

Equitable briefing policy

(Adopted: June 2022)

Purpose

Legal work and the legal profession itself benefit from a diversity of perspectives, experiences and backgrounds. The HRLC recognises its responsibility to actively promote diversity, equality, respect and inclusion within our work and within the legal profession. We are committed to using our resources and influence to drive cultural change and address structural barriers to equal participation in the profession.

This policy is designed to guide the HRLC's selection of legal counsel in litigious or advice work, and to set out our commitment to encouraging equitable briefing practices more broadly. The policy is also intended to contribute to the HRLC's efforts in fostering a more diverse legal profession. Previous data from the Victorian Bar, for example, found that approximately 29% of barristers were women, 9% spoke a language other than English at home and 1.2% were of Aboriginal or Torres Strait Islander heritage. While there has been improvement in recent years, the bar, and the profession more widely, does not fully reflect the society it serves.

To offer our clients and the communities we work for the best possible legal services, we aim to brief a diverse range of counsel including an equitable number of people of colour (people of culturally and linguistically diverse backgrounds), Aboriginal and Torres Strait Islander people, women and gender diverse people and people living with disabilities.

This policy is introduced because significant work is needed to reform our briefing practices. In FY2020-21, out of 66 briefs to counsel, only 9% of briefs were to people of colour. We did not brief any Aboriginal or Torres Strait Islander barristers. 62% of all briefs, and 71% of briefs to senior counsel, were to men. As such, accountability for our progress in the form of regular review and internal reporting is an important aspect of this policy. We note that some forms of diversity may not be immediately visible or evident and so this data may be incomplete.

There is a significant gender pay gap at the bar. Data is not currently available to compare pay across other diversity indicators. The HRLC recognises that much of our work with counsel is unpaid. While we respect and appreciate that many barristers choose to undertake pro bono work, by leaning too heavily on barristers who are First Nations, people of colour, women or gender diverse, or who live with disabilities, we risk contributing to pay disparity. As such, a qualitative (and not purely quantitative) approach to equitable briefing is required, as well as respect for individual choices in accepting or declining unpaid work. This is also why our broader engagement and development goals are an important aspect of this policy.

We respect that counsel from diverse backgrounds have a range of professional skills and interests and should not only be briefed in matters relating to their own identity or backgrounds. We must also ensure equitable briefing practices extend beyond advice work to include appearance work – real change means briefing equitably in all matters and in all courts.

We acknowledge that the data that will be captured under this policy, and our chosen targets, are incomplete. They do not encompass all aspects of diversity, including membership of the LGBTIQ+ community, or all barriers to equal participation in the workforce, such as caring responsibilities or socio-economic background. It is intended that this policy will continue to evolve.

Authority to approve or vary this policy

Executive Director

Selecting counsel

- 1) In selecting legal counsel to brief for advice or appearance work, all staff will seek to identify suitable barristers in the relevant practice area who are Aboriginal or Torres Strait Islander, are people of colour, have a disability, or are women or gender diverse, and genuinely consider offering the brief to them.
- 2) To identify barristers who are Aboriginal or Torres Strait Islander, are people of colour, have a disability, or are women or gender diverse, staff may conduct online searches, consult barristers' public profiles, or seek recommendations from bar associations or internal or external colleagues. Diversity information will not always be self-evident or advertised, and staff should work with the information that is available to them.
- 3) Giving **genuine consideration** includes:
 - a) having regard to the skills and experience required in a particular brief. Where there are appropriately qualified barristers available who are Aboriginal or Torres Strait Islander, are people of colour, have a disability or are women or gender diverse, staff should first provide opportunities to those barristers over others; and
 - b) considering and weighing up the learning and exposure opportunities that may be provided to a barrister through the brief, as well as the likelihood (or otherwise) of fee recovery. Where a brief is likely to provide significant learning and exposure opportunities, barristers who are Aboriginal or Torres Strait Islander, people of colour, women or gender diverse, or who have a disability, should be preferred. Conversely, an advice-only brief or a brief that forms part of a cohort of similar cases, for example, may be less appropriate.
- 4) Where more than one legal counsel is required for a matter:
 - a) Staff will make all reasonable endeavours to assemble a diverse team of barristers.
 - b) If the lead counsel who is briefed in an existing matter requests to involve another barrister/s, staff will express the HRLC's preference for a diverse barrister team where possible (and reference this policy if desired). Staff will seek to suggest diverse additions to the team unless this is inappropriate in the circumstances.
- 5) In each financial year the HRLC aims to:
 - a) offer briefs to barristers who are Aboriginal or Torres Strait Islander, people of colour or who have a disability in at least 15% of all matters;¹
 - b) offer briefs to barristers who are women or gender diverse in at least 50% of all matters, and in at least 40% of all briefs to senior counsel; and
 - c) increase the number of briefs accepted by (distinct from offered to) diverse counsel in comparison to briefing data from the previous financial year.

¹ This target relates to FY2022-23. It is intended that the target will increase in future years.

Data collection and reporting

- 6) In addition to normal legal file records, the HRLC will keep a record of all briefs to counsel in a central location - currently the Salesforce database:
 - a) All staff should enter a record in Salesforce ([instructions](#)² are available on the Intranet) whenever any counsel is briefed in a matter, and advise the pro bono coordinator. Wherever possible, the record should include a note indicating whether the brief is made to a barrister who is Aboriginal or Torres Strait Islander, a person of colour, has a disability or is a woman or gender diverse (noting that some diversity characteristics may not always be visible).
 - b) Further, whenever a brief is offered to counsel, regardless of whether that brief is accepted, staff should update the contact notes in the HRLC counsel spreadsheet in order to avoid repeated outreach to the same barristers and so we can track the number of briefs offered overall.
- 7) Annually, the pro bono coordinator will conduct a review of those records against the targets identified in paragraph 5 above, present the results to staff (and facilitate a discussion if targets are not met), and publish the results on the HRLC's website.

Outreach and development

- 8) The HRLC aims to build its relationships with barristers who are Aboriginal or Torres Strait Islander, people of colour or living with a disability. All legal staff are encouraged to pursue other opportunities outside of direct briefing engagements to engage with such barristers we have not worked with before, for example through attending or facilitating professional development or networking opportunities.
- 9) The HRLC will reach out to relevant bar associations and related special interest groups to seek expressions of interest from barristers who are Aboriginal or Torres Strait Islander, people of colour or people with a disability who are open to considering briefs from us.
- 10) All legal staff are encouraged to pursue opportunities to connect barristers who are Aboriginal or Torres Strait Islander, people of colour, women or gender diverse or who have a disability with:
 - a) other organisations, particularly those providing fee earning briefs in areas of counsel's practice; or
 - b) with other senior counsel where appropriate.

For example, where the HRLC is assisting partner pro bono firms to brief counsel in a particular matter, legal staff will endeavour to recommend barristers in the relevant practice area who are Aboriginal or Torres Strait Islander, people of colour, people with disabilities, women and gender diverse people.

- 11) The HRLC will seek to share this policy or an overview of its aims with our partner organisations, including non-profit legal partners and pro bono firms, and encourage them to adopt a similar policy if they do not currently have one. For example, this may be done during annual review meetings with existing pro bono firms, catch ups and strategy sessions with sector partners, or through outreach by Board members or the Executive Director with other organisations they are connected to. The HRLC will also publish this policy on its website, together with data on our equitable briefing (updated on an annual basis).

² Guide to adding a pro bono matter to Salesforce, available in the 'Engagement' folder and 'Salesforce guides' subfolder at https://humanrightslc.sharepoint.com/:w/s/Engagement/EXE7gDbSDRpR-b98_YG26mMB58PoQ-zvBa_msqRAfNxjFA?e=9CRFzG.

Review

- 12) This policy will be reviewed every two years to consider whether it can be improved or strengthened, taking into account performance against the identified targets.

Note:

Equal opportunity and anti-discrimination laws in most Australian jurisdictions recognise that people and organisations can proactively take steps, often called ‘special measures’, to improve equality for people based on protected attributes including race, sex, gender identity and disability. Special measures aim to foster greater equality by supporting groups of people who face, or have faced, entrenched discrimination so they can have similar access to opportunities as others in the community. This policy encourages staff to preference engaging some barristers over others for work opportunities on the basis of protected attributes. The policy is introduced with the aim of remedying the existing inequality in those work opportunities reflected in our assessment of briefing practices in FY2020-21, outlined in the Purpose section above. The policy is drafted to be consistent with equal opportunity and anti-discrimination law in the jurisdictions in which the Human Rights Law Centre operates, including the Equal Opportunity Act 2010 (Vic), Anti-Discrimination Act 1977 (NSW), Sex Discrimination Act 1984 (Cth), Race Discrimination Act 1975 (Cth), Disability Discrimination Act 1992 (Cth).

Related policies

Related policies include:

- Diversity & Inclusion Action Plan
- Reconciliation Action Plan

CHANGE HISTORY	
DATE	CHANGE DETAILS
February 2022	Policy drafted
May 2022	Policy revised to reflect consultation
June 2022	Policy adopted