

LegalAffairs

## **Equitable briefing 'silver bullet' misses its target**

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Barristers in every jurisdiction have a direct interest in this week's report that reveals the ineffective nature of the much touted equitable briefing policy for barristers.

When this policy was adopted by the Law Council in 2004, it was hailed as the silver bullet that would help women barristers overcome the barriers hampering their progress at the Bar. But more than a decade later, not much has changed.

Even though women now make up more than half of all law graduates, they account for just 20.9 per cent of the membership of the NSW Bar and just 9.9 per cent of that state's senior counsel.

When it comes to court work women account for just 9.9 per cent of appearances in the NSW Court of Appeal and just 5.8 per cent of appearances by senior counsel in the Federal Court.

On the measure that counts — money — the income gap is huge. Figures compiled last year by the NSW Bar Association show average gross fees for men were \$437,450 while the average for women was \$269,958.

And while just 24 cent of male barristers earned less than \$200,000 in gross fees, the figure for women was 41 per cent.

These details are outlined in a report on the impact of the equitable briefing policy that was commissioned by Jane Needham SC, president of the NSW Bar Association.

While it naturally focuses on the situation in NSW, its analysis and conclusions are of national significance.

Arthur Moses SC, who co-chaired the working party that wrote the report, says its conclusion is that the equitable briefing policy has failed and needs to be reworked.

"Mere platitudes including ignorant and, with respect, offensive statements that women have to do more to get 'noticed' are a diversion from the real problems," says Moses.

"The disparity in remuneration between men and women at the Bar cannot be explained away.

"In order for the Bar to remain strong and independent it needs not only to recruit but retain more women.

"The simple fact is that the majority of law graduates for a substantial period of time have been women — indeed women have been overwhelmingly the best and brightest of the graduates.

"We need to be encouraging more women to our ranks to ensure we have the best lawyers practising as barristers rather than losing these lawyers to law firms or in-house roles." The report calls for targets and accountability measures in which senior counsel and participating entities with more than 25 lawyers — law firms, companies and government agencies — would produce reports on how much work they are giving to female barristers.

The targets are 10 per cent of all briefs going to senior counsel, 20 per cent of briefs to counsel with more than five years seniority and 35 per cent of briefs to counsel with less than five years seniority.

This approach seems to draw on the way pro bono work is now treated. The National Pro Bono Resource Centre produces regular reports on whether participating entities are meeting the voluntary national pro bono target of 35 hours of pro bono work per lawyer each year. Like the pro bono target, nobody is forcing organisations to embrace equitable briefing. But if they choose to do so, it makes sense to do it with rigour.

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