Writing a Legal Memo

Legal Writing Series No. 2
Law Library, Monash University

What is a memorandum of advice?

As an assignment, a ‘memo’ is usually for in-house use, intended to be used by legal colleagues.

-OR-

a document on legal policy. For example, to a politician or an organisation responsible for policy change, such as a submission to a law reform commission.

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.

If you have any questions, consult your assignment instructions or your lecturer.

Commercial Memoranda

Most will be looking at the issues arising from the client’s questions or from a scenario.

For recommendations, consider feasibility and practicality. If it is not the same as a conclusion, you must assess the likelihood of a course of action having the desired outcome for the client.

Policy Memoranda

eg for an Attorney-General.

Start by summarising the issues and their significance.

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

How is a memo structured?

Suggestions for an in-house research memorandum (Note: 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: or, if necessary: Context or background – be brief!

Executive Summary:

This can also cover the context and background.

It 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 this is too long, you may try to avoid going into too much detail, especially for relevant facts which will be used in the main discussion.

If you need more help, drop in to see a Learning Skills Adviser at the Research & Learning Point on Level 1 of the Law Library.

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’:

Is 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:

You will be writing persuasively, emphasising the strengths while minimising the weaknesses of the client’s position, and arguing in their favour.

You need to analyse issues in depth, researching the current legislation, court interpretation. Your sub-headings should reflect the issues, and may be phrased as questions.

Remember to investigate 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 by resolving the weaknesses of the client’s position, and arguing in their favour.

Commercial Memoranda

You need to focus on the audience as well as the task.

Policy Memoranda

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.

For recommendations, consider feasibility and practicality. It is not the same as a conclusion; you must assess the likelihood of a course of action having the desired outcome for the client.

Suggestions for an in-house research memorandum (Note: THERE IS NO ONE ‘RIGHT’ STYLE)

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

Executive Summary:

This can also cover the context and background.

It sets out:

- The main issues AND
- 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 this is too long, you may try to avoid going into too much detail, especially for relevant facts which will be used in the main discussion.

If you need more help, drop in to see a Learning Skills Adviser at the Research & Learning Point on Level 1 of the Law Library.

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’:

Is 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:

You will be writing persuasively, emphasising the strengths while minimising the weaknesses of the client’s position, and arguing in their favour.

You need to analyse issues in depth, researching the current legislation, court interpretation. Your sub-headings should reflect the issues, and may be phrased as questions.

Remember to investigate 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 by resolving the weaknesses of the client’s position, and arguing in their favour.

Commercial Memoranda

You need to focus on the audience as well as the task.

Policy Memoranda

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.

For recommendations, consider feasibility and practicality. It is not the same as a conclusion; you must assess the likelihood of a course of action having the desired outcome for the client.

Suggestions for an in-house research memorandum (Note: THERE IS NO ONE ‘RIGHT’ STYLE)

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

Executive Summary:

This can also cover the context and background.

It 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 this is too long, you may try to avoid going into too much detail, especially for relevant facts which will be used in the main discussion.

If you need more help, drop in to see a Learning Skills Adviser at the Research & Learning Point on Level 1 of the Law Library.