

Equitable Briefing and Equitable Remuneration: Briefing and Pay Disparity through a Gender Lens – the Way Forward

Dr Kylie Weston-Scheuber[#]

1. Equitable briefing has been on the agenda of many women barristers and those interested in equality for decades now. At a national level, this culminated in the Law Council of Australia adopting the Gender Equitable Briefing Policy in 2016.
2. But how far have we progressed in the eight years since the adoption of the policy? In June 2016, the *Sydney Morning Herald* reported that barristers topped the gender pay gap list, with men on average earning 184% more than women at the Bar, and 141% more after adjusting for hours worked.¹ Does the gender pay gap still exist for barristers? And if so, why?
3. This paper brings together the latest available data on equitable briefing, and the gender pay gap, from around Australia.

Gender composition of the legal profession

4. I commence with some general figures:
 - a. 53% of practising solicitors in Australia were women as at October 2020;²
 - b. 32% of partners of Australia's largest firms as at July 2022 were women;³
 - c. 46% of Australian judicial officers were women as at 30 June 2024;⁴
 - d. In matters where judgment was delivered by five or more Justices of the High Court in 2022, 22% of appearances were by women and women had only 15% of speaking roles.⁵

[#] BMus, BA/LLB (Hons), PhD, GAICD. Dr Kylie Weston-Scheuber has been a member of the Victorian Bar since 2013. She is a former Convenor and current committee member of the Women Barristers Association and has been involved in promoting and researching gender equitable briefing over the past six years. This is a paper prepared for the Australian Women Lawyers Conference 2024 presented in a session together with Kate Eastman SC and chaired by Renee Bianchi. Sincere appreciation goes to Maya Ranganathan for the data analysis behind the Supreme Court of Victoria statistics presented here.

¹ Samantha Woodhill, "Barristers top the gender pay gap list", *Australasian Lawyer*, 14 June 2016.

² Urbis, 2020 National Profile of Solicitors (2020) at 8, available at <<https://www.lawsociety.com.au/sites/default/files/2021-07/2020%20National%20Profile%20of%20Solicitors%20-%20Final%20-%201%20July%202021.pdf>>.

³ Pelly, "Female lawyers to wait another decade for partner equality", *Australian Financial Review* (7 July 2022).

⁴ Australian Institute of Judicial Administration, AIJA Judicial Gender Statistics (2024), available at: <https://aija.org.au/wp-content/uploads/2024/09/AIJA-Judicial-Gender-Statistics-2024_for-publication_SA-revised.pdf>

⁵ The Honourable Justice Gleeson, "Women in Law: How Far have we come, and where to from here?", Brennan Program Justice Talks Address, delivered at the University of Sydney, 20 March 2023 [30]. The Honourable Justice Gleeson has noted that three prominent male senior counsel from the NSW Bar addressed the High Court in 2022 more times than all women who appeared before the Court combined.

5. As at January 2021, women comprised the following proportion of barristers in each Australian state and territory:⁶
- a. New South Wales – 23%;
 - b. Victoria – 31%;
 - c. Queensland – 24%;
 - d. Western Australia – 26%;
 - e. South Australia – 27%;
 - f. Australian Capital Territory – 21%;
 - g. Northern Territory – 32%;
 - h. Tasmania – 18%.
6. Women currently comprise the following proportion of senior counsel at the various Bars:
- a. New South Wales – 16%;⁷
 - b. Victoria – 20%;
 - c. Queensland – 10%;⁸
 - d. Western Australia – 12%;⁹
 - e. South Australia – 21%;¹⁰
 - f. Australian Capital Territory – 21%;¹¹
 - g. Northern Territory – 24%;¹²
 - h. Tasmania – 3%.¹³
7. Providing some indication of how the gender composition of the Bar is changing over time, in Victoria, figures for the composition of the Bar as at June 2024 were as follows:

	Women	Men	Total	% Women
All	768	1494	2262	34%
Silks	62	253	315	20%
Junior	706	1240	1946	36%
Under 15	517	661	1178	44%
Under 10	374	471	845	44%

⁶ Law Council of Australia, “Gender Equitable Briefing Policy: Annual Report 2021-2022”, <https://lawcouncil.au/files/web-pdf/Equitable%20Briefing%20Policy%20Annual%20Report%202021-22%20Financial%20Year.pdf>.

⁷ 64/390 senior counsel were women in a search of the NSW Bar Association website on 8 October 2024.

⁸ 13/134 senior counsel were women in a search of the Bar Association of Qld website on 8 October 2024.

⁹ 6/51 senior counsel were women in a search of the WA Bar Association website on 8 October 2024.

¹⁰ 12/58 senior counsel were women in a search of the SA Bar Association website on 8 October 2024.

¹¹ 4/19 senior counsel were women in a search of the ACT Bar Association website on 8 October 2024.

¹² 4/17 senior counsel were women in a search of the NT Bar Association website on 8 October 2024.

¹³ 1/29 senior counsel were women in a search of the Tasmanian Bar Association website on 8 October 2024.

National Briefing Figures - Law Council of Australia's Gender Equitable Briefing Policy

8. Nationally, figures for equitable briefing, and proportion of fees to women counsel, are reported annually by the Law Council of Australia. There are limitations to this data, given that it is limited to reporting by signatories to the policy, and further, fewer than 50% of signatories comply with their reporting obligations. Those figures are presented here, from the inception of the Gender Equitable Briefing Policy in 2016 to present day.
9. In 2016, the Law Council of Australia adopted the Gender Equitable Briefing Policy, which is available for adoption by briefing entities and barristers.¹⁴ Briefing entities commit to the targets of 30% of briefs by number and value to women barristers. The original policy was specified as intending that the 30% target be reached by 2020.
10. In 2022, the Law Council conducted a review of the policy and adopted changes to the policy flowing from that review which include:
 - a. to include in the Policy a general statement supporting the extension of equitable briefing practices to broader areas of diversity; and
 - b. maintaining the previous target thresholds for briefing of women.

The LCA is currently seeking submissions on the continued operation of the policy.¹⁵

11. Based on the data provided by reporting entities since the inception of the Policy (though noting that on average only 40.5% of Policy adoptees report),¹⁶ the proportion of briefs, and proportion of fees, given to women barristers was:
 - a. 20% in 2016-17 (15% of fees);
 - b. 25% in 2017-18 (17% of fees);
 - c. 27% in 2018-19 (20% of fees);
 - d. 28% in 2019-20 (23% of fees);¹⁷
 - e. 29% in 2020-2021 (23% of fees);
 - f. 30% in 2021-2022 (26% of fees);
 - g. 31% in 2022-2023 (20% of fees).
12. Promisingly, these figures reflect a consistent upward trend in the briefing of women barristers (by volume), with the 30% target being met in 2021/22 and exceeded in 2022/23. However, the percentage of fees to women barristers has consistently lagged behind the percentage of briefs to women. The 30% target for value of briefs going to

¹⁴ A copy of the policy and a list of signatories is available here: <https://lawcouncil.au/policy-agenda/advancing-the-profession/equal-opportunities-in-the-law/national-model-gender-equitable-briefing-policy>

¹⁵ <https://lawcouncil.typeform.com/to/NfmsBDzi>.

¹⁶ Law Council of Australia, "Review of the Equitable Briefing Policy", 1 June 2022, <https://lawcouncil.au/files/pdf/policy-guideline/Review%20of%20the%20Equitable%20Briefing%20Policy.pdf>, p 11.

¹⁷ Law Council of Australia, "Equitable Briefing Policy: Annual Report" 2020-2021 Financial Year, <https://lawcouncil.au/files/web-pdf/Equitable%20Briefing%20Policy%20Annual%20Report%202020-21%20Financial%20Year.pdf>.

women has not been met in any year. Further, in 2022-2023 there was a 6 percentage point decrease in the proportion of fees paid to women from the previous year.

13. This is relevant to the gender pay gap, which is addressed below.

Gender Equitable briefing in Australian states and territories – the picture as at 2024

Victoria

14. Statistics on gender equitable briefing are presented here from Victoria, which are the only recent, publicly available statistics for Bars across Australian states and territories.¹⁸ It is noted that, with the exception of the Northern Territory, Victoria has the highest proportion of women barristers of any state or territory, and therefore the figures for Victoria may not generally reflect briefing trends in other states and territories.

15. While briefing statistics may be available in other states or territories, they were not able to be located using online search facilities. The data from Victoria is therefore presented as an example of briefing trends in one Australian state, noting again that the proportion of women barristers is higher in Victoria than in most other Australian states and territories.

Court of Appeal

16. The Victorian Court of Appeal website contains data for appearances of counsel by gender between 2018 and 2024, including whether each barrister had a “speaking role”.¹⁹ This data is extremely valuable in providing a snapshot of gender appearances over time and the extent to which they have (and have not) improved. Further, unlike data that has been gathered from Austlii (in relation to which see below), the data is important for indicating whether women barristers are advocating in the Court of Appeal, or merely appearing.

17. In criminal appeals, the statistics reflect a general improvement over time, from 32% of appearances being by women counsel in 2018/19 to 40% in 2023/24. Women counsel had speaking roles in 25% of criminal appeals in 2018/19 compared to 38% of matters in 2022/23, a further and consistent improvement over time.

18. Appearances by women in civil appeals have consistently been at much lower rates than for criminal appeals. Women appeared in 18% of civil appeals in 2018/19 increasing (though not uniformly) to 26% in 2022/23 and dropping to 24% in 2023/24. Women had speaking roles in 11% of appeals in 2018/19 increasing (again, not uniformly) to 19% in 2022/23 and dropping to 18% in 2023/24.

¹⁸ Some of those statistics are publicly available, and some have been prepared for the purpose of this paper. The source of the data for the various statistics is reported herein.

¹⁹ <https://www.supremecourt.vic.gov.au/sites/default/files/2024-07/Court%20of%20Appeal%20appearance%20data%20FY%202018-2024.pdf>. [f](#)

19. These differences are not explicable by reference to men and women practising in different areas. In 2024, women comprised 41% of the membership of the Victorian Criminal Bar Association. For non-criminal practice areas, the figures are:²⁰

- a. Common law – 35% women;
- b. Compensation law - 38% women;
- c. Commercial law – 30% women;
- d. Tax law – 27% women;
- e. Industrial Law – 31% women;
- f. Migration law – 34% women;
- g. Family law – 46% women;
- h. Children’s court – 61% women.

20. Therefore, women are currently appearing (and taking speaking roles) in criminal appeals at rates roughly commensurate with the percentage of women at the criminal Bar, although this is a relatively recent development. However, women are appearing in civil matters at rates well below the proportion of women at the Bar, even taking into account differential representation in practice areas, and when they do appear, they are much less likely to take speaking roles.

		Court of Appeal Counsel Appearances by Gender – Criminal																							
		Appeared Male						Appeared Female						Speaking Role Male						Speaking Role Female					
FY	2018 / 2019	2019 / 2020	2020 / 2021	2021 / 2022	2022 / 2023	2023 / 2024	2018 / 2019	2019 / 2020	2020 / 2021	2021 / 2022	2022 / 2023	2023 / 2024	2018 / 2019	2019 / 2020	2020 / 2021	2021 / 2022	2022 / 2023	2023 / 2024	2018 / 2019	2019 / 2020	2020 / 2021	2021 / 2022	2022 / 2023	2023 / 2024	
1st QTR	69%	69%	66%	67%	55%	65%	31%	31%	34%	33%	45%	35%	82%	71%	72%	68%	59%	71%	18%	29%	28%	32%	41%	29%	
2nd QTR	65%	70%	61%	61%	70%	61%	35%	30%	39%	39%	30%	39%	70%	76%	62%	70%	74%	60%	30%	24%	38%	32%	26%	40%	
3rd QTR	65%	65%	63%	57%	62%	59%	35%	35%	37%	43%	38%	41%	77%	71%	71%	62%	63%	64%	23%	29%	29%	38%	37%	36%	
4th QTR	71%	63%	66%	68%	58%	55%	29%	37%	34%	32%	42%	45%	74%	71%	67%	72%	59%	56%	26%	29%	33%	28%	41%	44%	
Overall	68%	67%	64%	62%	60%	60%	32%	33%	36%	38%	40%	40%	75%	72%	68%	68%	63%	62%	25%	28%	32%	32%	37%	38%	

²⁰ Source: Victorian Bar Office, email on file with author, 16 October 2024.

Court of Appeal Counsel Appearances by Gender – Civil																									
FY	Appeared Male						Appeared Female						Speaking Role Male						Speaking Role Female						
	2018 / 2019	2019 / 2020	2020 / 2021	2021 / 2022	2022 / 2023	2023 / 2024	2018 / 2019	2019 / 2020	2020 / 2021	2021 / 2022	2022 / 2023	2023 / 2024	2018 / 2019	2019 / 2020	2020 / 2021	2021 / 2022	2022 / 2023	2023 / 2024	2018 / 2019	2019 / 2020	2020 / 2021	2021 / 2022	2022 / 2023	2023 / 2024	
1st QTR	74%	72%	76%	78%	77%	69%	26%	28%	24%	22%	23%	31%	82%	85%	76%	89%	84%	69%	18%	15%	24%	11%	16%	31%	
2nd QTR	87%	84%	82%	82%	77%	83%	13%	16%	18%	18%	23%	17%	92%	89%	91%	89%	88%	90%	8%	11%	9%	11%	12%	10%	
3rd QTR	83%	83%	82%	69%	78%	80%	17%	17%	18%	31%	22%	20%	86%	95%	92%	75%	84%	89%	14%	5%	8%	25%	16%	11%	
4th QTR	85%	78%	82%	77%	65%	72%	15%	22%	18%	23%	35%	28%	95%	90%	90%	87%	71%	79%	5%	10%	10%	13%	29%	21%	
Overall	82%	79%	81%	77%	74%	76%	18%	21%	19%	23%	26%	24%	89%	90%	87%	85%	81%	82%	11%	10%	13%	15%	19%	18%	

Source: Victorian Supreme Court website (Court of Appeal).

Victorian Supreme Court

Commercial division data

21. The Commercial Division of the Supreme Court recently commenced publishing data of appearances by gender. The data is available here: <https://www.supremecourt.vic.gov.au/areas/commercial-court/data-on-gender-of-counsel>.

Commercial Court (Judge-managed) In-Court Counsel appearances by gender						
	Appeared (Male) (Senior and Junior Counsel)			Appeared (Female) (Senior and Junior Counsel)		
Financial Year	2021 / 2022 EOFY	2022 / 2023 EOFY	2023 /2024 FYTD	2021 / 2022 EOFY	2022 / 2023 EOFY	2023 /2024 FYTD
Quarter 1	86%	84%	80%	14%	16%	20%
Quarter 2	86%	80%	80%	14%	20%	20%
Quarter 3	85%	80%	83%	15%	20%	17%
Quarter 4	82%	84%	-	18%	16%	-
Average	85%	82%	81%	15%	18%	19%
	Speaking role Senior Counsel (Male)			Speaking role Senior Counsel (Female)		
Financial Year	2021 / 2022 EOFY	2022 / 2023 EOFY	2023 /2024 FYTD	2021 / 2022 EOFY	2022 / 2023 EOFY	2023 /2024 FYTD
Quarter 1	97%	93%	91%	3%	7%	9%
Quarter 2	94%	89%	89%	6%	11%	11%
Quarter 3	95%	89%	96%	5%	11%	4%
Quarter 4	93%	94%	-	7%	6%	-
Average	95%	91%	92%	5%	9%	8%
	Speaking role Junior Counsel (Male)			Speaking role Junior Counsel (Female)		
Financial Year	2021 / 2022 EOFY	2022 / 2023 EOFY	2023 /2024 FYTD	2021 / 2022 EOFY	2022 / 2023 EOFY	2023 /2024 FYTD
Quarter 1	84%	85%	75%	16%	15%	25%
Quarter 2	87%	81%	80%	13%	19%	20%
Quarter 3	82%	81%	84%	18%	19%	16%
Quarter 4	85%	80%	-	15%	20%	-
Average	85%	82%	80%	15%	18%	20%

Source: Victorian Supreme Court website (Commercial Division).

22. In 2023/2024 (as at the time of report), women appeared as senior or junior counsel in 19% of matters (compared to 15% in 2021/22).
23. In 2023/24 women had a speaking role as senior counsel in 8% of matters (a drop of 1% from the previous year) and as junior counsel in 20% of matters (an increase of 2% from the previous year).
24. All these figures are well below the figure of 30% of barristers who are members of the Commercial bar. They are also below the 18% figure for commercial silks who are women.²¹

Supreme Court generally

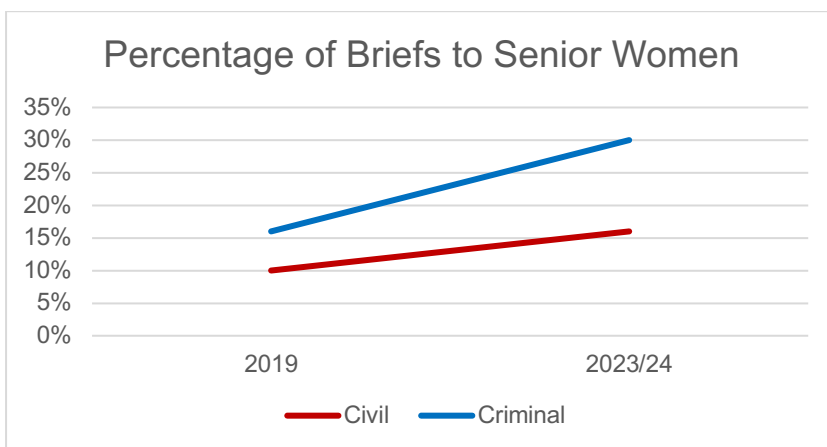
25. Data recently analysed from Austlii reveals some improvement in appearance rates in the Supreme Court over time.²² In 2023/2024, 16% of civil briefs went to senior women (an increase from 10% in 2019) and 30% of criminal briefs went to senior women (an increase from 16% in 2019).²³ Of senior counsel practising in criminal law, 23% are

²¹ 47/255 commercial barristers (senior counsel) were women in a search of the Victorian Bar website on 8 October 2024.

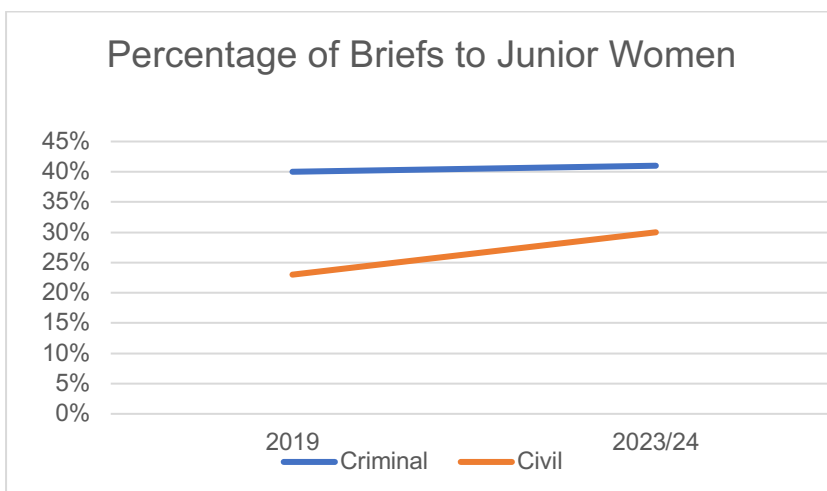
²² Data modelled on the methodology used in the “Visible Targets” research conducted in NSW by Kate Eastman SC. The data is on file with the author. Thank you to Maya Ranganathan for her excellent work in performing the data analysis.

²³ Note that while the 2019 figures reflect appearances in the calendar year, the 2023/2024 data reflects that financial year, although there is no reason why the two should not be comparative.

women.²⁴ It is important to note that when two junior counsel appear in a matter, the Supreme Court appearance data records the more senior junior counsel as “senior counsel”.



26. For junior women, the percentage of briefs going to women increased from 23% in 2019 to 30% in civil matters in 2023/2024, and from 40% to 41% in criminal matters.

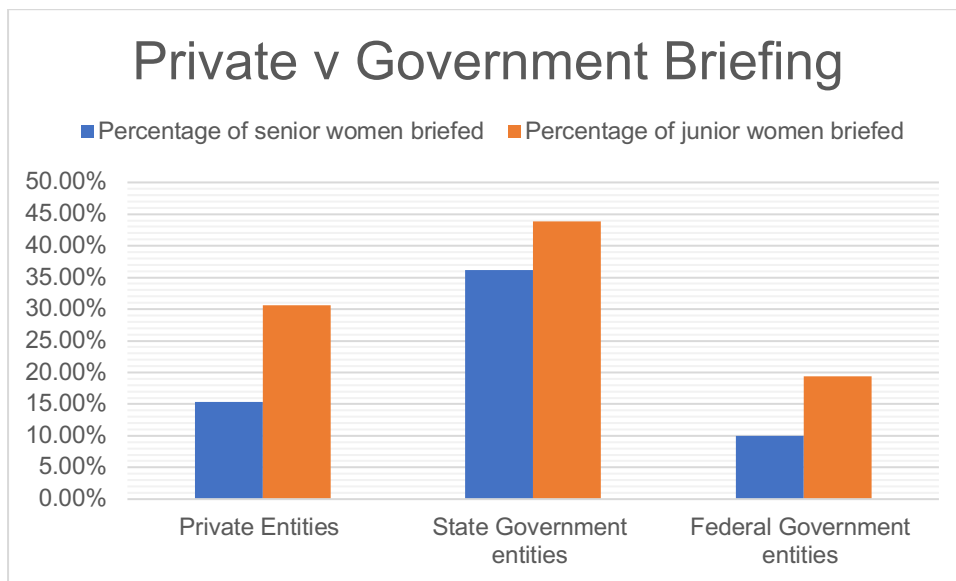


27. Previous research has indicated that government entities perform much better than private entities in terms of equitable briefing. That observation remains pertinent, although there has been an improvement in briefing by private entities of women: for senior counsel, 15% of briefs from private entities went to women (compared to 9% in 2019) and for junior counsel, 30% of briefs from private entities went to women (compared to 22% in 2019).

28. It remains the case that government entities perform better on gender equitable briefing, though this is true for state rather than federal entities (at least in Supreme Court briefing). While federal entities briefed senior women 10% and junior women

²⁴ 21/93 criminal barristers (senior counsel) were women in a search of the Victorian Bar website on 8 October 2024.

19% of the time, state entities briefed senior women 36% and junior women 43% of the time, a much higher rate of briefing, likely driven in part by the Victorian Government’s new Equitable Briefing Policy.



Supreme Court – briefing by firm

29. Supreme Court data has also been analysed to record gender equitable briefing performance by law firm. It is particularly important to identify equitable briefing trends within the top law firms, given that figures reported to the Law Council of Australia are only reported on a holistic basis (i.e. not firm specific) and it is very unusual for firms to publicise their own equitable briefing figures.

30. Data on equitable briefing was recorded for the top 30 highest-volume briefing law firms in 2017-2019 and for the top 20 highest-volume briefing law firms for the 2023-24 calendar year. The rates of briefing between the two periods for firms that featured in both data sets are reflected in the following table.²⁵

²⁵ In other words, the firms reflected here are not necessarily the best-performing in terms of gender equitable briefing – they are the firms that briefed the highest number of barristers generally within the relevant periods. Gender breakdown of counsel was recorded for those high-volume briefing firms and is recorded here. Firms with an * reflect firms currently members of the Victorian Government Legal Services Panel in at least one area of practice.

Law firm	Percentage of briefs to senior women 2017-2019	Percentage of briefs to senior women 2023/24	Percentage of briefs to junior women 2017-2019	Percentage of briefs to junior women 2023/24
<i>Maddocks*</i>	13%	30%	36%	69%
<i>Emma Turnbull Lawyers</i>	0%	27%	16%	73%
<i>King & Wood Malletsons*</i>	0%	0%	27%	87.50%
<i>Corrs Chamber Westgarth*</i>	12%	17%	43%	58%
<i>Piper Alderman</i>	7%	0%	26%	57%
<i>Maurice Blackburn</i>	8%	18%	19%	54%
<i>Stary Norton Halphen</i>	7%	33%	19%	50%
<i>Colin Biggers & Paisley</i>	N/A	0%	N/A	50%
<i>Herbert Smith Freehills*</i>	17%	13%	6%	50%
<i>Arnold Thomas & Becker</i>	16%	0%	21%	44%
<i>Gadens*</i>	N/A	33%	N/A	36%
<i>Clayton Utz*</i>	0%	4%	31%	28%
<i>MinterEllison*</i>	3%	16%	29%	26%
<i>Russell Kennedy*</i>	0%	10%	27%	25%
<i>Norton Rose Fulbright*</i>	33%	0%	22%	18%
<i>HWL Ebsworth*</i>	N/A	8%	N/A	16%
<i>Hall & Wilcox*</i>	8%	20%	25%	13%
<i>Mills Oakley</i>	10%	14%	18%	11%
<i>Lander & Rogers*</i>	7%	0%	33%	10%
<i>Strongman & Crouch</i>	0%	9%	0%	0%

Victorian Government panel briefing figures

31. On 1 July 2023, a new legal services panel commenced for a term of three years. The panel is appointed through an open tender process. The panel allows government departments and agencies to purchase legal advice and representation from panel firms, in areas including administrative, employment, property, contracts, general commercial, personal injuries, coronial and planning and environmental law.

32. Under the new arrangements in place from 1 July 2023, firms on the panel are required to provide 50% of briefs and 50% of fees to women barristers, and are also required to report to government on diversity policy and practices, and gender pay gaps.²⁶

33. The new panel is an improvement on the previous panel arrangements which set briefing and fee targets commensurate with the proportion of women at the Bar.

Victorian Government Legal Services Panel – Barrister Briefing Data

Table 1 - Total and Proportion of Briefs by Gender (all seniorities) in FY23 and FY24

Data as at 10/10/2024

Financial Year, Gender	No. of Briefs	% of Briefs in FY	Total Fees (ex. GST)	% of Fees in FY
2023-24	1,445		\$26,979,622	
Female	692	48%	\$11,709,085	43%
Male	753	52%	\$15,270,537	57%
2022-23	1,186		\$23,065,325	
Female	524	44%	\$8,962,221	39%
Male	662	56%	\$14,103,104	61%

Table 2 – Total and Proportion of Briefs by Seniority and Gender in FY23 and FY24

Data as at 10/10/2024

FY, Gender, Seniority	No. of Briefs	% of Briefs in FY	Total Fees (ex. GST)	% of Fees in FY
2023-24	1,445		\$26,979,622	
Junior	963	67%	\$13,895,227	52%
Female	503	52%	\$7,518,157	54%
Male	460	48%	\$6,377,070	46%
Senior	482	33%	\$13,084,396	48%
Female	189	39%	\$4,190,928	32%
Male	293	61%	\$8,893,467	68%
2022-23	1,186		\$23,065,325	
Junior	815	69%	\$11,716,274	51%
Female	389	48%	\$5,518,610	47%
Male	426	52%	\$6,197,664	53%
Senior	371	31%	\$11,349,051	49%
Female	135	36%	\$3,443,611	30%
Male	236	64%	\$7,905,440	70%

²⁶ See Schedule 8 to the Deed of Standing Offer for the Provision of Legal Services, “Victorian Gender Equitable Briefing Policy”.

34. In 2022/23, Department of Justice and Community Safety assisted WBA to gather research from law firms who were members of the legal services panel in 2020 and 2021 financial years. In the period covered by the survey, there were 29 law firms appointed to the Victorian Government Legal Services Panel (there are currently 35).²⁷ Seventeen of those firms agreed to participate in the collection of data shown here. Of those 17 firms, 13 firms had briefed barristers through the legal panel. Ten (10) law firms generously agreed to share their entire firm's briefing data.²⁸

Briefing by panel firms

35. In 2020/2021, 43% of legal panel briefs went to women counsel. Of the 11 panel firms who briefed in this period, nine briefed women barristers in 30% of matters or more.²⁹ The remaining two firms briefed no women.

36. While receiving 43% of briefs by number in 2020/2021, women barristers received 41% of fees overall. Of the nine firms that briefed women, all but two paid women more than 30% of fees.

37. For the ten law firms who provided briefing data (non-panel firm) for the purposes of the research, those firms briefed women in the following percentage of matters and fees for 2020/21:

Law Firm	Percentage of briefs to women	Percentage of fees to women
Clayton Utz	19%	10%
Corrs	31%	29%
DLA Piper	40%	23%
Minter Ellison	29%	23%
Thomson Geer	30%	16%
Gilbert & Tobin	23%	22%
Sparke Helmore	26%	21%
VGSO	52%	37%
King & Wood Mallesons	25%	19%

38. Notably, of the law firms who provided their data, in 2021 four met the Law Council's gender equitable briefing target of briefing women in 30% of matters. Only VGSO met the target for both brief numbers and fees.

39. All law firms that participated paid women a lower percentage of fees than the percentage of women briefed as counsel.

Gender pay gap

²⁷ <https://www.buyingfor.vic.gov.au/legal-services-panel-contract>

²⁸ I am grateful to the Department of Justice and Community Safety for their assistance with gathering this data.

²⁹ VGSO which briefed women in 43% of matters. The other law firms were Minter Ellison (51%), Russell Kennedy (39%), Corrs (45%), HSF (66%), Clayton Utz (30%), DLA Piper (42%), Moray & Agnew (46%) and Thomson Geer (31%). Two law firms briefed no women (Hardwood Andrews and King & Wood Mallesons).

40. The gender pay gap represents the difference in average earnings between women and men, measured either by hourly rates of pay or by annual remuneration.³⁰
41. In 2024, the gender pay gap across legal professionals not including barristers was measured at 10% based on average base salary.³¹ The gap was consistent across all levels of seniority within the profession. As noted by the College of Law in its reporting, “This suggests that the gender pay gap is not a legacy issue and that more must be done to bridge the divide.”
42. NSW figures reflect that the gender pay gap for solicitors (based on annual gross income over \$150,000) is 7%. The gender pay gap is consistent across all sectors of practice, including women-dominated sectors. In private practice, only 29% of women were principals compared to 52% of men.³²
43. For barristers, the gender pay gap was reflected in Victorian results from 2023, as follows.³³

	Total	Male	Female	Total	Male	Female
Prefer not to say	54	29	15	8%	8%	6%
0-\$18,200	7	4	3	1%	1%	1%
\$18,200-\$45,000	3	2	1	0%	1%	0%
\$45,001-\$120,000	67	30	36	10%	8%	14%
\$120,000-\$180,001	70	35	34	11%	9%	13%
\$180,001+	449	270	167	69%	73%	65%
Total	650	370	256	100%	100%	100%

44. As reflected in this table, the majority of both men and women barristers in Victoria are in the highest income earning bracket of taxable income of \$180,001 or more each year. However, this income bracket will incorporate a very broad range of taxable incomes, such that it is of limited assistance in determining reasons for the gender pay gap amongst this large group.
45. The reasons for the gender pay gap are difficult to ascertain in specific terms. However, they are likely to include:
- a. a higher proportion of women practises in criminal law and in Children’s Court matters, which are generally lower paid than other areas of law;

³⁰ I am grateful to Kate Eastman SC for the provision of statistics and figures compiled in relation to the gender pay gap.

³¹ College of Law Australia, *Australian Legal Salary Survey 2024*, <https://issuu.com/ncao85/docs/col_2024_salary_survey_executive_summary_may24_v3>.

³² *2023 Annual Profile of Solicitors in NSW*, Pay Gap in the Legal Profession, p 7.

³³ State of the Bar Survey, 2023, Q53 Taxable personal income range for the financial year ending 30 June 2023, p 42.

- b. women are briefed more often by government where hourly and daily rates are capped at below commercial rates;
 - c. women comprise a small fraction of senior counsel – ranging from 3% to 24% across Australia, accounting for a higher proportion of men than women charging the highest fees;
 - d. underbilling and “writing off” of work.
46. At the Victorian Bar, survey results from 2023 indicate that women and men barristers performed roughly similar hours of pro bono work in the previous six months, and roughly similar hours of volunteer work for the Victorian Bar or for community service organisations.³⁴ It therefore does not appear that disproportionate engagement in pro bono and volunteer work is responsible for the gender pay gap.
47. In England and Wales, the Bar Standards Board’s recent reports into the gender pay gap have found that:³⁵
- (a) men’s median gross earnings were higher than women’s in every call band and practice area;
 - (b) women silks earn on average 71% of their male colleagues’ median gross earnings;
 - (c) the gender pay gap starts from commencement at the Bar and quickly increases with the gap being greatest at the 11-15 years Call band (30%).
48. Of course, gender is not the only form of inequality operating at the Bar. The Bar Standards Board has also recently found:³⁶
- (a) women barristers from minority ethnic backgrounds are the lowest earning group, while white male barristers are the highest earning group;
 - (b) women barristers from minority ethnic backgrounds have average incomes 41% those of white male barristers;
 - (c) when barristers are grouped by main area of practice and seniority by year of Call, women barristers and barristers from minority ethnic backgrounds earn less on average than equivalent male and white barristers.

The Way Forward - Strategies for improving gender equitable briefing and reducing the gender pay gap

³⁴ 2023 State of the Bar survey, p 19.

³⁵ Bar Standards Board, *Gross earnings by sex and practice area at the self-employed Bar, 2023*, <<https://www.barcouncil.org.uk/static/ab5ab80b-39c6-4918-9a5d031492ce5f3e/0d3183a8-23e9-49b9-af1bb516eb02f583/Barrister-earnings-by-sex-and-practice-area-November-2023.pdf>>.

³⁶ Bar Standards Board, *Income at the Bar – by Gender and Ethnicity: Research Report*, February 2022, <<https://www.barstandardsboard.org.uk/static/af6c9471-1328-4f4d-8f1baf5adb349d64/Income-at-the-Bar-by-Gender-and-Ethnicity-2022.pdf>>.

49. In 2021, WBA invited the four firms who ranked the highest in WBA's research in gender equitable briefing performance in its survey of Supreme Court appearances between 2017 and 2019 to participate in a panel discussion.
50. The panel discussion is available to watch here: <https://www.vicbar.com.au/public/bar-associations/women-barristers/wba-events-cpds>.³⁷
51. Below I have outlined some of the key strategies and tips panellists had for improving gender equitable briefing performance, together with other concepts for improving gender equitable briefing that have been discussed with me over the past four years in various forums.

Networking events

52. Many women barristers and many solicitors will have attended gender equitable briefing functions in the form of cocktail-style "meet and greet" events. While these are valuable in terms of putting gender equitable briefing in focus, and allowing for introductions, it appears that these events often do not lead to work for women barristers.
53. Most solicitors I have spoken to say that in order to feel comfortable briefing a new barrister that they had not engaged previously, they would need to have seen them in court, or have received a recommendation from a trusted source, such as another law firm partner, or senior counsel. This may explain why "introduction" or "speed networking" events are less likely to be effective than subject-specific networking events where there is the opportunity for more extensive contact and communication with barristers. Alternatively, presentation of CPDs by barristers was seen as being an effective way of seeing the barrister as an advocate in action.
54. The opinion of senior counsel was identified by many solicitors as important in identifying and briefing junior counsel. Some firms had held, or talked about holding, events where senior counsel whom the firm engages regularly would be invited to attend and to invite female junior counsel to attend with them, whom senior counsel could then introduce and "sponsor" at the event. Senior counsel should always be asked to provide the name of at least one woman barrister when recommending junior counsel.
55. Another useful strategy is for gender equitable briefing to be a regular focus for law firms, rather than simply something that is considered in September when reporting to the Law Council is due. Some suggestions include:
- (a) profiling a woman barrister in a weekly or monthly newsletter or email;
 - (b) inviting a female barrister who has recently been engaged by the firm to present a CPD to broaden their exposure to other solicitors at the firm;

³⁷ "Gender Equitable Briefing – some strategies for improving briefing rates", WBA Events & CPDS, Victorian Bar website.

- (c) having a practice of emailing or advising others at the firm (and between firms) about new women barristers and recommending them, and sharing names of women barristers at team meetings and in firm lists;
- (d) seeking out recommendations for women counsel from other barristers;
- (e) inviting women barristers to events with clients, particularly at firms where clients are important decision-makers in the briefing process.

56. Doyles Guide was mentioned by some solicitors as a source of information about leading barristers in certain practice areas. In that regard, nominations for awards are important in placing women barristers in focus. Solicitors should actively consider nominating female counsel they rate highly for Doyles Guide and other awards.

Promotion and accountability of gender equitable briefing

57. Solicitors have emphasised the need for all solicitors within the firm to be advocates for gender equitable briefing, and to ensure that names of women barristers are put forward when selecting counsel.

58. Promotion of compliance with the GEBP is also important, and an effective means of communicating with clients that the firm treats gender equity seriously. Many corporate clients will themselves be signatories to the GEBP and other gender strategies and commitments.

59. Publicly reporting on gender briefing rates (e.g. via the firm website) is therefore a means to be transparent about gender equitable briefing practices, but also a sign to clients that the firm treats gender equitable briefing seriously.

60. Accountability and transparency are important when it comes to gender equitable briefing. There should be a central reporting system for recording the gender of counsel, including number and value of briefs. Recording via invoicing is one way to do this. One law firm that I am aware of (Herbert Smith Freehills) publishes online its compliance with gender equitable briefing targets: <https://www.herbertsmithfreehills.com/equitable-briefing-of-women-at-the-australian-bar>.³⁸ It would be great to see more law firms openly publicising their compliance with the policy.

61. A firm's commitment to the GEBP should be reinforced regularly through reminders to solicitors. Individual solicitors' compliance with the policy can also be monitored and questions asked if a particular solicitor does not comply with the firm's commitment.

Further recommendations for improving gender equitable briefing

62. Other strategies that have been suggested include:

³⁸ In FY23 the figures were 29% of all briefs nationally to female barristers, 45% of all briefs to junior counsel to female barristers (equating to 53% of total dollar value) and 56% of all briefs to junior counsel to female barristers in disputes practice (equating to 63% of total dollar amount of those briefs).

- (a) identifying women barristers from an early stage (via clerking list mail-outs or other means) and following the progress of barristers as they progress (including briefing the same barrister at different stages);
- (b) encouraging senior counsel to facilitate junior counsel having a speaking role, and speaking to the client about that if necessary;
- (c) holding networking events with clients to encourage clients to actively engage in the selection of more women barristers;
- (d) actively encouraging senior junior women to apply for silk;
- (e) actively considering briefing senior junior counsel where the matter does not require a silk to be engaged.

Reducing the gender pay gap

63. More work needs to be done to ascertain the causes of the gender pay gap. In particular, clerks play an important role in monitoring differences between charge-out rates of counsel and ensuring that men and women counsel of equivalent experience and practice areas are charging similar rates.
64. Further, discussions around charging practices and “writing off” work remain “taboo”, although there is anecdotal support for the idea that women barristers engage more frequently in writing off work due to questioning the amount of time spent and the level of background knowledge that should be required of a barrister. Having open and frank discussions about charging practices encourages all barristers to query their own practices and whether they are unnecessarily undervaluing their work.
65. Another factor likely to contribute to the gender pay gap is the low proportion of women who are senior counsel, ranging from 3% to 24% across all Australian states and territories. This rate remains surprisingly low, particularly when one considers that, at least in Victoria, women comprise 44% of barristers under 15 years’ call. Statistically, we would expect to see an increase in the proportion of women silks over the next decade, given the increasing percentages of women at the Bar. It remains to be seen whether this will eventuate, and if it will translate into a decrease in the gender pay gap.

Final observations on gender equitable briefing

66. Despite the progress made in the last eight years since the introduction of the Gender Equitable Briefing Policy, it is apparent that there is still a long way to go in achieving the equitable briefing of women counsel.
67. While the targets contained in the GEBP have not “solved” the problem in terms of equitable briefing, they do appear to have been instrumental in improving the briefing rates of women. To that end, it is hoped that briefing entities that have not signed up to the policy already will do so, and that signatories will comply with their reporting obligations diligently, and consider publishing data as to their equitable briefing practices.

68. However, policies mean little without a commitment to implementing them and monitoring compliance. As reflected in the firm-specific data from the Victorian Supreme Court reported above, many firms that have signed up to the policies continue not to meet the targets under the policy, despite the fact that women barristers constitute more than one-third of the Victorian Bar.
69. This takes commitment from law firms, developing a “culture” of gender equitable briefing, thinking outside the usual mechanisms for briefing, actively seeking out new counsel, and being accountable and transparent about briefing practices. This is no time to be complacent about equitable briefing, or to think that “the targets have been met” when the statistics reflect that women are not briefed at rates commensurate with their representation at the Bar in many respects, and while there have been improvements over time, these have not always been consistent, and briefing rates have dropped in some respects in recent years.
70. Now more than ever, all members of the legal profession need to be aware of the importance of equitable briefing (both in terms of gender and other forms of diversity) to ensure that the legal profession reflects the diversity of the Australian community.

15 October 2024