

FACT SHEET

For lawyers

Acting for clients with intellectual disability



IMPORTANT – This Document only provides general information.

It is not intended to be a substitute for a close reading of the relevant legislation and other materials to which reference is made.

Acting for clients with intellectual disability

Does my client have intellectual disability?

Intellectual disability affects the way a person learns. It can affect them in a wide variety of ways and to different degrees. In many cases, the cause of intellectual disability is unknown. Possible causes may include:

- chromosomal and genetic disorders or syndromes
- extremely premature birth
- health problems or injury during childhood
- brain injury or infection occurring around birth or during pregnancy
- exposure to toxins, including alcohol, tobacco, and other drugs

Like anyone, people with intellectual disability have a variety of experiences. Some people work in open employment settings; others may work in supported employment (previously known as sheltered workshops) or attend day programs. Some receive Centrelink benefits or other sources of income. Some live in supported accommodation, such as group homes or residential centres. Others live independently in the community or with family members. Some are in relationships and are parents. Some are aged.

Intellectual Disability is not the same as Mental Illness

Intellectual disability is sometimes confused with mental illness but the two are very different. A mental illness often arises in early adulthood and affects a person's perception and mood. It is often episodic. Some examples of mental illness are: schizophrenia, depression, bipolar affective disorder (used to be known as 'manic depression').

Intellectual disability arises either at birth or when the person is a child or young person. It is fairly constant throughout the person's life, although the effects of the disability will also depend on what support and opportunities for skill development the person has. It impacts on various skill areas such as communication, self-care and social skills.

Depending on the person, a person with intellectual disability might:

- take longer to absorb information
- have difficulty understanding complex questions or instructions, and abstract concepts
- have difficulty with reading and writing and money management skills
- have a short attention span and might be easily distracted
- find it difficult to maintain eye contact
- find it difficult to adapt to new situations or to plan ahead or solve problems
- find communication over the phone difficult
- have difficulty expressing their needs

You cannot tell whether a person has intellectual disability by their appearance. Intellectual disability often does not have any physical signs.

You will need to observe the client for yourself and if you suspect that your client might have intellectual disability you could ask them. If they do not know, are not sure or do not identify as having intellectual disability you could ask:

- Did they go to a special school or were they in a special class?
- Do they receive services from the NSW Department of Family and Community Services, Ageing, Disability and Home Care (ADHC)?
- Do they live in a group home or residential centre?
- Do they have a case or key worker?
- Do they receive the Disability Support Pension?
- Do they work in a sheltered workshop?

The answers to individual questions may not necessarily mean the person has intellectual disability, but together, may provide an indication.

Working with clients with intellectual disability

Solicitors that are able to adjust their communication style to suit the client can make a difference to the capacity of the client to understand their case, provide instructions and understand and participate in the proceedings.

Some tips for interviews and speaking on the phone

- Be aware that the client may have a short attention span and have difficulty staying on the same subject. They may not have absorbed the information you discussed at your last appointment.
- It is preferable to interview the client in person.
- Tell the person you want them to let you know if they don't understand
- Treat the person with respect and build their confidence – don't criticise
- Allow additional time for the interview
- Hold the interview in a quiet, private area free from distractions and interruptions

- Allow the person to tell their story – save your questions for the end
- Don't interrupt or finish the person's sentences
- Use open rather than leading questions
- Use simple words and sentences – one idea at a time
- Avoid abstract concepts and don't use jargon
- Check whether they understand – get the person to repeat back the information in their own words or ask follow up questions
- Be aware that the client may need more breaks than other clients
- You may need to spell out any phone numbers slowly for the client to write down

Hiding their disability

People with intellectual disability may also not want you to know that they have intellectual disability or wish to hide the effect of their disability from you. This is often because of the stigma associated with having intellectual disability.

Your client may give a false appearance that they understand what is being said to them. This is referred to as a 'cloak of competence'. The person may be responding in this way to hide that they in fact do not understand or they may be eager to please you and be giving answers they think you want them to give.

This might lead to inappropriate or inconsistent answers to questions. This issue means that it is particularly important to refrain from using leading questions when speaking with your client.

Allow time

You must allow extra time or more interviews when working with a client with intellectual disability. Explaining information will take longer and you will need to take more breaks.

People with intellectual disability will take longer to process and comprehend the information you are telling them or the question you have asked. You may find that you ask a question and the client does not respond within the time period you expect. Avoid jumping in to clarify or ask another question. If you wait you may find that the client's response will come.

Non-verbal communication

Be aware of the client's non-verbal communication and behaviour. This may provide more information about how they are responding to a situation and what they really think about what is happening.

Writing letters to your client

Find out about your client's skill level in reading and writing. Where the client has difficulty reading, make sure you communicate the information contained in any letter to the client in person or on the phone.

Where writing to your client consider the following:

- Use at least 14 or 16 point font
- Use at least 1.5 spacing
- Use a clear and easy to read font like Arial
- Do not make the wording dense
- Use short sentences and paragraphs
- Use headings
- Write in point form
- Use plain English
- Include only necessary information in the letter

Consider changing any pro forma client agreement to a format that assists the client to understand it.

Reports

Assessments of intellectual disability are best made by a psychologist. The assessment measures both IQ level and functional skill levels. Both are important. Assessments can suggest an age range within which the person functions, but this information should be used with caution as the person is an adult with their years of experience and they will have strengths and weaknesses in different areas.

If the client has other disabilities such as a mental illness or epilepsy, then an additional assessment by a psychiatrist or neurologist would be useful.

Working with a support person

A client may bring a support person with them to an interview or court appearance. This person might be a CJSN support person or family member, friend, worker or advocate.

Contact IDRS

Please call IDRS on **(02) 9318 0144** to consult an IDRS solicitor:

- for helpful information when helping clients with intellectual disability
- to discuss legal avenues open to people with intellectual disability
- provide information about providing services to a person with intellectual disability