



## Privileged and confidential

### Observations to Counsel

Nature of advice sought [or nature of the dispute]

1. Counsel is asked to advise on [set out what you want counsel to do: an advice on evidence, draft a pleading, draft an affidavit, settle a letter of demand, settle a letter to an expert witness, attend a mediation.] [In a dispute context, counsel is asked to advise and appear on behalf of Defendant Pty Limited in proceedings commenced in the Supreme Court of NSW.]
2. [If applicable] We require the [deliverable/advice] by [date].
3. Prior to the advice being finalised, we seek a conference with counsel on or before [date].

### Factual background<sup>1</sup>

4. This matter involves allegations of [set out nature of cause of action: negligence, breach of contract, breach of consumer laws] against [Defendant Pty Limited].
5. We act for [party].
6. We refer counsel to the enclosed chronology of factual events dated [ ].
7. [Set out key facts (do not repeat every fact in the chronology)].
8. The incident took place on [date].
9. The incident report prepared by [party] on [date] sets out the following relevant facts.
10. The claimant's solicitor sent a letter of demand to [party] on [date] containing the following allegations.

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<sup>1</sup> Set out a summary of the key objective facts. If affidavits or statements have been served, try and refer these facts back to the evidence as set out in the affidavit or statement. If the facts are taken from court documents, identify the paragraph number of that document.



11. Our investigations into the circumstances of the incident, completed by [person, title] on [date] reveal the following:

Procedural Background<sup>2</sup> [include where applicable]

12. Counsel is referred to the enclosed Court Chronology of Events.

13. The claimant filed and served a statement of claim in the [court or tribunal] on [date]. It contained the following allegations:

14. [Party] filed and served a defence on [date].

15. A directions hearing took place before [Judge / Registrar] on [date]. The following orders were made [set out orders].

16. The parties have agreed to attend a mediation [or the proceeding is listed for trial] on [date, time, place].

The law<sup>3</sup>

17. Counsel's attention is drawn to [identify relevant legislation, policy, key authorities etc].

The evidence<sup>4</sup>

*Lay evidence*

18. The claimant has served the following [statements/affidavit]:

- a. Statement of Kelly Smith dated [date];
- b.

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<sup>2</sup> Set out the key dates of the legal proceedings in the relevant court or tribunal.

<sup>3</sup> Identify relevant regulatory, legislative or policy material that counsel should consider.

<sup>4</sup> Identify the relevant evidence that has been obtained from the parties to the matter.



19. The claimant has issued subpoenas/notices to produce to the following parties and the documents are enclosed:

- a. [set out subpoenas etc].

20. We have issued subpoenas/notices to produce to the following parties and the documents are enclosed:

- a. [set out subpoenas etc].

21. We have drafted the following [statements/affidavit] and seek counsel's assistance to settle them:

- a.

#### *Expert Evidence*

22. The claimant has served the following expert reports:

- a.

23. The [other parties] have served the following expert reports

- a.

#### Case Theory<sup>5</sup>

24.

Questions on which advice is sought [if counsel is being asked to advise on specific questions]

25. We seek counsel's advice on the following questions:

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<sup>5</sup> If possible, set out in summary form your theory of the case - ie proposed strategy for defence or prosecution.



a.

Rates

26. We look forward to receiving counsel's disclosure letter and fee agreement.

27. [If applicable] We confirm that we have agreed to counsel's rate of [per hour, per day etc].

Model litigant code

28. [Include any relevant professional codes or internal documents].

Conclusion & other matters

29.

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