

# **Equitable Briefing Policy for Female Barristers and Advocates**

## **Objectives of the Policy**

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 counsel or solicitor advocates.

The adoption of equitable briefing practices can play an important role in the progression of women in the law, the judiciary and the wider community.

## **Application of the Policy**

This policy, formulated for adoption by the Law Council of Australia, shall be applied by both clients and legal practitioners (including in-house counsel) throughout NSW Government agencies.

Whilst acknowledging that the selection of counsel or solicitor advocates is ultimately the decision of the client, referring legal practitioners exercise significant influence in making that selection.

Consistent with that acknowledgement, this Policy applies whether in-house lawyers or external legal providers are selecting counsel. It is the responsibility of each NSW agency to ensure that their staff, and any external legal providers they engage, are aware of this Policy.

The Policy applies in addition to other Policies and Procedures, which may apply across the NSW State Government and within particular agencies in relation to the selection of counsel.

## **Equitable Briefing Policy**

In selecting counsel, all reasonable endeavors should be made to:

- (a) identify female counsel in the relevant practice area<sup>i</sup>; and
- (b) genuinely consider engaging such counsel<sup>ii</sup>; and
- (c) regularly monitor and review the engagement of female counsel<sup>iii</sup>; and
- (d) periodically report on the nature and rate of engagement of female counsel<sup>iv</sup>.

- i. Female counsel may be identified through searches of the relevant bar or women lawyer websites; and/or maintaining internal referral lists which are regularly updated; and/or through eliciting expressions of interest.
- ii. A genuine consideration would have regard to the skills and competency of counsel regardless of gender and should avoid inappropriate assumptions about the capacities and aptitude of female and male counsel. Where there are equally meritorious male and female counsel available, arbitrary and prejudicial factors should not operate to exclude the engagement of female counsel.
- iii. Internal records should be maintained to identify the nature of the engagement, that is the number, type, stage and gross dollar value of legal services provided by all barristers by gender.
- iv. The objective of monitoring and reviewing the proportional rate of engagement is to ensure that female barristers are briefed at or above the prevailing percentage of female barristers in practice in that jurisdiction. The review should have regard to the success or otherwise of the implementation of an equitable briefing policy, and initiate steps to redress inequity where it is identified.



## Reporting standard for equitable briefing practices

### COURT/VENUE

- Identify the court or place in which the appearance was made.
- Where the matter involves mediation, arbitration or conciliation, enter the court or venue to which the matter relates.
- Where the matter referred is for legal advice only, enter N/A.

### ROLE

- *Leader (L)*- Where the brief is to a QC or SC (whether with another silk, or with or without a junior) or to a senior junior leading another barrister.
- *Briefed Alone (BA)*- Where a barrister is appearing alone and having the ultimate responsibility for the conduct of the case.
- *Junior (J)*- Where a barrister is being led by a silk or more senior barrister.
- *Legal Advice (LA)* - Where the matter referred is for legal advice only.

### HEARING

- Where the hearing or appearance takes one day or less than one day, enter one day. Where the hearing or appearance last more than one day, enter actual number of days.
- Where the matter referred is for legal advice only, enter N/A

### TYPE OF BRIEF

- *Pre trial* – An appearance not involving a final determination, which may be pre trial or an interlocutory hearing, a mention or directions hearing including any application or hearing ancillary to a substantive proceeding or which is an adjunct to principal relief e.g., an induction (mareva / anton pillar order), admissibility argument, abuse of process / stay application etc.
- *Hearing / Trial* – Any type of appearance involving a hearing or trial of substantive matter involving a final determination. A settlement of a matter that occurs at a hearing or trial or at the “door of the court” should be entered into this category. So too should a plea and sentence in a criminal case.
- *Appeal* – All appeals from a court or tribunal to another court or tribunal.
- *Mediation, arbitration or Conciliation*- Where a barrister is briefed to appear as counsel in a mediation, arbitration or conciliation, or to act as the mediator, arbitrator or conciliator, enter the appearance as MAC.
- *Legal Advice* – Where a barrister is briefed to provide legal advice only.

### AREAS OF LAW

- *Commercial* – including taxation, mercantile, equity, building, banking, bankruptcy, insolvency, wills estates, insurance etc.

- *Personal Injuries* – including running down and all victim compensation cases.
- *Criminal* – all crime (defence and prosecution), including traffic matters, Children’s Court matters, local or other Government prosecutions, OHS AVO’s etc.
- *Family* – including all de facto matters.
- *Administrative* including planning, valuation FOI, veterans, social security etc.
- *Other* – anything not falling into one of the above categories.

**GROSS FEE**

- Record the total professional fee paid only (including GST). Do not include disbursements.