



THE
VICTORIAN
BAR

THE VICTORIAN BAR EQUALITY OF OPPORTUNITY BRIEFING POLICY

At its meeting on 1 April 2004, The Victorian Bar Council adopted the following policy as a model for the briefing of counsel at the Victorian Bar.

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 is formulated for voluntary adoption by both clients and legal practitioners (including in-house counsel) throughout Australia.

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 is also formulated to take into account the role relevantly played by barristers' clerks and counsel in its effective operation. When they are consulted by clients, briefing firms and briefing agencies with a view to engaging counsel, all barristers' clerks and counsel adopting this policy will include female counsel among the names of counsel they identify in the relevant practice area under inquiry.

Equitable Briefing Policy

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

- (a) identify female counsel in the relevant practice area; ⁽¹⁾ and
- (b) genuinely consider engaging such counsel; ⁽²⁾ and
- (c) regularly monitor and review the engagement of female counsel; ⁽³⁾ and
- (d) periodically report on the nature and rate of engagement of female counsel. ⁽⁴⁾

Notes to Assist in Implementing the Policy

1. Female counsel may be identified through searches of the relevant bar or women lawyer association websites; and/or by maintaining internal referral lists that are regularly updated; and/or through eliciting expressions of interest.
2. 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 capable male and female counsel available, arbitrary and prejudicial factors should not operate to exclude the engagement of female counsel.
3. Briefing firms, agencies and where applicable¹ barristers' clerks should develop the capacity to collect data and report upon that data so as to identify the nature of such engagement. The data should show the number, practice area, type (including hearing type) and gross value of such services. In-house counsel should consider requiring firms engaged by their organisation to ensure capacity exists to collect such data. Firms, agencies and where applicable² barristers' clerks should take care to ensure that the data collected or retained is not used for any other purpose than that referred to in this policy. In particular, they should take care the data is not used improperly, or released or published in a way which identifies clients, matters or counsel or particulars relating to any of them which would reasonably be regarded as confidential information.
4. The objective of reviewing, monitoring and then reporting to clients and to Bar Associations or Law Societies on the nature and rate of engagement is that female counsel be briefed at no less than the prevailing percentage of female counsel in the relevant practice area. Applicable statistics are available from the Bar Association or Law Society in each jurisdiction. The review and periodic report should have regard to the success or otherwise of the implementation of an equitable briefing policy, and should initiate steps to redress inequity where it is identified. In-house counsel should consider requiring firms engaged by their organisation to periodically conduct such reviews and report on their outcome to the organisation.
5. Having regard to the diversity in legal practice which exists in different states and territories throughout Australia, it is envisaged that relevant legal bodies and interested parties in each jurisdiction will draft more detailed guidelines for the implementation of this policy.

¹ In some jurisdictions barristers clerks do not have access to such data.

² *ibid*