



## WESTERN AUSTRALIAN BAR ASSOCIATION

SUBJECT: **MODEL BRIEFING POLICY**  
DATE: **JUNE 2011**

In 2005, the Western Australian Bar Association adopted a model briefing policy to address identified briefing behaviours that discriminate against women members of the Association. On 8 July 2008 and 22 June 2011 the Association updated the policy.

The Association notes there are other forms of discrimination and that legal practitioners in Western Australia must not engage in conduct which constitutes unlawful discrimination: r 17(5)(a) of the *Legal Profession Conduct Rules 2010 (WA)*. In addition to discrimination against any practitioner by reason of their gender, unlawful discrimination extends to discrimination by reason of their age, family responsibility, family status, gender history, impairment, marital status, political conviction, pregnancy, race, colour, descent, ethnic or national origin, nationality, religious conviction or sexual orientation.

### **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 Association has adopted this model briefing policy to address identified briefing behaviours that discriminate against women members of the Association. The Association's objective is for this model briefing policy to 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). The Association advocates its adoption.

### **Equitable briefing policy**

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

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

### **Notes to assist in implementing the policy**

1. Female barristers may be identified through searches of the relevant Bar or women lawyer association websites, by maintaining internal referral lists that are regularly updated and through eliciting expressions of interest. The Association website ([www.wabar.asn.au](http://www.wabar.asn.au)) has a full listing of women barristers.

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2. A genuine consideration would have regard to the skills and competency of barristers, regardless of gender and should avoid inappropriate assumptions about the capacities and aptitude of women and men as barristers. Where there are equally capable men and women available, arbitrary and prejudicial factors should not operate to exclude the engagement of women.
3. Briefing firms and agencies should develop the capacity to collect data and report upon that data so as to identify the extent of engagement of women barristers. The data should show the extent to which women barristers are briefed and the practice areas and type of work briefed to women.
4. The objective of reviewing, monitoring and then reporting the information on briefing practices is to ensure that women barristers are briefed at no less than the prevailing percentage of women in the practice area by reference to quantity, and by reference to the kind of work and complexity of the work briefed. Reviews should initiate steps to redress inequality where it is identified. In-house counsel should consider requiring firms to conduct reviews and report on their outcome.