

Electronic Briefing Guideline

1. Introduction

The purpose of the *Electronic Briefing Guideline* is to assist barristers to understand the challenges and opportunities involved in accepting electronic briefs.

This document is intended to assist barristers to identify practical issues associated with using electronic documents instead of a paper brief, for both preparation and presentation. It may provide the basis for a member's own electronic briefing policy which can be provided by barristers to their instructing solicitors, to communicate their expectations as to the content, format, organisation and processes involved in electronic briefing.

2. Content of an electronic brief

As a minimum, the brief must contain all materials upon which it is proposed to give an advice, or which it is envisaged would be relevant to the matter in which counsel is to appear.

In addition to relevant materials, the brief should contain:

- a memorandum to counsel, in an editable format, such as MS Word, or RTF, which contains:
 - Brief observations of the facts relating to the work the barrister is asked to perform
 - The specific questions (if any) upon which the barrister's advice is sought
- Index to brief, preferably with links to the documents so described
- Chronology of events, again linking to documents in the brief where relevant

The NSW Bar website maintains a briefing toolkit which contains examples of such documents:

<https://nswbar.asn.au/using-barristers/briefing-a-barrister>.

3. Format of an electronic brief

The standard format for the provision of documents is the Portable Document Format (PDF). It is essential that such documents be searchable, that is, they are generated from electronic source documents, or scanned and converted to searchable with optical character recognition (OCR). Most PDF tools, including Adobe Acrobat and PDF Expert can do this conversion.

There is no single way in which a bundle must be put together. How a brief is structured electronically will be determined by reference to:

1. the complexity and size of the documents to be included in the brief;
2. the purpose for which the electronic brief is to be provided, i.e. is it to be used by the barrister for preparation only, or is it to be used to run the hearing;
3. any Court requirements as to the organisation of bundles to be used in the hearing;¹
4. the familiarity of the solicitor and barrister with electronic tools such as PDF readers and annotation tools and document management tools.

Dialogue between briefer and briefee is the only way to ensure the right brief structure is arrived at.

Broadly speaking, there are two ways in which an electronic brief might be structured.

¹ See for example Federal Court "Technology and the Court Practice Note (GPN-TECH)", <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-tech>

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Single file brief

On this approach, all documents comprising the brief are contained within a single PDF file. If this is proposed, then individual documents within the brief should be bookmarked for ease of navigation.

The single file approach makes continuous pagination simple, and allows for simple searching within the PDF reader, across the whole of the brief.

The main drawback of this approach, especially for larger briefs, is that it causes memory and display issues on the computer, especially once the brief size crosses the 1,000-page mark. This is all the more significant when the same computer is used for appearing via video link, or for other functions including notetaking during the hearing.

There may be other limitations on this approach, for example the Federal Court guidelines which do not allow electronic lodgment of a file more than 30Mb in size.²

File-per-document

The alternative is to provide the brief as multiple individual documents, that is, one document per file.

The advantages of this approach are:

1. It allows the organisation of the brief using file names and folders, in a way which is consistent with the way in which hard copy briefs are organised into volumes and tabs.
2. It avoids memory issues associated with having large files open.
3. It allows the barrister flexibility as to the way in which the brief is constructed (or reconstructed) of the lifetime of the matter
4. It avoids the need for version management when new documents are added to the brief.
5. It allows the brief to be integrated into third-party tools for brief management and bundling, such as DevonThink and eBrief ready.

Third party tools

There are a number of third-party tools which can assist with brief creation and management tasks. A comprehensive review of the many available options is beyond the scope of this guide, but links are provided to some commonly available alternatives.

² See "Preparing Documents for Lodgment", <https://www.fedcourt.gov.au/online-services/preparing-documents-for-the-court>

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PDF Editors/Annotators

Any PDF Editor should be able to read, annotate, convert to searchable (OCR), add bookmarks or outlines, re-organise pages and add custom pagination. Annotations are not software-specific – annotations created in Acrobat are consistently viewed in PDFExpert, for example.

- Adobe Acrobat Pro DC, \$21.99/month, <https://www.adobe.com/au/acrobat.html>
- PDF Expert (Mac & iOS only) US\$79.99 one-time license, <https://pdfexpert.com/>
- Wondershare PDFelement (US\$80/yr) <https://pdf.wondershare.com/>
- Nitro PDF, Windows one-time license \$260, Mac one-time license \$197, <https://www.gonitro.com/pdf-pro>
- GoodReader (iPad/iPhone) - \$2.99 one-time fee <https://apps.apple.com/app/id777310222>

Bundling software

Bundling software can help convert a collection of PDF files, by compiling, indexing and numbering them.

- eBrief Ready – starts at \$30/user/month <https://www.ebriefready.com.au/>
- Hyperlaw – pricing not available - https://hyperlaw.co.uk/product_page/court-bundle-software/
- DocsCorp PDFBinder – pricing not available - <https://www.docscorp.com/industry-solutions/PDF-binder/>
- Bundledocs – no pricing available, but free trial - <https://www.bundledocs.com/>

Document databases/file management

- DevonThink 3 (Mac) – one-off fee \$99, Pro edition \$199 <https://www.devontechnologies.com/apps/devonthink>
- DevonThink ToGo (iPad) – companion app to DevonThink US\$1.99/month or one-time US\$39.99 <https://www.devontechnologies.com/apps/devonthinktogo>
- GoodReader (iPad) - \$2.99 <https://www.goodreader.com/>
- Documents by Readdle – free <https://readdle.com/documents>

Search files by content

Both Windows and Mac

- Everything (Windows) free <https://www.voidtools.com/>
- DocFetcher (Windows) free <http://docfetcher.sourceforge.net/en/index.html>
- AstroGrep (Windows) free <http://astrogrep.sourceforge.net/>
- Alfred (Mac) free, Pro version £29 one-time <https://www.alfredapp.com/>

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4. Organisation of an electronic brief

Organisation of the brief will assist with ready access to relevant materials when preparing an advice or appearing in court.

Folders

Similar principles can be followed as per physical brief, that is the brief should be organised into volumes (folders), with dividers(subfolders). A system such as the following might be appropriate.

Folders should be numbered at the beginning of the folder name, as this allows the computer's operating system to automatically sort the folders into the desired order, rather than alphabetical order. For example, one might use this folder structure:

- 1 Court documents
- 2 Submissions
- 3 Affidavits
- 4 Witness statements
- 5 Expert reports
- 6 P documents
- 7 D documents
- 8 Correspondence
- 9 Court Orders
- 10 Transcript
- A Analysis
- B Conferences
- C Research
- D Authorities

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File naming

A consistent naming scheme is important. For **witness statements**, a naming scheme like the following conveys enough information about the content to identify it, whilst also allowing documents to be sorted by name then date:

DocumentType – Identifier – Date

For example:

- Statement – Hughes – 2021.10.21.pdf
- Expert Cert – Lee – 2020.9.15.pdf

For other documents, consider using a date-first format:

Date (reverse order) – DocumentType - Identifier

For example:

- 2021.10.20 – Orders – Bench DCJ.pdf
- 2021.10.21 – Letter – To D re discovery.pdf
- 2020.6.26 – Student Record – St Johns Park – Awan Lazim.pdf

For authorities, it is useful to use a short case name, and citation, for example:

- Aon v ANU (2009) 239 CLR 175.pdf

Pagination

When the matter comes to court, it will be expected that documents are paginated in the order they appear in the court book.

Where documents are maintained in a single file, pagination is easier to accomplish, although updating the brief may require updating page numbers.

It is probably most sensible to defer using page numbers (except perhaps in affidavits) until the court books are put together.

5. Process of electronic briefing

It is necessary that there be a method for collaboration which allows the brief to be initially delivered, then updated in accordance with the policy above, without sending of multiple emails, which creates an unnecessary overhead, and also causes potential issues with managing multiple versions of documents.

To that end, it is important to have a shared document platform, such as OneDrive, DropBox, Box.com, Google Drive, which allows for:

- Delivery of the electronic brief using appropriately secure mechanism (i.e. not email)
- Collaboration features to facilitate updating of brief by solicitors and barristers, for example during discovery, following return of subpoenae, or provision of new documents by the client.

Ideally, the collaboration features will include version management, which ensures that the most up to date version of a drafted document is not misplaced amongst multiple back-and-forth emails.

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It is for a barrister to satisfy themselves that the security arrangements for any shared document platform suitably discharges their obligations to guard against the unwanted disclosure of the confidential, privileged and/or private information contained therein. This requires that consideration be given to the following questions:

1. Where does the collaboration system store the data?
2. Can I retract the data from the system in the event I wish to remove it?
3. Is there any audit trail available to determine who has accessed the documents contained in the brief.
4. To what extent is data stored in the system encrypted? For example, is the data encrypted by the end user, or is encryption provided by the system? This may determine whether employees of the service provider are able to access files stored in the system in unencrypted form.

It should also be noted that the systems listed above are no substitute or backup for a versioning system.

6. Further inquiries

Any electronic briefing related inquiries can be directed to a member of either the Practice Development Committee or the Innovation and Technology Committee.

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