

Law Council of Australia

Equitable Briefing Policy

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Law Council
OF AUSTRALIA

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EQUITABLE BRIEFING POLICY

The Australian legal profession is committed to promoting diversity, equality, respect and inclusion consistent with the principles of justice, integrity, equity and the pursuit of excellence upon which the profession is founded.

The Law Council of Australia (the **Law Council**) supports measures to improve the retention within the profession of women barristers. Since 2016, the Law Council's Equitable Briefing Policy has included measurable targets relating to the percentage of women barristers briefed and the value of those briefs and reporting mechanisms on measures to implement those targets.

The Policy

The Law Council of Australia and its constituent members encourage all persons or entities who brief or select barristers:¹

1. to make all reasonable endeavours to brief or select women barristers with relevant seniority and expertise, experience or interest in the relevant practice area;
2. to brief or select women barristers for at least 30% of all briefs and at least 30% of the value of all brief fees, in accordance with international benchmarks concerning the retention and promotion of women;
3. to provide a confidential report to the Law Council by 30 September each year with respect to the measures taken to implement these targets; and
4. to ensure that the Law Council is notified within a reasonable time of any changes to the status or contact details provided to the Law Council.

An adoptee would not be expected to meet the targets in clause 2 if local conditions preclude them from doing so.² In such cases, adoptees of the Policy should include in the 'Comments' section of their annual confidential report the nature of the local conditions affecting the data.

What is the aim of the Policy?

The Law Council's aim is to achieve a nationally consistent approach towards bringing about cultural and attitudinal change within the legal profession with respect to gender briefing practices.

¹ See below for Definitions and Expressions used in this Policy

² For example, in some areas, particularly rural, regional and remote areas, there may be only one woman barrister. It may be unreasonable for that woman barrister to be expected to accept 30% of an adoptee's briefs, particularly if there are other Policy adoptees in that local area who are also looking to brief that woman barrister.

Equitable briefing practices maximise choices for legal practitioners and their clients, promote the full use of the independent bar and optimise opportunities for practice development of all barristers.

Why is the Policy necessary?

The Law Council is committed to taking measures that ensure a level playing field for all members of the Australian legal profession.

In 2004, the Law Council vigorously supported the creation of a Model Briefing Policy because it was convinced that equitable briefing practices open up access to suitably qualified barristers and advocates, maximising choices for legal practitioners and their clients.

The Law Council recognises that it is now appropriate to revise the Model Briefing Policy that was adopted in 2004 in order to ensure there is transparency and accountability in the implementation of that Policy.

The objectives of the Policy are that it will (continue to):

- play an important role in the progression of women in the law, the judiciary and the wider community;
- redress the underrepresentation of women as barristers in Australia;
- acknowledge that diverse groups bring a greater variety of experience and enhance decision making;
- promote the provision of role models for women in the legal profession generally;
- reflect community expectations of fairness in all aspects of the administration of the law; and
- enhance the profession's credibility by making it more representative of the composition of the community which it serves.

Who can adopt the Policy?

The Policy is formulated for adoption by any briefing entity.

The Policy may also be adopted by clients of briefing entities operating in Australia.

The selection of counsel is ultimately the decision of the client, and in-house counsel are encouraged to adopt and apply the Policy when instructing briefing entities and making their selections of barristers.

Barristers' clerks and barristers can play a significant role in the effective operation of the Policy. When they are consulted by clients and briefing entities with a view to engaging barristers, all barristers' clerks and barristers adopting the Policy will include women barristers in the relevant practice area among the names of barristers whom they suggest.

How is the policy adopted

Adoption of the Policy should be accompanied by notification or publication of its adoption internally and externally, including to the Law Council. The Law Council will publish on its website the names of those who have adopted the Policy.

What needs to be done when the Policy is adopted?

The Policy should be distributed widely within the briefing entity, client or other organisation.

The Law Council recommends that each briefing entity, client and organisation review their current briefing practices, having regard to the following questions:

- Do your briefing practices reflect the objectives of the Policy?
- How do you maintain a record of your briefing practices?
- Do you regularly review the panel of barristers whom you brief (if any)?
- How do your partners/staff receive ongoing training in 'best briefing' practices, including practices that will promote achievement of the targets?
- How do you foster and encourage women barristers?

Periodically there should be internal publication of reminders and refreshers about the adoption of the Policy and its requirements.

Briefing entities which have adopted the Policy are requested to provide the Law Council with updated contact details if their contact details change, by sending an email to 'mail@lawcouncil.asn.au' with 'Equitable Briefing Policy contact update' in the subject line.

What are the benefits to clients, briefing entities and barristers who adopt the Policy?

The benefits of the Policy include:

- expanding the existing and prospective pool of talent for barristers available for court appearance and advice work;
- meeting client expectations with respect to genuine participation and inclusion of women; and
- giving effect to gender equity in supply chains for the provision of legal services.

How to identify women barristers?

The Policy encourages genuine consideration of women barristers based on their skill, experience, expertise and interest. It encourages all practitioners (barristers, solicitors, in-house counsel etc) and barristers' clerks/practice managers to seek out women barristers appropriate for the relevant matter.

For example:

- briefing entities are encouraged to prepare and maintain an internal referral list/database of women barristers, which is regularly updated;
- briefing entities should liaise with local bar associations and chambers to obtain relevant information about women barristers, such as up to date contact details, qualifications, seniority, practice areas and experience;
- briefing entities should invite women barristers to provide them with statements of their relevant experience and areas of interest;
- if a recommendation is sought from a barrister, they should be asked whether there are appropriate women barristers to be considered; and
- if the client requests a list of barristers who might be engaged, women barristers should be included in that list.

Are the targets mandatory?

The targets are not mandatory.

The targets are not intended to be quotas or to undermine clients' right to select the barrister(s) to advise and appear on their behalf.

Can the targets be modified to address local conditions?

Briefing above the targets

The Law Council recognises that, in some practice areas, women barristers may be briefed to advise and appear in numbers higher than these targets.

The targets are not intended to limit the number of women barristers briefed. It is open to any briefing entity to adopt targets higher than those recommended in this Policy.

Where the proportion of available women barristers is low, briefing entities are encouraged to increase the proportion of briefs they provide to junior women barristers in excess of the targets in the Policy in order to nurture and develop expertise.

Briefing below the targets

The targets are intended to increase the number of women briefed in practice areas where women barristers are not briefed, infrequently briefed or where the pool of women briefed is small.

The Law Council also recognises that some briefing entities may need to set their own incremental annual targets and to extend the time to meet the targets in order to reflect the proportion of women barristers who are available to appear in small jurisdictions, remote and rural areas or in particular areas of practice.

Exceptions can be made where these targets are not achievable due to the gender make up in particular areas of practice or geographical locations, provided this is stated in the annual confidential report (see below).

What happens if the targets are not achieved?

Where a briefing entity does not meet a target in the Policy, consideration should be given by that entity as to the reasons why a target was not achieved.

What are the reporting obligations?

The reporting obligations for individuals and entities, such as sole practitioners and law firms, adopting the Policy are different from the reporting obligations for barristers adopting the Policy.

Reporting obligations for individuals and entities adopting the Policy

Individuals and entities adopting this policy are asked to provide an annual confidential report on their briefing practices and measures taken to implement the Policy.

The confidential report will assist the briefing entity to achieve the targets and to assess how it might improve its briefing policies with respect to selection practices, costs and means to identify a pool of talented, experienced and skilled barristers of all genders.

The confidential report should address separately the figures for men and women barristers in respect of:

- a. the number of barristers briefed during the year;
- b. the number of those barristers who are senior barristers;
- c. the number of those barristers who were junior barristers;
- d. the number of those junior barristers who were briefed without a leader; and
- e. the monetary value of the briefs.

Confidential reports should be provided to the Law Council, by 30 September each year.

The Law Council will subsequently publish the figures on state-by-state and national bases each year. The material published will be in a format that does not identify any individual barrister or briefing entity.

What is the role and commitment of in-house counsel and clients who adopt the Policy?

Where they do not already do so, clients and in-house counsel may consider:

- requiring that the firms they engage confirm their adoption of the Policy; and
- requesting regular reporting from firms as to their performance against the targets, both overall and on matters for that client; and if women barristers are not recommended or targets are not met, asking “why not?”.

What is the role and commitment of barristers who adopt the Policy?

In addition to targets identified in this Policy, barristers who adopt the Policy will make all reasonable endeavours to ensure that all recommendations they make of other barristers include at least one woman, unless there is no qualified woman.

Reporting obligations for barristers adopting the policy

Barristers should provide a confidential annual report to the Law Council. A barrister's report should address the following information, by reference to gender:

- a. the number of barristers briefed as their junior or as their leader during the year;
- b. number of barristers who were briefed as junior barristers as a result of a recommendation by senior barristers (if known);
- c. the number of barristers who were briefed as senior barristers as a result of recommendations by junior barristers (if known); and
- d. the number of barristers recommended to briefing entities in new matters.

Barristers' clerks should work with barristers who adopt the Policy to develop practices and protocols to assist with their reporting obligations.

Are there resources to assist implementing the Policy?

Many Bar Associations and Law Societies have online resources which are publicly available. Likewise, Australian Women Lawyers and State Women Lawyers' Associations have publicly available resources.

Local Bar Associations and Law Societies will assist with the implementation of the Policy by adopting appropriate strategies, including education, information and resources. Barristers' clerks and practice managers can assist with information, recommendations and introductions.

The Law Council will assist its constituent bodies to provide templates for reporting, regular information and education seminars and workshops directed to implementing the Policy as required.

Review and development of the Policy

The Law Council recognises the need to continue to review the Policy from time to time to ensure the Policy is appropriate and adapted to achieve its purpose.

The targets set out in clause 2 will be reviewed in the report on the 2023-2024 reporting year. The Law Council will continue ongoing discussions with its constituent bodies to monitor the impact of the Policy and consider its broader application beyond gender.

Other areas of diversity

The Law Council is committed to improving inclusion and diversity across the legal profession by reference to a broader range of considerations. It recognises that enhancing inclusion must also extend to persons:

- from culturally and linguistically diverse backgrounds;
- living with disability; and
- who identify as LGBTIQ+.

The Law Council supports the application of equitable briefing practices to broader areas of diversity. At this stage, lack of consistency in data collection precludes the Policy's application across these broader areas, as it is not possible for the Law Council to set

targets for equitable briefing in these additional areas of diversity, nor monitor progress against them. Going forward, the Law Council will continue to consider whether this Policy can be so expanded, aided by consultation with members of the profession who identify as being from those and potentially other diverse groups.

Even though the Policy does not currently encompass other areas of diversity, the Law Council encourages briefing entities to brief or select barristers from other diverse groups.

Definitions and expressions used in the Policy

For the purpose of the Policy:

barrister means a member of an independent State or Territory Bar.

brief means the engagement of legal services provided by barristers and includes barristers' work in judicial (before Courts and tribunals), non-judicial (through commissions of inquiry, investigations, negotiation, mediation or arbitration) and advisory work. A brief may count towards the targets in this Policy by reference either to the retention of a barrister or to the provision on behalf of a barrister of an invoice for fees, depending upon the length and scope of the matter.

briefing entity is a person, corporation, entity, firm, partnership, government or body who recommends or briefs Australian barristers to advise or to appear in Australia or overseas.

senior barrister is a barrister of 10 or more years standing at the independent bar or who is King's Counsel or Senior Counsel, and **junior barrister** means all other barristers.

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