

PREPARING AN ELECTRONIC BRIEF

The barristers at 13 Wentworth Chambers are committed to working collaboratively with their instructing solicitors and each other to address the challenges presented by the Covid-19 pandemic.

One of those challenges is the preparation of fully electronic briefs.

In this document we set out the key steps for solicitors to consider in the preparation of an electronic brief and provide some practical tips directed to enhancing the efficiency of the communication between solicitors and counsel and seeking to avoid the need for solicitors to engage in multiple steps in the preparation of an electronic brief.

We hope the process we suggest also assists our instructors to simply and clearly specify how a brief is to be prepared while leaving the detailed preparation of electronic documents to support staff.

PLANNING THE BRIEF

Like a hard copy brief, the objective of an electronic brief is to provide counsel with the documents that will be useful in delivering to you the legal services which you seek – whether that be advice, representation or both.

An electronic brief and a hard copy brief should contain the same documents. However, the key difference between an electronic brief and a hard copy brief is that electronic briefs are much more structured and rigid when it comes to moving around the brief. As a result, the capacity for counsel to efficiently develop an understanding of an electronic brief depends much more upon the clarity with which you index the brief and the order in which documents are presented.

As a result, it is even more important in preparing an electronic brief to start by planning what will be in it.

Summary of required content

The efficient collation of the brief starts with planning what is to go into it. The following provide brief checklists for different types of briefs.

Brief for hearing

An electronic brief to appear at a hearing which is imminent will usually be most efficiently organised as follows:

1. Index
2. Your observations
3. Documents organised as they will be in the Court Book for the hearing (Doing this has the added advantage that you do not have to redo document preparation when it comes to settling the electronic Court Book)
4. Other documents you think may be of assistance

Brief to advise and appear

An electronic brief to advise and appear in litigation which has already been commenced is usually most efficiently organised by providing:

1. Index
2. Your observations
3. The document (Summons, Originating Application or Statement of Claim) by which the proceeding was commenced
4. All other pleadings in the order in which they have been filed
5. Any request for and provision of particulars in the order in which they have been exchanged
6. All Affidavits or witness statements served by each party, organised by the party serving the document and then by date of service
7. Documents which each party has served or otherwise notified as being documents to be relied on in the proceedings (including exhibits to affidavits)
8. Any other documents filed or served in the proceeding that you consider relevant
9. Other documents which you consider relevant, for example inter-party correspondence or Offers of Compromise

Briefs to advise

An electronic brief to advise will usually contain at least:

1. Index
2. Your observations
3. A copy of each document that may form part of the transaction upon which you seek advice (for example Contract, Will or Deed)
4. Other documents which you consider relevant including witness statements

In planning your electronic brief it is important to recognise that there are some briefs which cannot be delivered fully electronically.

For example, unless you have available facilities to produce PDF documents sized A3 or above you are likely to experience significant difficulty in communicating detailed construction drawings to counsel electronically. Similarly there may be an issue whether a transaction document was in fact signed by the party whose signature apparently appears on it. It will be essential that you protect the original of the document. In such a case you cannot scan the document. Issues such as these need to be considered at the planning stage and discussed with counsel before the brief is finalised.

Create a Table of Contents

Having identified the scope of documents to be included in your electronic brief it is important to produce a first cut Table of Contents for your brief for planning purposes. This Table of Contents performs the following important functions:

1. It identifies each document in the order in which it is to be placed in the brief.
2. It provides, by its listing, a descriptive and unique number and name for each document, which will constitute the text of the electronic file name of that document in the brief.
3. It identifies where the document is to be found for the purpose of collating the brief.
4. It enables you – by ticking a box or boxes - to identify at the planning stage what you need to do to create the electronic document to be included within the brief. In short there are three options:
 - (a) **SAVE AS PDF:** When you already hold the document in your electronic records as a PDF, the file will be simply moved into the folder created for the brief, and renamed using the number and name you have chosen for it in the Table of Contents. When you hold it in another format (eg Word, Excel) but it is to be provided to Counsel to read use the “save as” feature to save the file as a PDF using the number and name you have chosen for it in the Table of Contents
 - (b) **NATIVE FORMAT:** where you already hold the document in electronic form, but not as a PDF and you wish to provide it in Native format – for example a spreadsheet in Excel format - save it in its native electronic format using the number and name that you have allocated to in the Table of Contents. Documents, such as draft affidavits may be both saved as a PDF and provided in Native (Word) format. The PDF version forms part of your brief setting out the facts which counsel needs to read, while the Word format is provided so that Counsel can make amendments in settling the document
 - (c) **SCAN TO PDF:** when the document is held by you only in hard copy it will need to be scanned.

[A Word version of the Table of Contents](#), which can be readily adopted for use as an Index to the brief, is **attached** to this document. It allocates a unique number to each document and enables the solicitor preparing the brief to choose and fill out the name for each document, to identify where the document to be included in the brief is to be found on the solicitor’s file or in the solicitor’s electronic filing system and to then provide instructions by way of checking the boxes “save as PDF”, “native format” or “scan to PDF” on how the document is to be created in the folder in which the electronic brief will be created.

CREATION OF THE BRIEF

Once the Table of Contents is prepared the physical production of the electronic brief can commence. The first step is to create a new folder with a title that commences with the Matter name (with the client’s name the first to appear) and includes “Brief to counsel”.

The Table of Contents document provides the instructions by which each document is saved as a separate file within that new folder, using the number and name recorded as the document number and name in the Table of Contents as the file name for the electronic brief.

Electronic documents to be briefed in native format should be saved in their native format. For example, an Excel spreadsheet which is to be provided in Excel format need only be saved in Excel format. On the other hand a draft affidavit may be provided as a PDF document – being the record of your instructions on its content; and also provided in Word format for the purpose of any amendments made by counsel in settling it.

Scanning of documents should be kept to a minimum – and only of documents which are held by you only in hard copy. Scanning should use software configured to produce a PDF file which is text searchable and to which Optical Character Recognition (OCR) can be applied. A scanned document is saved in the folder using the number and name you have chosen for it in the Table of Contents.

One of the documents to be saved in the electronic brief folder is your Observations. It is worth reviewing the Observations after the documents have been saved in the electronic brief folder to ensure that each reference to a document in the Observations is to a document using the file number and name now allocated to the document in the folder.

The final step is the creation of an Index to the electronic brief.

For a simple brief the first three columns from the Table of Contents document constitute an Index providing a full list of documents with the document number, name and date for each document constituting the brief.

For longer briefs we recommend use of a program such as Court Binder (courtbinder.com).

Court Binder is a program prepared for use by lawyers preparing briefs and Court Books. It enables the creation of an electronic brief by dragging and dropping a series of PDF files into a folder. Once those files are placed in the order in which they appear in the Table of Contents, Court Binder will produce a PDF document which:

1. Paginates the whole brief;
2. Creates an Index to the brief; and
3. Inserts into the Index hyperlinks to each individual file contained within the brief.

Where Court Binder is used it is not necessary to provide any separate or further Index to PDF documents.

Court Binder will generate a document which will download as a ZIP file to your computer. Unzip the file and save the Court Binder PDF in the brief folder.

In a case where there are a number of documents provided in native format, and not in PDF, those documents are unlikely to have been included in your Court Binder document. In that case it might be useful to provide a Supplementary Index of the files provided in native electronic format. Like other documents, save the supplementary index in the brief folder.

DELIVERING THE BRIEF TO COUNSEL

The barristers at 13 Wentworth prefer that electronic briefs are delivered using a file sharing service for example: Sharepoint, DropBox, OneDrive etc.

This can be done by simply copying the brief folder in which you have created the brief over to the file sharing service and sharing access to that folder with your selected Counsel.

You should confirm delivery of the brief by your selected file sharing service by email, but please do not attach the brief to the email.

As documents are added to the Brief, the Index should be amended by adding the additional documents at the end of the Index. The Amended Index should be given a file name “1A Amended Index [date]”, “1B Amended Index [later date]” and so forth.

The additional documents should be given electronic titles using the number and name recorded in the amended index. The amended index and additional documents should then be emailed to Counsel and added to the brief folder using the file sharing service.

Please do not hesitate to [contact the Clerk](#) at 13 Wentworth for further clarification if required.