from a social worker or doctor.

5 Threat of suicide

Client: I need help to get my kids back. My ex-wife has the kids and I never get to see them. I don't have the money to get a good lawyer to fight my case in the family court. My friends say that they're always on the mother's side anyway.

Lawyer: I'm really sorry to hear about your situation, but our firm doesn't have any expertise in family law. I will need to try to refer you to another lawyer. Have you already been to Legal Aid?

Client: Legal Aid can't help me. I spoke to someone there but they can't take my case. Everything is gone. My wife, my home, my children. What's the point? Why do I bother? Nobody wants to help me. Nobody cares about me. Nobody would care if I lived or died. I might as well top myself.

Lawyer: Sometimes when people are as upset as you seem to be, they are thinking of suicide. I'm wondering if you're feeling that way, too?

Discussion points

What lawyer did well: Identified risk of suicide and asked the client directly about this.

What lawyer could do better: N/A

What next: Follow suicide risk procedure outlined in the threat of harm flowchart on page [X].

6 Strange behaviour

[Lawyer and client filled out an Application for Legal Aid form together.]

Client: Yeah, nope, I don't like what you have written.

Lawyer: In the form? We just went through this together. Have you thought of some extra information to add?

Client: [Angry raised voice.] You got it wrong. All you lawyers do.

Lawyer: Can you tell me where I have made an error and we can correct it?

Client: The whole bloody thing is wrong. Give me the pen. [Client takes pen and starts scribbling all over the completed form.]

Lawyer: [Silence.]

Client: I don't want anyone in the government to know my story. They will use it against me. They did that before and I had to sue the prime minister. This is wrong. [Client continues scribbling all over the form so the words are illegible.]

Lawyer: If you want to be assessed for Legal Aid you will need to write down your circumstances and legal problem in the form. It is part of the process we cannot avoid.

Client: What do you know, you bloody idiot? You lawyers have screwed me over one too many times.

Lawyer: [Gets up and opens door to office and then sits back closer to the door.] Did you want to finish up now and we can make an appointment for another day to look at your other options?

Client: Will make no difference. I am not giving any information out to anyone. I'm done with this. [Client gets up and starts rummaging through his bag, swearing under his breath.]

Lawyer: I am just going to go to the bathroom. I will be back.

[Lawyer goes and talks to the front desk to ask for some assistance.]

Discussion points

What lawyer did well: Terminated the conversation when it was clear it was not productive.

What lawyer could do better: Should have sat near the door in the first instance.

What next: Alert supervisor and discuss next steps, and whether assistance can be provided to the client. Consider referring the client to other support services, such as mental health services.

7 Need for plain English and explanations

Client: Hi. I've gotta see the parole board on Friday and it's not fair, they're going to lock me up. I went there on Monday like I was meant to, but they weren't there. So what am I supposed to do? It's not my fault if they're not there and they tell me that I'm not doing what I'm supposed to.

Lawyer: Okay. Before I can help you today, I need to do a conflict check. [Starts making a call.]

Client: [Shocked and distressed.] Oh my god, you're not calling the cops, are you?

Lawyer: No. It's just a process I need to go through.

Client: What conflict? I haven't been in any trouble? What are you writing? Who are you talking to?

Lawyer: It's nothing for you to worry about. I'm just checking that we aren't already representing someone who might be in conflict with you.

Client: I said I haven't had any problems for ages.

Discussion points

What lawyer did well: Followed conflicts procedure.

What lawyer could do better: Communicate using plain English explanations. Inform the client what he/she is doing in more detail before actually carrying it out.

What next: Provide more comprehensive, simple explanations of what is involved in a conflict check.

8 Culturally and linguistically diverse

Lawyer: Hi. My name is Michael and I will be your lawyer today. [Lawyer moves in to shake client's hand.]

Client: [Client pulls away.]

Lawyer: [Pulls back uncomfortably.] How can I help you?

Client: My husband, he say to me - money, no more, coming, no.

Lawyer: Are you telling me that your husband doesn't give you money?

Client: No. Centrelink money. My husband, work - is much too much.

Lawyer: [Speaking more loudly.] So is the problem about Centrelink?

Client: Yes, Centrelink, calling my husband - complain. Go Centrelink office.

Lawyer: [Speaking even more loudly.] Have you filled in a request for review with the authorised decision-maker?

Client: [Looks embarrassed, speaks quietly.] Yes.

Lawyer: Has there been a decision?

Client: Yes.

Lawyer: Are you considering an appeal to the tribunal following the decision in response to the request for review by the original decision-maker?

Client: Yes.

Lawyer: On what grounds do you believe that the decision could be reviewed?

Client: Yes, Centrelink. My husband - he say to me - money, no more.

Lawyer: I'm having trouble understanding. It might be a good idea if we arrange for you to come back with an interpreter.

Discussion points

What lawyer did well: Recognised the need for an interpreter.

What lawyer could do better: Be prepared with some research into issues of cultural awareness/sensitivity given the background of the client. Demonstrate emotional intelligence.

What next: Skilfully use an interpreter.

Part D

MENTAL HEALTH SERVICES CARDS



1 Client support card



Have a chat with your
friends and family

headspace
headspace.org.au

beyondblue
1300 22 4636
beyondblue.org.au/getsupport

Lifeline
(24/7 Crisis Support)
13 11 14



**Need
support?**



2 Staff support card

[Insert Firm's Logo]

[Insert Firm's Staff Support number]

headspace
headspace.org.au

beyondblue
1300 22 4636
beyondblue.org.au/getsupport

Lifeline
(24/7 Crisis Support)
13 11 14

[insert firm Staff Support html]

Debrief