



Victorian Equal Opportunity
& Human Rights Commission



Equitable Briefing Initiative – Achieving equitable representation of Victorian women barristers in commercial litigation

Facilitator Guide for Law Firms/In house Counsel

The Equitable Briefing Initiative

A joint initiative between the Commercial Bar Association of Victoria (CommBar), members of the Judiciary and the Victorian Equal Opportunity and Human Rights Commission, the overarching objective of this project is to increase briefing of women at all seniority levels of the CommBar (and beyond), by engaging with the lawyers who brief the CommBar and working with them and their organisation to commit to real change.

The initiative arose due to concerns expressed by members of the Judiciary about the under representation of women barristers in the matters before them.

Two workshops have been convened to progress this initiative. The first focused on problem identification, whilst the second workshop focused on uncovering high impact actions for change. Since the workshops a *Charter of Commitment* has been publically released, with many firms/in house counsels signing up directly to the goals that it contains. (For more information please visit the Charter of Commitment).

The Facilitator Guide

After the first workshop, many workshop participants expressed a desire to run their own internal session within their own firm/ organisation. This Guide aims to help facilitators (law firm partners or organisational leaders) to run these sessions within their own firms and organisations, in order to identify actions to address the under representation of female barristers in commercial litigation.

For workshop participants who have since signed up to the Charter of Commitment, it may be that by running an internal workshop, additional internal actions (over and above the Charter of Commitment) are identified,

whilst for organisations/ firms that are not signatories to the Charter, these facilitated sessions may assist in identifying internal actions for change.

Objectives of the internal workshops

- Allow participants to identify key issues that drive the unequal representation of women lawyers in commercial litigation
- Encourage self reflection and an awareness of diversity in briefing practices more broadly
- Identify current efforts in the firm/organisation to improve equitable briefing practices
- Motivate change in the firm's/ organisation's practice (and individuals' practices) towards implementing equitable briefing practices and change practice more broadly
- Explore what firms/ organisations can do to lead to change.
- Discuss the Charter of Commitment and the potential for the firm/ organisation to be a signatory to this.

At the end of the session, it is anticipated that participants will:

- Have identified current issues in the firm that impede the equal representation of female barristers in commercial litigation
- Apply feedback and tips raised in discussions to improve the participation of female barristers in commercial matters
- Identify high impact actions that can produce significant change over the next five years period
- Consider signing up to the Charter of Commitment.

Facilitation resources

This facilitation guide includes:

- A Session Plan, which is the main source of information and guidance for facilitators on delivering this session.
- Background information for facilitators: provides a summary of the key evidence for you to refer to when facilitating a discussion during the session.

Before the session

Provide participants with:

- Information on how/why the session is being held
- Key discussion questions or preparation tasks to enable participants to ascertain their positions and practices prior to the facilitated discussion.

Logistics:

- As host, you will need to consider who will be accompanying you to run the session, for example a judicial member or representative from the Victorian Equal Opportunity and Human Rights Commission to assist in

'setting the scene' or hosting, as well as allocated group facilitators for small group discussions (facilitators should be senior staff).

- If a Judge or Commission representative will accompany you, provide them with a briefing session at least one week before the session starts.

Program overview and timing

Content	Time
TOTAL	2 hrs
<p>Arrival Facilitator to allow participants to settle at their tables, allowing one seat per table for a senior participant who will act as a group facilitator</p>	5 mins
<p>Opening remarks Host to welcome and thank participants for attending. Clarify and explain the learning aims for the session participants.</p>	10 mins
<p>Guest Speaker (if applicable) Guest speaker to outline the context of the issue and the workshop and acknowledge the integral role of law firms in addressing the underrepresentation of women.</p>	10 mins
<p>Small Group discussion Group facilitator or judicial member to provide opening remarks</p> <p>Group facilitator to lead a discussion on equitable briefing practices.</p>	60 mins
<p>Report back Host to request each group to give a 2 minute wrap up/summary of the key issues discussed by the whole group</p> <p>Group facilitators to collect notes from each group to capture the gathered information.</p>	20 mins
<p>Wrap up and closing remarks Host to thank participants and explain the next steps</p> <p>Guest speaker (if applicable) to thank participants for their input and participation</p>	5 mins 10 mins

Session Overview	
5 mins	<p>Arrival</p> <p>Allow participants to settle at their tables, allow one seat per table for a group facilitator.</p>
5 mins	<p>Introduction by host</p> <p>Host to welcome and thank participants for attending</p> <p>Introduce yourself and the reason you are involved today. Set the context in brief</p> <p>Clarify and explain the learning aims for the session participants</p> <p>Outline the issue: the under representation of women in commercial law and/or litigation matters</p> <p>Explain why this issue is important generally but why it is so important to law firm partners or leaders in organisations</p> <p>Acknowledge the work of CommBar/ VEOHRC/ Judiciary in developing the Charter of Commitment- Equitable Briefing Initiative and explain whether the firm/ organisation has signed up to this external initiative or whether they may want to address these issues internally.</p> <p>Introduce guest speaker (if applicable).</p>
10 mins	<p>Guest Speaker (if applicable, or host)</p> <p>Explain why the issue is important – generally, but also why it is important to members of the judiciary.</p> <p>Recognise that while some effort have been made to improve the situation, progress is slow – that the next generation of barristers will face the same barriers that previous generations have faced unless we commit to doing something differently.</p> <p>Acknowledge the work of CommBar/ VEOHRC/ Judiciary in developing the Charter of Commitment- Equitable Briefing Initiative.</p> <p>While this session is about the under representation of women in commercial law matters – firms and the bar should consider all diversity and discussions should focus on the broader issues of equality across the full spectrum of diversity.</p> <p>Recognise key players involved in a solution: lawyers, barristers, Comm Bar, law partners, firms, clerks, clients, judges.</p> <p>Acknowledge that because firms make the instruction decisions, they are integral to a safe, open and frank discussion about how to change this.</p>
5 mins	<p>Host</p> <p>Communicate ‘house keeping’ for the session –i.e. program timing,</p>

	<p>duration of session, location of restrooms, etc</p> <p>Explain the format of the day and the expectations of all participants</p> <p>Establish the ground rules of the day's proceedings-frank and fearless input needed, safe place where Chatham house rules strictly apply.</p>
60 mins	<p>Small group discussion</p> <p>Group facilitator to provide opening remarks (2 mins)</p> <p>Explain why you are supportive of this initiative and what your personal observations are on women lawyers and their under-representation in commercial law matters and/or commercial litigation.</p> <p>Group facilitator to lead a discussion on the following subject areas:</p> <p>Current briefing practice/s in the law firm</p> <p>What processes are used to determine who you brief in commercial law matters? E.g.:</p> <p>Do you have a briefing policy?</p> <p>Who decides? E.g.: lawyer, partner, client, clerk?</p> <p>What criteria do you use in selecting a lawyer in commercial law and or commercial litigation? How are these expressed or are they informal?</p> <p>Do you give consideration to diversity more broadly in your briefing?</p> <p>Do you actively seek female lawyers to work on commercial law matters in your firm?</p> <p>Are female lawyers actively included in networking opportunities in the firm, which might make them aware of briefing opportunities in this area?</p> <p>Are you familiar with the role profiles of the female lawyers in your practice area when deciding who to brief?</p> <p>What stops you from briefing more women?</p> <p>What if any, are you accountability measures more generally in your briefing?</p>

Your current equity agenda

What initiatives, if any, do we have in place to ensure equitable briefing?

Are you required to observe equitable briefing policies?

Have you signed up to the Equitable Briefing Initiative Charter of Commitment?

Do your clients require you to observe an equitable briefing policy? If yes, does it cover women only or other attribute groups? How are you (or your firm) accountable for this?

Do you collect data on your briefing practices?

If yes, do you break the data down on work type? How do you report on/use this data?

If no, what would best practice on this look like?

Building a shared equity agenda

What would motivate your area to drive more equitable briefing practices?

What incentives work?

What benefits might arise for your firm (or you) if you adopted equitable briefing practices?

Would your firm/ organisation benefit to being a signatory to the *Equitable Briefing Initiative Charter of Commitment* that includes a Gender Equitable Briefing Target?

What do you think needs to be in place for your firm/organisation to be able to be part of this initiative?

How else can your firm/organisation lead change and improve, i.e., what can you specifically do to be industry leaders in driving equity?

60 mins

Small group discussion

Group facilitator to provide opening remarks (2 mins)

Explain why you are supportive of this initiative and what your personal observations are on women lawyers and their under-representation in commercial law matters and/or commercial litigation.

Group facilitator to lead a discussion on the following subject areas:

Current briefing practice/s in the law firm

What processes are used to determine who you brief in commercial law matters? E.g.:

Do you have a briefing policy?

Who decides? E.g.: lawyer, partner, client, clerk?

What criteria do you use in selecting a lawyer in commercial law and or commercial litigation? How are these expressed or are they informal?

Do you give consideration to diversity more broadly in your briefing?

Do you actively seek female lawyers to work on commercial law matters in your firm?

Are female lawyers actively included in networking opportunities in the firm, which might make them aware of briefing opportunities in this area?

Are you familiar with the role profiles of the female lawyers in your practice area when deciding who to brief?

What stops you from briefing more women?

What if any, are you accountability measures more generally in your briefing?

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If yes, do you break the data down on work type? How do you report on/use this data?

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What do you think needs to be in place for your firm/organisation to be able to be part of this initiative?

How else can your firm/organisation lead change and improve, i.e., what can you specifically do to be industry leaders in driving equity?

20 mins	<p>Report back</p> <p>Host to request each group to give a two minute wrap up/summary of the key issues discussed by the whole group, specifically: what the day's discussion has revealed about the key drivers of women lawyers' underrepresentation in commercial matters and/or litigation what the firm needs to do next to address the issue</p> <p>Group facilitators to collect notes from each group to capture the gathered information.</p>
5 mins	<p>Wrap up</p> <p>Facilitator to thank participants and explain the next steps Summarise the key findings Explain that the feedback obtained in group discussions will be collated and copies sent to all participants Request all participants to consider the actions that they can take to make a tangible difference to future briefing practices in the firm/organisation once the collated information is received Request participants to consider their further actions and send a document setting out those actions to: [insert name] Suggest a reconvened meeting with the same participants to settle on some further actions and determine implementation Commit to feeding back to participants on progress.</p>
10 mins	<p>Closing remarks</p> <p>Guest speaker (if applicable – or host) to thank participants for their input and participation Recall some personal reflections of commitment to making a change and observations of the day Explain that careful thought will be given to the actions participants want to see Note the impetus for change and acknowledge the commitment of participants and the firm.</p>

If you require assistance or have any questions, please contact: Catherine Dixon, Director, Commissioner's Office, Victorian Equal Opportunity Commission: Level 3, 204 Lygon Street, Carlton, Victoria on (03) 9032 or email: Catherine.Dixon@veohrc.vic.gov.au

Background information for facilitators

Contents:

- Background reading
- Key messages from CommBar private workshop 1: Increasing the representation of women barristers in commercial litigation
- Key messages: CommBar Workshop 2: Uncovering high impact actions
- Equitable Briefing Initiative Charter of Commitment (Law firms/ in-house)
- VicBar Statistics
- The National Attrition and Re-Engagement Study (NARS) Report

The Host and facilitators may wish to draw on resources (such as statistics, research findings and judicial views) to provide evidence of women lawyers' lack of equal participation in commercial legal practice. Some useful background reading includes:

Background reading

Law Council of Australia (Canberra), *Beyond the Statistical Gap: 2009 Court Appearance Survey*, (2010)

Law Council of Australia, *Equitable Briefing Policy for Female Barristers and Advocates*, (2009)

Law Council of Australia, National Attrition and Re-engagement Study (NARS) Report (2014) Accessible (9December 2014) Law Council
www.lawcouncil.asn.au/lawcouncil/index.php/law-council-media/news/324-nars
<x-msg://30/www.lawcouncil.asn.au/lawcouncil/index.php/law-council-media/news/324-nars>

The Law Society of New South Wales, *Thought Leadership 2011 Advancement of Women in the Profession - Report and Recommendation* (2011)

Victorian Bar Statistics, accessed at: <http://www.vicbar.com.au/about-us/about-the-victorian-bar/bar-statistics> on 9 December 2014

Victorian Equal Opportunity & Human Rights Commission, *Changing the Rules: the Experience of Female Lawyers in Victoria* (2012).

Key messages: CommBar private workshop 1: Increasing the representation of women barristers in commercial litigation (7 November 2014)

The CommBar workshop there were four areas identified where action could be taken to improve women lawyers' representation in commercial law matters and or litigation:

1. *Improving awareness* – while the Bar is aware of slow progress of change and systemic challenges-participants believe awareness of the problem is the key first step to making change.
2. *Briefing practices* – the unscientific methods by which barristers are briefed create gender bias. Equitable briefing policies are ignored, except where the Victorian Government requires reporting against them.
3. *Firm and organisational* accountability – participants were supportive of some kind of public monitoring and reporting on equitable briefing practices.
4. *Commitment, leadership and recognition* – there is a clear acknowledgment that leadership is needed to voice support for change in this area.

Key messages: CommBar Workshop 2: Uncovering high impact actions (20 May 2015)

The second workshop was convened to identify high impact actions that could produce a significant change over three to five years. The Charter of Commitment (In House Counsel and Law Firms) was formulated based on the discussions and ideas for action expressed at these workshops.

Equitable Briefing Initiative Charter of Commitment (Law firms)

Achieving equitable representation of Victorian women barristers in commercial litigation

We, the signatories to this Charter, commit to the following actions every year over the next three year period (2015-18). Our goal is to collectively achieve gender equality in our commercial briefing practices:

1. We are committed to Gender Equitable Briefing. We commit to one of the following aspirational targets:
 - a. Our target is to brief in approximately equal proportion to the number of CommBar members who are women (which at 30 June 2015 is 28%), in both the number of briefs and value of briefs; or

- b. Our target is to brief in approximately equal proportion to the number of Commbar Junior Counsel members that are women (which at 15 September 2015 is 30%) and the number of CommBar Senior Counsel that are women (which at 15 September 2015 is 16%), in both the number of briefs and value of briefs.
2. We commit to developing, updating and promoting an Equitable Briefing Policy and circulating this annually to all lawyers at our organisation. This will include supporting staff to attend relevant training sessions to improve briefing practices.
3. We undertake to ensure that, in preparing commercial briefing shortlists for clients and in seeking recommendations for shortlists, suitably qualified and experienced women barristers are included. If we are provided with a list without a woman barrister nominated, we will ask, "if not, why not", to determine the justification.
4. We will take proactive steps to identify new women commercial barristers with skills and expertise in the areas in which we regularly brief work. This may be women who are new to the bar, or women barristers practising in a particular area who have not previously been on the firm's radar.
5. We commit to collect relevant data that captures the gender and experience level of the person briefed, and the monetary value of briefing. The data captured may be expanded in the future to collect other relevant information.
6. We undertake to confidentially report our briefing data to the Victorian Equal Opportunity and Human Rights Commission every 6 months, with the expectation that the Commission will report back to us individually and publically in a de-identified manner. The first report will be provided to the Commission by 1 September 2016 and will capture data from [1 January 2016 – 30 June 2016].

Equitable Briefing Initiative Charter of Commitment (In House Counsel)

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 - a. Our target is to brief in approximately equal proportion to the number of CommBar members who are women (which at 30 June 2015 is 28%), in both the number of briefs and value of briefs; or

- b. Our target is to brief in approximately equal proportion to the number of Commbar Junior Counsel members that are women (which at 15 September 2015 is 30%) and the number of CommBar Senior Counsel members that are women (which at 15 September 2015 is 16%) in both the number of briefs and value of briefs.
2. We commit to developing, updating and promoting an Equitable Briefing Policy within our organisation. This will include supporting relevant legal staff to attend relevant training sessions to improve briefing practices where applicable.
3. We undertake to ensure that our external firms provide us with briefing shortlists that include female counsel. We will not brief the firm unless they commit to do this.
4. We will take proactive steps to identify new women commercial barristers with skills and expertise in the areas in which we regularly brief work. This may be women who are new to the bar, or women barristers practising in a particular area who have not previously been on our organisation's radar.
5. We commit to collect relevant data that captures the gender and experience level of the person briefed and the monetary value of briefing. The data captured may be expanded in the future to collect other relevant information.
6. We undertake to confidentially report our briefing data to the Victorian Equal Opportunity and Human Rights Commission every 6 months, with the expectation that the Commission will report back to us individually and publically in a de-identified manner. The first report will be provided to the Commission by 1 September 2016 and will capture data from [1 January 2016 – 30 June 2016].

VicBar Statistics¹

Statistics released by the Victorian Bar show that systemic discrimination prevents female barristers from progressing to more senior leadership levels at the Bar. This is particularly evident when you note the number of male Queen's Counsel compared to the number of female Queen's Counsel.

In Victoria, as at 10 June 2015, there were a total of 1969 practicing counsel. Of these there was 534 practising female counsel (27 per cent), and 1435 practising male counsel (73 per cent).

In Victoria there is a total of 258 Queen's Counsel or Senior Counsel – of these there are: 229 male counsel (89 per cent), compared to 29 female Counsel (11 per cent).

Junior Counsel – there is a total of 1,711 practicing junior counsel, of these 1,206 are male (70.53 per cent), compared to 505 female junior counsel (29.47 per cent).

¹ Victorian Bar, accessed at: <http://www.vicbar.com.au/about-us/about-the-victorian-bar/bar-statistics>, on 20 October 2015.

The National Attrition and Re-Engagement Study (NARS) Report²

The NARS Report shows that women lawyers were frustrated by the inflexibility of court practices and felt discriminated against when they are pigeon-holed into areas of law that were seen as 'soft law,' such as family law and wills and estates.

Key findings from the NARS Report included:

- Women were more likely than men to report family reasons as reasons for not considering the Bar (6% and 1% respectively), and long hours and a lack of flexibility (7% and 2% respectively)
- Women were dissatisfied with reliability and stability of income (41%), significantly more so than women lawyers in private practice (10%) and in house lawyers (9%)
- Female barristers more often reported experiencing harassment at work than their counterparts in private practice or in house legal roles
- Female barristers were also more likely to experience bullying, intimidation and discrimination due to family/carer responsibilities
- Discrimination remained a barrier at the Bar, for example, female barristers noted that they were allocated a different style of work (e.g. soft law: environmental law, family, wills and estates)
- Women at the Bar were sometimes denied briefs because clients preferred male counsel
- There was a perception that women get pigeon holed - being rejected or judged as less competent by clients
- Women at the Bar experienced demeaning or condescending language, unwanted advances, and felt an inability to identify with the culture.

² Law Council of Australia, *National Attrition and Re-engagement Study (NARS) Report* (2014).