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Law: Writing legal memos

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If you need more help, see a Learning Skills Adviser at the Research & Learning Point on Level 1 of the Law Library, or Fiona McCook at the Law Chambers.

For details and times, see the Law Faculty Team page.

Legal memoranda

Memorandum of advice.

As an assignment, a 'memo' is usually for in-house use, intended to be used by legal colleagues. This can be a 'legal practice' document, to a colleague or senior member of a law firm, or a document on legal policy, for example to a politician or an organisation responsible for policy change, such as submission to a law reform commission. Occasionally you may be asked to add a 'letter to the client' or the memorandum may be for the client as well as for a legal colleague. You need to focus on the audience as well as the task. For a legal colleague, the tone will be impersonal and objective, the writing concise and precise, using the accepted citing style. You may use question-style sub-headings, and number paragraphs for ease of reference. A 'letter to a client' would be written in a more informative, non-legal style, emphasising the possible actions and likely outcomes, usually with recommendations. For a legal memorandum addressed to both a legal and a non-legal (client) audience, you will be writing persuasively, emphasising the strengths while minimising the weaknesses of the client's position, and arguing in their favour. If you have any questions, consult your lecturer.

The main part of the document:

- Most commercial memoranda will be looking at the issues arising from the client's questions or from a scenario.

You need to analyse these issues in depth, researching the current legislation, and how this has been interpreted by the courts. Frequently a 'pattern' is used, such as IRAC or MIRAT. Your sub-headings should reflect the issues, and may be phrased as questions.

Remember to investigate in depth the reasons for 'considered, distinguished' etc and any split Bench judgments. Then apply these findings to the issues arising.

Anticipate the counter-arguments, and bring each issue to a conclusion.

This should your assessment of a possible court decision.

THIS SHOULD YOUR ASSESSMENT OR A POSSIBLE COURT DECISION.

Relevant policy matters can be included, or discussed in a separate section.

- If you are asked to make recommendations on a course of action, then base your suggestions on feasibility and practicality. A recommendation is not the same as a conclusion; it requires you to assess the likelihood of a course of action having the desired outcome for the client.
- For a memorandum looking at policy issues, eg for an Attorney-General, start by summarising the issues and their significance.

Then move into background, purpose and discussion. Usually you will be researching policy matters, perhaps arising from a judgment, perhaps addressing a community concern.

The analysis may have a different focus, such as the intended purpose of the suggested reform, amendment or submission.

You would usually be looking at how the intended legislative change would interact with existing legislation eg between the Commonwealth and the States, or with existing provisions within an Act.

Any potential areas of ambiguity need to be addressed in depth.

The sub-headings would reflect this approach.

- Any recommendations would arise logically from your discussion and form the conclusion of your discussion.



Memo structure***Suggestions for an in-house research memorandum (NB: THERE IS NO ONE 'RIGHT' STYLE)******Opening:***

There should be a file number (usually on the interview record or file note) so that all records on this case are kept together. Use this number at the start.

Your headings will usually be:

Recipient: _____

Sender: _____

Date: _____

You may then have Re: _____ (ie short for 'Regarding' which would be the client or organisation concerned in the legal matter)

or, if necessary: Context or background – be brief!

This last heading may be done as an executive summary.

This sets out the main issues, the main areas under dispute or those that require most analytical depth and discussion, especially if the research indicates this is a contentious area of law. This should suffice to provide enough context for the reader. This section may include the main recommendation.

In practice there would probably be a short section outlining the main facts of the case. If you decide to do this in an assignment, try to avoid going into too much detail, especially for relevant facts which will be used in the main discussion.

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