

CORPORATE COUNSEL INFORMATION KIT

Introduction

Some corporate counsel do not have any litigation experience and accordingly may be unfamiliar with the process of briefing a barrister. This document is addressed to them. Increasingly, however, corporate counsel are lawyers with broad experience, including experience in litigation.

Legal Services Offered by the Bar

Legal Advice

There is great scope for direct briefing by corporate counsel in the area of legal advice work. A barrister may be retained to provide legal advice in relation to a particular transaction, issue of interpretation of a contract or legislation, or in relation to an enquiry from a regulator (such as ASIC, the ACCC or APRA).

In many cases, corporate counsel should consider briefing a barrister with acknowledged expertise in an area of law to give the relevant legal advice work.

Alternative Dispute Resolution ('ADR')

There are a number of barristers who have special expertise in ADR – including mediation and arbitration. The Victorian Bar website (www.vicbar.com.au) has separate directories which identify barristers who are accredited as either arbitrators or mediators (including advanced mediators).

International

Increasingly, contractual relationships span transnational borders. Invariably such contracts will provide for dispute resolution by international arbitration. There are barristers with special expertise in this area.

Strategic Advice

The Bar has a role to play in providing strategic advice to corporate counsel. When a dispute is brewing, even one likely to be productive of major litigation, corporate counsel might wish to consider briefing a senior barrister directly to provide strategic advice.

Litigation

Where a corporate client is involved in major litigation, it is desirable that it engage a law firm to help the Barrister prepare the case and instruct the Barrister in appearances at Court.

It is quite appropriate to seek the advice of a Barrister as the first step in dealing with major litigation. The Barrister will be able to provide you with an overview of what you can expect in the course of the litigation and how to best manage those matters.

In minor litigation there is more scope for corporate counsel to brief barristers directly without going through a law firm.

Scoping the Assistance Sought and Negotiating Fee Arrangements

You can engage a barrister directly or through a clerk. Presently there are thirteen barrister's clerks. Each of them has a website – see www.vicbar.com.au/c.3.asp.

You may ascertain a particular barrister's fee schedule from the barrister or his/her clerk. This will ordinarily comprise a daily rate or an hourly rate.

Once engaged the barrister will provide you with a standard cost agreement and a disclosure statement.¹ The cost agreement will identify the barrister's fee rates and method of charging. The cost agreement can be between corporate counsel's employer (i.e. the client) and the barrister. The disclosure statement will disclose an estimate of the barrister's fees for performing the work in question.

¹ Which are required by the *Legal Profession Act 2004* (Vic), except in limited circumstances: see section 3.4.1.2

Commercial barristers usually require that their fees be paid within 30 days of the rendering of their tax invoice for the work performed. Such invoice will be rendered by the barrister's clerk. Payment should be made directly to the clerk.

How to Compile a Brief to a Barrister

What your barrister needs to know depends upon what exactly you are asking of him or her.

Legal Advice

If you are asking the barrister to provide legal advice, you should:

- (a) identify the question(s) for opinion;
- (b) provide the barrister with a set of instructions which provides relevant background and places the question for opinion in some reasonable perspective. No special form of words is necessary. The instructions should be comprehensive but concise;
- (c) provide the barrister with a copy of all the relevant documents (appropriately organized and indexed). The barrister should be able to digest the documentary information in sensible order and be able to locate particular documents conveniently as the need arises;
- (d) (if useful) provide the barrister with a chronology of key events; and
- (e) provide the barrister with any general observations that you have concerning the matter at issue.

ADR

Where the barrister is sought to be engaged in relation to a mediation or arbitration, you should provide the barrister with:

- (a) a summary of the dispute;
- (b) a chronology of key events;
- (c) a copy of the underlying documents; and
- (d) a statement of the client's commercial objectives in resolving the dispute.

Litigation

If the matter involves commencing legal proceedings in a litigious matter, you should provide the barrister with:

- (a) a set of instructions identifying the proposed defendants, the proposed relief, and the factual and legal basis of the proposed claims;
- (b) a copy of all the relevant documents (appropriately organized and indexed);
- (c) a chronology of key events;
- (d) any general observations.

Where the barrister is sought to be engaged to conduct litigation which has already commenced, you should provide the barrister with:

- (a) a copy of all of the court documents that have been filed and served in the proceeding;
- (b) a set of background instructions;
- (c) a chronology of key events; and
- (d) copies of the underlying documents relating to the controversy.

To save time and unnecessary expenditure, it is worthwhile speaking to the barrister prior to forwarding him or her the brief (whatever the nature of the brief). After explaining the nature of the problem, the barrister should be able to guide you as to what is required by him or her.