



Privileged and confidential

Checklist for preparation of Brief to Counsel

This checklist is designed to assist a client in identifying the key steps in the preparation of a brief to counsel. The checklist should be applied in a common sense way and with recognition that not every step will be applicable in every case.

No.	Action	Completed
N/A	Prepare index to brief to counsel [insert link to document]	
1	Prepare observations to counsel [insert link to document]	
2	Prepare factual chronology of events [insert link to document]	
3	Prepare court chronology of events [insert link to document]	
A	Court Documents¹	
A.1	Court documents - collate relevant court documents in chronological order including: <ul style="list-style-type: none">• Statement of claim / initiating application / summons;• Defences / responses of parties;• Notices of Motion / Interlocutory Applications;• Orders;• Judgments;	
A.2	Affidavits filed in the court proceedings (lengthy exhibits can be in separate folders).	
A.3	Transcripts – include any relevant transcripts from court hearings.	
A.4	Exhibits – include any relevant exhibits from court hearings.	
A.5	Submissions – include any submissions filed by parties in the proceedings.	
B	Corporate Documents	
B.1	Collate relevant corporate documents including: <ul style="list-style-type: none">• ASIC company searches• Business Name Searches• Board minutes• Board resolutions etc	
C	Facts	
C.1	Statements – include any statements obtained from witnesses.	
C.2	Reports – include any lay and expert reports such as: internal incidental reports, external reports (police, regulators etc), expert reports.	
C.3	Key Documents – collate in chronological order ² .	
C.4	Other relevant documents – collate either by issue (eg financial records) or in chronological order.	
C.5	Other factual research.	
D	Law	
D.1	Legislation – include short extract of relevant legislation or regulations.	

¹ Court documents may not be needed for advice work and/or if legal proceedings have not yet been commenced.

² Aim to limit this to a few material documents. These might be extracted from affidavit material or disclosed documents.



No.	Action	Completed
D.2	Policy – include any relevant policy documents from government or your organisation.	
D.3	Case law – include cases that you have identified as being directly relevant ³ .	
E	Correspondence and Other Documents	
E.1	Correspondence – would include material letters and emails between the parties ⁴ .	
E.2	Advice – if relevant, consider including advice provided by other lawyers.	
E.3	Include any other material that is relevant to the advice that you are seeking.	
F	Mechanics of compiling the brief to counsel	
F.1	Hard Copy	
F.1.1	Folders – present the material in lever arch folders.	
F.1.2	Order – follow the order suggested in ‘A’- ‘D’ above.	
F.1.3	Tabs – include numbered tabs between each section and if time and resources permit, between each individual document.	
F.1.4	Number pages – number the brief consecutively from start to finish or alternatively, number the pages of each tab consecutively.	
F.1.5	Spine & Cover Page – include a spine and cover page that includes the following information: <ul style="list-style-type: none"> • Brief to counsel • Name of counsel • Street address of counsel • Matter name, project name or identification • Your reference • Volume number: eg Volume 1 of 2 • Mark as ‘privileged and confidential’ 	
F.1.6	Large briefs with multiple volumes include the following <i>additional</i> matters: <ul style="list-style-type: none"> • Label each folder with a volume number eg: 1 of 10 • Identify the contents of the folder: <i>eg Tax Records of ABC Limited 2002-2005 or Exhibit to Affidavit of Kelly Smith dated 1 January 2019.</i> 	
F.1.7	Update the Index to counsel to correspond with and include the volume numbers from the brief.	
F.2	Electronic Brief	
F.2.1	Format of electronic attachments⁵ -	
F.3	Electronic Brief – via email⁶	
F.3.1	Follow the format outlined in ‘A’-‘D’ above.	
F.3.2	Prepare an additional index to electronic brief that identifies: <ul style="list-style-type: none"> • How many emails are to be sent; 	

³ If including copies of cases, use authorised reported versions of the cases (eg CLR, FCR, ALD, NSWLR, VR, VLR, QdR, SASR, Tas R, WAR) or alternatively if these are not available cases recorded on Austlii (<http://www.austlii.edu.au>) or government legal sites (eg: [http:// www.caselaw.nsw.gov.au](http://www.caselaw.nsw.gov.au)).

⁴ Correspondence would include material letters and emails between the parties and their solicitors/in-house counsel teams that are relevant to dispute. For example, correspondence regarding offers of settlement, factual admissions and without prejudice communications. Arrange the documents in chronological order, from oldest to most recent.

⁵ **[Format of electronic files – ensure that they are searchable]**

⁶ Check first with counsel or the counsel’s clerk to see if counsel will accept an electronic brief.



No.	Action	Completed
	<ul style="list-style-type: none"> Which attachments will be sent with each email; In subject line of email include: Brief to Counsel, [Matter Name], Email [1 of 5 etc] – privileged and confidential. 	
F.3.3	Size of email & attachments – be conscious of the size of attachments and that large emails may take time to be delivered.	
F.3.4	Send numbered emails (eg Brief to Counsel: Email 1 of 4) with attachments that are logically grouped: 1 st email – index to brief, observations, chronology; 2 nd email - contain court documents; 3 rd email – factual material; 4 th email – law etc.	
F.4	Electronic brief – via external device (eg USB)	
F.4.1	Follow the format outlined in 'A'-'D' above.	
F.4.2	Consider use of password protection on the external device.	
	Prepare an electronic index to brief that outlines how the brief is organised on the USB or other device.	
F	Copy of brief – keep a copy of the complete brief for your records and reference.	