

Gender equitable briefing at the bar

By Anthony McGrath SC

It is important that the independent Bar continues to thrive because of the role it plays in the administration of justice. Ensuring that the bar attracts and retains the best talent is fundamental to the future of the bar. Failing to attract and retain the best female talent undermines the quality of the bar and the manner in which it is viewed by the community it serves. Those matters affect every member of the bar. Any step which can be taken by barristers to assist in attracting and retaining women barristers is therefore vital to the profession.

In June 2016 the Law Council of Australia released the National Model Gender Equitable Briefing Policy (GEB Policy), replacing the previous policy that had been released in 2004. The development and implementation of the GEB Policy is a significant renewal of efforts by the Australian legal profession as a whole towards achieving gender equity at the bar in Australia. The promotion of the GEB Policy is very timely in the profession as a majority of law graduates are women and the number of women choosing a career at the bar is growing steadily.

The primary feature of the GEB Policy is what sets it apart from the previous policy: it now provides interim and long term targets, with the ultimate intention being that by 2020 women barristers will be briefed in at least 30 per cent of all briefs and receive at least 30 per cent of the value of all brief fees, and also requires annual reporting against those targets.

The expressed aim of the GEB Policy is to achieve a nationally consistent approach to drive cultural and attitudinal change within the legal profession with respect to gender briefing practices. It is not only aimed at benefitting women. It seeks to maximise choice for legal practitioners and their clients, promote the full use of the independent Bar and optimise opportunities for practice development of all barristers. In other words, it is unashamedly directed at strengthening the whole Bar as a profession, men included.

Underlying this overarching aim are a set of objectives, which are supporting the progression of women in the law and the judiciary, address the underrepresentation of women as barristers in Australia, acknowledge that diverse groups bring a greater variety of experience and enhance decision making, promote role models for women in the legal profession generally, reflect community expectations of fairness in the administration of the law and enhance the profession's credibility by making it more representative of the composition of the community it serves.

In September 2016 the Law Council of Australia launched the GEB Policy's online register¹ which allows what the GEB Policy describes as 'briefing entities' (generally comprising solicitors,

clients and barristers) to adopt the GEB Policy easily, swiftly and, just as importantly, publicly. At the time of writing this article, amongst those who have adopted the GEB Policy are the NSW Bar Association, the Law Society of NSW, ASX 200 companies Telstra, Woolworths and Westpac, 11 national law firms and 45 barristers, 33 of whom are from the NSW Bar.

What does the GEB Policy say?

At the heart of the GEB Policy is the encouragement of those persons or entities who brief or select barristers 'to make all reasonable endeavours to brief or select women barristers with relevant seniority and expertise, experience or interest in the relevant practice area.'

The GEB Policy provides for the collection of quantitative and qualitative information with the overall aim of meeting targets in the interim and moving towards targets in the long term. The targets are not mandatory and are not intended to be quotas. The purpose of setting targets contributes to the long term GEB Policy strategy of attracting, retaining and ensuring women get work that is meaningful, challenging and equal to that of their male peers.

With adjustment allowed for local conditions, the interim target in the GEB Policy provides that, by 1 July 2018, briefing entities are:

- to brief or select senior women 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;
- to brief or select junior women barristers 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 GEB Policy defines a 'senior barrister' as a barrister with 10 or more years standing at the independent Bar or who is a queen's counsel or senior counsel and a 'junior barrister' as all other barristers.

It is important to note here that presently 21.66 per cent of the NSW Bar are women, and women constitute 10.13 per cent of senior counsel².

The GEB Policy states that in 2018 the targets will be reviewed to reflect the reporting provided by those who have adopted it. The long term targets contained in the GEB Policy that by 2020 – only four years away – women are to be briefed in at least 30 per cent of all briefs and are to receive at least 30 per cent of the value of all brief fees, in accordance with international benchmarks concerning the retention and promotion of women.

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Briefing entities have the option to confidentially report to the local Bar Association, the local Law Society or directly to the Law Council by 30 September of each year. The reported data is then sent to the Law Council by 30 October each year. The Law Council is required to publish figures on state-by-state and National bases by 30 November of the reporting year, with the material published in a format that does not identify any individual barrister or briefing entity. It is contemplated that a standard form of reporting will be developed by the Law Council in consultation with its constituent bodies.

What are barristers required to do under the GEB Policy?

Page six of the GEB Policy outlines the role and commitment of barristers who adopt the GEB Policy. Barristers who adopt the GEB Policy are encouraged to 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.

In addition to consciously including at least one woman in any recommendations, the GEB Policy requires barristers who adopt it to provide a confidential annual report to the local Bar Association, at a time determined by the local Bar Association.

The GEB Policy also highlights the importance of clerks working with barristers who adopt it to develop practices and protocols to assist with their reporting obligations. Clerks have an important role in ensuring gender equity, not only on their floors but also at the bar as a whole.

Why barristers should adopt the GEB Policy

The existence of the GEB Policy is an important signal to the legal profession and all those who use the services of the legal profession that it is no longer sufficient to merely identify gender equity as an issue at the bar. Reading the GEB Policy broadly, it serves to ensure that those who adopt the GEB Policy examine their practices in briefing, selecting or recommending barristers and turn their minds consciously to whether a woman barrister, relevantly qualified and experienced, could be briefed on a matter at the time the briefing, selecting or recommending is undertaken.

This allows some redress of unconscious bias. It is important to recognise that the GEB Policy does not require the briefing, selection or recommendation of a woman barrister merely because she is a woman. Rather, by requiring the person making the recommendation to turn their mind to the question, it ensures a more fulsome consideration of the qualifications and experience of available barristers and so assists in promoting truly meritocratic briefing.

Many barristers already practice in accordance with the GEB Policy and meet the targets set out in it. It is important that those barristers also consider adopting the GEB Policy to show their support for its aims and purpose, and to ensure that a more complete and reliable cross-section of data can be collated.

Finally, adoption of the GEB Policy by barristers provides a clear indication to briefing entities that gender equity is recognised as an important issue to the bar, and will encourage adoption and implementation of the GEB Policy by those briefing entities. If barristers are not prepared to support strategies such as the GEB Policy which are designed principally for the future of the bar, why should they expect that solicitors and clients will do so?

What is the NSW Bar doing to implement the GEB Policy?

The NSW Bar Association's Diversity and Equality Committee, in conjunction with the Women Barristers' Forum (WBF), have formed an Equitable Briefing Working Group to promote adoption and implementation of the GEB Policy.

So far, the Equitable Briefing Working Group has organised seminars for barristers at each of the Commercial Bar and the Criminal Bar entitled 'Implementing the Gender Equitable Briefing Policy – what does it mean for you and your practice?'. The Commercial Bar seminar was chaired by Advocate for Change, Steven Finch SC, with the other panelists being John Sheahan QC, Andrew Bell SC and Elizabeth Cheeseman SC. The Criminal Bar seminar was chaired by Tim Game SC, with the other panelists being Chrissa Loukas SC and Kara Shead SC.

These seminars provided opportunities for frank and open discussion about the GEB Policy, the issues it addresses, the commitments made within it and how it could be implemented in practice, as well as raising other questions of practice, such as women's experiences in dealing with fellow legal practitioners, the bench and clients.

A seminar on equitable briefing involving a panel of solicitors from firms that frequently brief the bar will be held in the Bar Association Common Room on 9 March 2017. In addition, WBF will present a series of seminars entitled 'Be seen. Be heard. Be briefed' aimed at practice management and development for barristers. These seminars will be open to women barristers and men barristers.

In addition to raising awareness of the GEB Policy amongst members of the bar, the Equitable Briefing Working Group is developing a reporting template to assist barristers who adopt

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the GEB Policy to collect and report the data required for reporting. Once approved by Bar Council, this template will be made available to members of the bar to enable barristers who have adopted the GEB Policy to comply more easily with their reporting obligations.

The Bar Association has adopted the GEB Policy and will in the course of the next six months review its briefing practices and how it collects relevant data.

If you require more information about the GEB Policy and its implementation at the NSW Bar, or if you have ideas on its implementation or would like to be involved, please contact Ms Ting Lim, policy lawyer, at the NSW Bar Association.

Endnotes

1. [http://www.lawcouncil.asn.au/lawcouncil/index.php/current-issues/equitable-briefing-GEB Policy](http://www.lawcouncil.asn.au/lawcouncil/index.php/current-issues/equitable-briefing-GEB%20Policy)
2. <http://www.nswbar.asn.au/the-bar-association/statistics>

Four readers share their experiences starting out at the bar

Greg Antipas and Ingrid King of the New Barristers Committee recently caught up with Linton Teoh, Danielle Woods, Glenn Fredericks and Uche Okereke-Fisher about their experiences starting out at the bar. All of them were from the same intake, but had very different backgrounds. They were each asked the same series of questions and their responses below provide an insight into the diversity and similarity in how readers are finding their first year at the bar.



Glenn Fredericks

What did you do before coming to the bar?

I was an in-house lawyer at the Commonwealth Bank of Australia specialising in employment law, but also leading the major disputes team (among other things). Prior to joining the bank, I was a partner at Freehills (as it then was) in the Employee Relations

Group. Before Freehills, I had been an industrial officer with the NSW Nurses Association.

Has your reading year so far been what you had expected?

I didn't know what to expect, but the experience has been good. I've received work from where I never would have expected it, including many more new relationships with solicitors rather than just re-kindling older relationships (which has also been important). I had done quite a bit of advocacy work prior to going in-house. I'd enjoyed that and have continued to enjoy it. I enjoyed the Bar Practice Course, but would have like more time on my feet, and fewer lectures.

Where does your work mainly come from?

Some of my work has come through chambers. I've have also been fortunate to have had referrals and recommendations from more senior barristers. I've had a lot of cups of coffee, and would not underestimate the power of a cup of coffee.

What have you found to be the biggest change since coming to the bar?

The uncertainty of income takes some getting used to. I like being my own boss, and being in charge of my own destiny. I've spent a lot of time outside my comfort zone, but I am learning all the time and enjoying it.

What would you say to others considering coming to the bar?

I'd recommend giving it a go. You need to be prepared to back yourself – and know that the experience will make you a better lawyer. Even if it doesn't work out, you'll be a better litigator and have insights in how to handle Counsel. As far as finances are concerned, I recommend having enough cash to live for six months. Cash flow will be a real problem, and if you don't have a cushion you will put real pressure on yourself.