

# DIRECT BRIEFING

A GUIDE FOR CORPORATE OR GOVERNMENT COUNSEL



## Preparing a Brief

If you are not familiar with briefing barristers do not be put off - the process of putting a brief together is relatively straightforward. An email or call to the barrister or the clerk will help you to identify the information you should include in the brief.

Briefs should be delivered in hard copy or increasingly, depending on the size of the brief, via email, in soft copy via USB or file sharing. Logistics can be worked out by contacting the clerk or the barrister.

## The Purpose of the Brief

A well put together brief is designed to promote:

- (a) The efficient use of the barrister's time, which can save costs for the client;
- (b) The barrister focusing on the essential points of your case in the time available; and
- (c) Team work between the barrister and the instructor to produce the best possible result for the client.

Organising the brief will also assist you to analyse the matter and articulate the tasks which the barrister needs to undertake. Pulling together the key documents in a logical order helps to distil the issues, even if you have been involved with the matter for some time. It also assists in drafting the observations and framing the issues upon which advice is sought. The brief should assist the barrister in understanding the documents, issues and objectives.

## Observations

The observations are the covering note that is included in the front of the brief. They set out the relevant factual and legal issues and include key information about the brief. The observations will include a statement of the client's objectives, the tasks that the barrister is to undertake and highlight client expectations based on any timing sensitivities or deadlines.

Barristers are assisted by a succinct distillation of the facts and any particular legal issues that you identify. Key documents are ideally cross-referenced in the observations. Unless there is a particular advantage in having the barrister look at the issues afresh, there is value in taking the time to give the barrister the benefit of your consideration of the issues.

### Structure of the Brief

A brief is best structured in sections with separate tabs for each document or category of document. The brief should include a tabulated index immediately behind the observations. Never include original documents or evidence in the brief.

A brief to provide advice will vary in terms of content but as a general rule it is wise to include an index, observations, the key documents (including any relevant policy, regulatory and legislative instruments) and a chronological set of any additional documents which should follow.

A useful structure for a litigation brief is to group the current pleadings and particulars as the first group of documents. Typically, this will include the current statement of claim, immediately followed by any particulars given to the statement of claim, followed by the current defence, any cross-claims, etc. Superseded pleadings that have been overtaken by amendment, notices of appearance, subpoenas and other less critical court documents are often omitted.

The next thing the barrister is looking for is the document that encapsulates what the case is really about. If the plaintiff sues on a contract, put the contract in next. If there is a critical letter said to give rise to an estoppel, enclose the letter (even if that involves having the document repeated several times). If there are relevant policy, regulatory and legislative materials they should be included in a separate section of the brief.

Next comes the evidence – affidavits/statements and tender documents. Where affidavits are filed in response to other affidavits, it is useful to have them arranged in an order in which they can be read with the affidavit in chief followed immediately by the reply, although having all of the evidence in chief followed by all of the evidence in reply sometimes can make more sense.

For all briefs, a good general rule is to ensure that relevant documents are arranged in chronological order with the earliest date in time appearing first in the compilation.

By filtering out the documents that are unimportant, or putting them to the back of the brief, you enable the barrister to maximise the advantage they have of bringing fresh eyes to the case. By focussing the barrister's attention on the key documents and issues, you not only help by giving the benefit of your analysis but also ensure that the barrister's immediate attention is focussed on the critical issues.

### Getting the most out of barristers

- a) Ring first before you send the brief up. Talk to your barrister or their clerk and find out if it falls within their area of practice. Find out their availability and the time frame in which it can be done. Get a firm idea of cost, including issues like cancellation fees. Discuss what materials will be included in the brief if you would like guidance as to how to compile the brief.
- b) Request a conference or call. It is sometimes useful to organise a preliminary conference or call to discuss the matter shortly after the barrister has received the brief to provide a timeframe within which the barrister should read the critical material.
- c) Keep a copy of the brief. Once you have prepared the brief, make sure you retain your own clean copy and update it with any supplementary materials that you provide to the barrister.
- d) Don't just get it off your desk. Speak to your barrister about how best to deal with the matter and update the barrister on developments as they occur after the brief has been delivered.
- e) Be involved in the analysis. Working as part of a team is motivating, efficient and productive. Cultivate a relationship where you and your barrister work together to bounce ideas off each other and work collaboratively to achieve the best outcome for the client.
- f) Stay in touch with the clerk. The clerk can always help with compiling a brief, managing workflow and organising logistics. A good line of communication with the clerk will help you to get the most out of the bar.

#### For more information about:

- direct briefing, visit [www.nswbar.asn.au/briefing-barristers/in-house-counsel](http://www.nswbar.asn.au/briefing-barristers/in-house-counsel);
- our members' practice areas and contact information, visit [find-a-barrister.nswbar.asn.au](http://find-a-barrister.nswbar.asn.au); and
- individual chambers, visit [www.nswbar.asn.au/briefing-barristers/chambers](http://www.nswbar.asn.au/briefing-barristers/chambers).



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