



Introduction

This guide is designed to provide a brief overview of how to brief taxation barristers directly (that is, without the assistance of an external solicitor).

Why direct brief?

Direct briefing offers the potential for time and cost saving, as compared to seeking advice from a law firm.

It can also offer clients convenient access to expert advice from counsel experienced in running tax cases in court.

When to direct brief

Direct briefing may be an appropriate option for clients requiring the assistance of specialist counsel in relation to:

- advisory matters;
- drafting or settling objections to assessments or other important correspondence with the ATO;
- strategic pre-litigation matters, including mediations and other dispute resolution processes;
- interviewing witnesses, and preparing or settling proofs of evidence or affidavits; and
- in some cases, court appearances.

Direct briefing can be particularly useful where a discrete topic of legal advice is sought.

Briefing a barrister early in a potentially litigious matter, for example at the stage where a tax audit is being commenced but prior to amended assessments being issued, can assist in ensuring that the interaction with the ATO is managed in a manner that does not affect the client's position adversely, should the matter go to court, such as by making inadvertent admissions in correspondence or by conduct.

Generally speaking, where a matter is likely to require the filing of documents in court or the collation of substantial evidence, it will be necessary to engage an external firm of solicitors. Barristers are restricted by the *Legal Professional Uniform Conduct (Barristers) Rules 2015* to only carrying out work which involves:

- appearing (or preparing to appear) as an advocate;
- representing a client in negotiations, mediations, or other dispute resolution processes;
- giving legal advice;
- preparing or advising on documents; and
- work which is incidental to the above types of work, or otherwise commonly carried out by barristers.

There are certain types of legal work that barristers specifically *cannot* carry out, such as acting as a person's representative in correspondence or for the purpose of receiving service of court documents, preparing or lodging returns, or commencing proceedings.

If you expect to need assistance in any of these areas, you will probably need to first engage external solicitors, who will then brief counsel as required. In some instances, however, external solicitors may not be required such as in some Tribunal matters and in circumstances where, for example, the client's internal lawyers are able to act as solicitors "on the record".

How to direct brief

Barristers may be contacted either directly or through their Clerk for their availability to accept a direct brief. You can find the contact details of tax barristers and their Clerks in our [Member Profiles](#). Most barristers have their direct telephone numbers published with their online profile, enabling availability to be checked by a short telephone call.

Before accepting a direct brief, a barrister will generally need to know:

- Who will the client be? (e.g. a client of an accounting firm, or a company seeking advice through its in-house counsel)
- What is the nature of the assistance sought? (e.g. provision of advice, drafting of court documents, appearance at a hearing)
- What are the issues, or the questions to be addressed?
- Are there any deadlines or fixed dates that may impact on a barrister's availability to carry out the work?
- What documents are available that you will be providing to the barrister? Are there relevant documents that still need to be obtained?
- Is the matter one in which it is proposed that both senior and junior counsel be briefed?

This information is typically provided by way of an initial phone call discussion or email to the barrister.

Cost of engaging a barrister

Barristers, as independent counsel, each set their own fees. You can find out about a barrister's fees either by contacting the barrister directly or through their Clerk. Fees, or the basis on which they are to be charged, should be discussed with the barrister or the Clerk and agreement reached before the work is done. Barristers' Clerks maintain trust accounts and, on occasions, barristers may request payment of part or all of their fees up front. In this instance, the fees are held on trust for the client in the Clerk's trust account, and are drawn by the barrister when the work is completed and a tax invoice issued, or as agreed.

Subject to some exceptions, barristers are required by the *Legal Profession Uniform Law Application Act 2014* (Vic) to provide clients with a costs disclosure before or as soon as practicable after being engaged to undertake legal work, which sets out:

- an estimate of the total fees to be charged by the barrister for the matter;
- the basis upon which the estimate has been calculated, and major variables that can affect the amount of the estimate; and
- when bills will be delivered by the barrister.

Providing documents

A barrister will usually need to review the key documents for a matter in order to provide a costs disclosure, or an estimate of their fees. You should find out from the barrister whether they prefer to receive documents in hard copy or digitally. Whichever format you provide, it is best to also provide an index to the documents, and a short memorandum explaining the background to the matter, identifying the scope of work to be performed by the barrister, and setting out any essential information such as upcoming deadlines.

It is not recommended to provide original documents to a barrister; you should provide clear photocopies or scans of documents. You should also keep a full copy of what is given to the barrister and where two or more counsel are briefed, it is desirable that they be given the same material.