**<PRACTITIONERS: Please delete this page before printing your completed letter>**

**PROFORMA LETTER TO DOCTOR RE: CAPACITY ASSESSMENT**

**PRACTITIONERS PLEASE NOTE:**

1. the letters should not be relied upon as adequate in ALL circumstances. The letters should not be used by a practitioner without considering the particular circumstances relating to the particular client. While every care has been taken in the production of the letters, no legal responsibility or liability is accepted, warranted or implied by the authors or The Law Society of New South Wales and any liability is hereby expressly disclaimed.
2. the solicitor should obtain instructions to write to the client’s doctor, and, if those instructions are forthcoming, obtain a signed authority for the doctor to provide the information sought by the solicitor;
3. the solicitor should factor in the potential for delay while waiting for a response from the doctor, and act accordingly if there is the need for prompt action;
4. if the client is very elderly or ill or about to travel overseas or if there is any other reason to anticipate that they may die or lose mental capacity, the solicitor should not delay the making of the will;
5. the solicitor should not rely on the doctor’s opinion alone – the solicitor should assess mental capacity, but the doctor’s opinion may assist the solicitor reach a conclusion in that regard;
6. when a reply is received from the doctor, the solicitor should carefully consider the doctor’s report to ensure that it has addressed the issues most useful to the solicitor’s assessment of the client’s mental capacity. If it doesn’t, the solicitor may need to contact the doctor to clarify the situation; and
7. the solicitor should generally proceed to make a will if the client’s instructions are sufficiently clear and consistent (or promptly decline to accept instructions if they aren’t, especially if the client declines to provide an authority to obtain relevant information from the client’s doctor).

**<PRACTITIONERS: Please delete this page before printing your completed letter>**

Our Ref:

Your Ref:

**[Insert date]**

Dr **[Insert doctor’s name and address]**

Dear Dr **[insert name],**

**[Insert client name and date of birth] Preparation of a will**

I act for **[insert client full name]** in relation to the preparation of a will. I am assessing my client’s mental capacity to make a will and seek your medical opinion to assist me make that assessment. I suggest that my client be seen by you for the purposes of preparing this opinion.

**[option to insert -** Please note that English is my client’s second language and he/she may require a qualified interpreter**]**

**Will**

The law says that the test of mental capacity required for someone to execute a will is that the person:

1. is aware, and appreciates the significance, of a will;
2. is aware, at least in general terms, of the nature, and extent, and value, of his/her estate;
3. is aware of those who may reasonably be thought to have a claim upon his/ her estate, and the basis for, and nature of, the claims of those persons;
4. has the ability to evaluate, and to discriminate between, the respective strengths of the claims of such persons.

**Your report**

In preparing your report please provide the following:

1. your full name, address and professional qualifications;
2. my client’s relevant medical background;
3. how long my client has been your patient;
4. your opinion on whether there is anything about the client’s medical history, treatment or medication which is likely to impair the client’s ability to remember, reflect and reason, and do so in a rational way. If your opinion is that the client’s ability may be impaired, is the impairment likely to be permanent or temporary; if temporary, what is its likely duration, is it likely to become worse or better, and, if so, over what period of time. Kindly explain the basis for your opinion, such as by reference to literature, tests, observations, experience, and so forth.
5. any other comments that you feel I should know concerning my client.

Should I proceed with the preparation and execution of the will, your report may be used in evidence if there is any future challenge to the will.

I enclose **[insert client title and surname]’**s authorisation to disclose medical information relating to them dated **[insert].**

Please provide a Tax Invoice in relation to your fee to prepare a report in advance of commencing work. I note that **[insert client title and surname]** will be responsible for payment of your fees.

Once prepared, please send your report to **[insert name and address of lawyer].** If you require further information, please do not hesitate to contact me on **[insert contact details]**.

Yours faithfully,

**[Insert lawyer’s name]**

**[Insert name of firm]**

Cc client.