

# NSW Government Equitable Briefing Policy for Women Barristers

The NSW Government Equitable Briefing Policy for Women Barristers (**the Policy**) operates to entrench equitable briefing practices in all NSW Government agencies that brief barristers. The policy implements aspirational targets for briefing women barristers. It applies to all NSW Government sector agencies effective 1 July 2018.

## Essential Summary

- In selecting barristers, all reasonable and genuine endeavours should be made to:
  - a. Identify women barristers in the relevant practice area
  - b. Engage women barristers.
- In selecting barristers each agency is to take all reasonable efforts to:
  - a. Brief or select women senior barristers accounting for at least 20 per cent of all briefs and/or 20 per cent of the value of all brief fees paid to senior barristers
  - b. Brief or select women junior barristers accounting for at least 30 per cent of all briefs and/or 30 per cent of the value of all brief fees paid to junior barristers.
- Each agency that briefs barristers should regularly monitor and review its progress towards meeting the above targets.
- At the end of each financial year, each briefing agency is to prepare a confidential report for that financial year, for submission to the Office of the General Counsel, Department of Justice.

The report is due by 31 October each year, and must outline, in respect of the agency:

- a. The number of women senior barristers who were briefed
- b. The number of women junior barristers who were briefed
- c. The value of brief fees paid to women senior barristers
- d. The value of brief fees paid to women junior barristers.

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# 1 Objectives of the Policy

This NSW Government Equitable Briefing Policy for Women Barristers operates to entrench equitable briefing practices in all NSW Government agencies that brief barristers. The NSW Government supports measures to improve retention of women barristers in the legal profession, as well as a nationally consistent approach to equitable briefing practices.

The Policy aims to:

- Play an important role in the progression of women in the law, judiciary and wider community
- Redress the underrepresentation of women barristers in NSW, and support a consistent national approach to equitable briefing practices
- 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 the administration of law
- Enhance the legal profession's credibility by making it more representative of the community which it serves.

The Policy has been formulated with reference to the Law Council of Australia's National Model Gender Equitable Briefing Policy (the National Model Policy), released in June 2016. The aim of the National Model Policy is to address the underrepresentation of women barristers in Australia by promoting equity within, and improving the diversity of, the profession and encouraging cultural change. The National Model Policy is designed to support measures to improve the retention of women barristers in the legal profession, and achieve a nationally consistent approach to facilitating cultural and attitudinal change within the legal profession with respect to briefing practices.

# 2 Application of the Policy

The Policy applies to all NSW Government sector agencies, as defined under the *Government Sector Employment Act 2013*. The Policy also applies to any external legal practitioners briefed by a Government sector agency or acting on an agency's behalf, whenever selecting barristers.

Each agency is responsible for ensuring that its staff, and any external legal providers engaged, are aware of and comply with this Policy.

The Policy operates in addition to any other policies and procedures relevant to the selection of barristers that may apply across Government and/or to particular agencies, including the Premier's Memorandum M2009-17, *Briefing Senior Counsel*.

## 3 The Policy

### 3.1 Definitions

- A **barrister** means a member of an independent state or territory bar
- A **senior barrister** is a barrister who has been appointed as a Queen's Counsel or Senior Counsel
- A **junior barrister** is any barrister who is not a senior barrister
- To **brief or select a barrister** means to engage a barrister to provide legal services (see further definition at 3.5.2).

### 3.2 Selection of barristers

In selecting barristers, all reasonable and genuine endeavours should be made to:

- a. Identify women barristers in the relevant practice area
- b. Engage women barristers.

Women barristers may be **identified** by searching relevant Bar or women lawyers' websites, by maintaining internal referral lists, or through expressions of interest.

To **genuinely consider** a particular barrister means having regard to her or his skills, experience and competencies and avoiding assumptions about capacity and aptitude based on gender. Where there are equally meritorious female and male barristers available, arbitrary and prejudicial factors must not operate to exclude the engagement of women barristers.

### 3.3 Briefing targets

In selecting barristers each agency is to make all reasonable efforts to:

- a. Brief or select women senior barristers accounting for at least 20 per cent of all briefs and/or 20 per cent of the value of all brief fees paid to senior barristers
- b. Brief or select women junior barristers accounting for at least 30 per cent of all briefs and/or 30 per cent of the value of all brief fees paid to junior barristers.

The **value of the brief fees** paid is the total sum paid to the barrister for all matters that the barrister was briefed on in the financial year (excluding disbursements and GST).

Whilst the above targets are aspirational in nature, agencies should make all reasonable efforts to achieve the targets. These targets may be adjusted to reflect local conditions.

The targets are designed to achieve the objective of women barristers in respect of briefings by NSW Government agencies receiving at least 30 per cent of all briefs and at least 30 per cent of the value of all brief fees by 2020. This target is in accordance with international benchmarks concerning the retention and promotion of women in the law.

### 3.4 Monitoring and Review

Each agency that briefs barristers should regularly monitor and review its progress towards meeting the above targets.

This Policy emphasises continual improvement. It may not be possible for all agencies to meet percentage targets immediately. However, monitoring and review of practices may assist in identifying areas for improvement that will allow targets to be met in later years.

The object of monitoring and reviewing the proportional rate of engagement is to ensure that women barristers are briefed at or above the prevailing percentage of women barristers in practice in NSW.

### 3.5 Reporting

At the end of each financial year, each briefing agency in the NSW Government is to prepare a confidential report covering that financial year, for submission to the Office of the General Counsel, Department of Justice.

The report is due by 31 October each year and must outline, in respect of each agency:

- a. The number of women senior barristers who were briefed
- b. The number of women junior barristers who were briefed
- c. The value of brief fees paid to women senior barristers
- d. The value of brief fees paid to women junior barristers.

#### 3.5.1 Direct and indirect reporting

Agencies should only report on barristers who have been briefed directly by the agency. Barristers who are engaged indirectly, including through the Crown Solicitor's Office, the Treasury Managed Fund or the NSW Government Legal Services (GLS) Panel will be reported through these agencies respectively and in respect of briefings they make or that are made through their relevant funds or arrangements. This will avoid instances where briefs are reported by more than one agency.

For the purposes of direct reporting:

- Barristers are assumed to be briefed once per matter; if multiple briefs per matter are referred to barristers, agencies should record the number of matters referred, rather than the number of briefs referred per matter
- If two barristers are briefed on a matter, then both should be reported as having received a brief
- If a barrister is paid for legal services by an agency, that retainer should be counted as a brief, regardless of whether the matter proceeds or not
- If a barrister is not paid for services by an agency, or the barrister did not provide any legal services, that retainer should not be counted as a brief.

### 3.5.2 Briefing barristers

A **brief** given to a barrister 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.

A barrister can also be briefed multiple times on the same matter. For example, where a barrister is briefed to provide advice in a matter this accounts for one briefing per that barrister. If the same barrister is subsequently briefed for judicial work on the same matter on the reporting template this would be recorded as two briefs for the particular barrister.

Types of briefs may include, but are not limited to:

- Pre-trial – an appearance not involving a final determination. For example, a 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 such as an injunction, an admissibility argument, abuse of process or stay application
- Hearing / Trial – any type of appearance involving a hearing or trial of substantive matter with a final determination. This can include a settlement of a matter that occurs at a hearing or trial or at the 'door of a court', or a plea and sentence in a criminal case
- Appeal – all appeals from a court or tribunal to another court or tribunal; an appeal should be treated as a separate briefing notwithstanding whether the same barrister was used in a lower court
- Mediation, arbitration or conciliation – where a barrister is briefed to in a mediation, arbitration or conciliation, or to act as the mediator, arbitrator or conciliator
- Legal Advice – where a barrister is briefed to provide legal advice only
- Briefs to prepare or settle documents.

There is no requirement for agencies to report on the type of brief assigned to a barrister.

### 3.5.3 Reporting to the Office of General Counsel

A report for each financial year should be electronically submitted to the Office of the General Counsel, Department of Justice by 31 October each year. The Office of General Counsel will collate the data from all agencies' reports to provide a whole-of-government report to the Attorney General. This report will demonstrate the NSW Government's overall performance against the Policy's targets.

In addition to reporting, each agency should consider how successfully it has adopted the Policy in the relevant financial year, and whether it met the targets. Each agency should consider what steps it intends to take in the subsequent financial year to address any difficulties in implementing the Policy and/or shortfalls in meeting the targets. This is not compulsory, but is recommended to ensure continual improvements in accordance with the Policy.

## 4 NSW Equitable Briefing Policy – Reporting Table

Barrister	Number of briefs received (or the number of matters referred, if multiple briefs are issued per matter)	Gender of barrister		Seniority of barrister (see above for definitions of junior counsel and senior counsel)		Total value of brief fees paid to barrister (excluding disbursements and GST)		Attorney General's prior approval date* (for senior barristers only, if briefing junior barristers insert 'N/A')
		TOTAL FEMALE	TOTAL MALE	TOTAL SNR FEMALE	TOTAL JNR FEMALE	TOTAL FEES PAID TO SNR FEMALE	TOTAL FEES PAID TO JNR FEMALE	
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
<b>TOTAL</b>	<b>TOTAL</b>	<b>TOTAL FEMALE</b>	<b>TOTAL MALE</b>	<b>TOTAL SNR FEMALE</b>	<b>TOTAL JNR FEMALE</b>	<b>TOTAL FEES PAID TO SNR FEMALE</b>	<b>TOTAL FEES PAID TO JNR FEMALE</b>	
				<b>TOTAL SNR MALE</b>	<b>TOTAL JNR MALE</b>	<b>TOTAL FEES PAID TO SNR MALE</b>	<b>TOTAL FEES PAID TO JNR MALE</b>	

\* As per Premier's Memorandum M2009-17, *Briefing Senior Counsel*.

**Endorsement:**

Please ensure that the Legal Manager authorises this return and its content.

**Name of Agency:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Referred to:**

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