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# NSW Government Equitable Briefing Report

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2021-2022 Financial Year



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# 1

## NSW Government Equitable Briefing Policy for Women Barristers

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## Background

NSW is committed to supporting the progression and retention of women barristers who are engaged with NSW agencies and across the legal profession more broadly. The NSW Government Equitable Briefing Policy for Women Barristers (Policy) operates to entrench equitable briefing practices in all NSW Government agencies that brief barristers. The Policy applies to all NSW Government sector agencies that brief counsel. The current Policy is endorsed by the Department of Premier and Cabinet via the Department of Premier and Cabinet Circular C2018-06 – Briefing Senior Counsel.

The Policy is modelled on the Law Council of Australia’s Equitable Briefing Policy (Law Council Policy) and reflects the key objectives and aims of the Policy. It also implements the Law Council Policy’s aspirational targets for briefing women barristers. Accordingly, in selecting barristers, each NSW Government agency must now make all reasonable efforts to:

- Brief or select women senior barristers accounting for at least 20% of all briefs and/or 20% of the value of all brief fees paid to senior barristers;
- Brief or select women junior barristers accounting for at least 30% of all briefs and/or 30% of the value of all brief fees paid to junior barristers.

The Policy is designed to promote opportunities for women at the Bar. It is founded on equity principles. Under the Policy, when government agencies engage barristers or advocates, they are to take reasonable endeavours to:

- Identify female counsel in the relevant practice area
- Genuinely consider engaging female counsel
- Monitor and review the engagement of female counsel, and
- Report annually on the number of female counsel briefed and value of briefs paid.

Each agency is responsible for ensuring that its staff, and any external legal providers engaged, are aware of and comply with the Policy.

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## Reporting Requirements

The NSW Attorney General is responsible for monitoring compliance with the Policy. The Policy is a positive attempt to address the imbalance in briefing male and female members of the New South Wales Bar. The Attorney General is also responsible for confirming that Senior Counsel is required for a particular matter, approving the proposed Senior Counsel and approving the appropriate rate of remuneration.

At the end of each financial year, each briefing agency in the NSW Government prepares a report covering that financial year, for submission to Transport for NSW. Transport for NSW also collects briefing data from law firms on the NSW Government Legal Services Panel.

The data reported by agencies and law firms records the number of briefs received by a barrister by:

- a. Gender
- b. Seniority
- c. Total value of brief fees paid to a barrister; and
- d. Area of law.

Also required is the date of approval granted to brief a Senior Counsel.

Whilst reporting on the Policy across the whole of government is limited by the quality of the data provided by the respective agencies and law firms, work continues to improve the quality of this data.

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## Women Barristers at the NSW Bar Association

As per the Policy, monitoring and reviewing the proportional rate of engagement occurs to ensure that female barristers are briefed at or above the prevailing percentage of female barristers in practice in NSW.

Statistics from the [NSW Bar Association Annual Report](#) for the 2021-2022 financial year recorded female counsel representing 24% of all counsel at the Bar (junior and senior counsel). The Bar Association is a voluntary association. Being a member and holding a barrister's practising certificate are distinctly separate. For the purpose of this Report and the Policy, the number of members with a NSW Practising certificate are considered.

The NSW Bar Association is working towards improving diversity at the Bar through the implementation of various equal opportunity strategies and objectives outlined in the [NSW Bar Association's Strategic Plan 2021-25](#). These include:

1. Improve and support diversity at the Bar to represent and support the society it serves.
2. Promote equality of opportunity in the practise of law regardless of gender, age, disability, class, race, ethnicity, sexual orientation or religion, respecting and taking into account commitments outside the workplace.
3. Promote the adoption of and ensure the implementation of the Equitable Briefing Policy for female barristers by clients, solicitors, government, barristers' clerks and barristers.

As at 30 June 2022 the Bar Association recorded:

- Female senior counsel represented 14% of all senior counsel in NSW; and
- Female junior counsel represented 26% of all junior counsel in NSW.

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## Equitable Briefing Report 2021-22 Financial Year

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## Overview

In the 2021-2022 Financial Year (FY) all Government agencies and external panel law firms reported equitable briefing data to Transport for NSW. This Report includes:

- data relating to direct briefs made by government agencies and indirect briefing data provided by external law firms under the NSW Legal Services Panel;
- data provided by the Crown Solicitor's Office (CSO) for core matters, agency funded non-core matters and matters briefed by the CSO under the Treasury Managed Fund (TMF) Panel;
- data relating to indirect briefings made by the Treasury Managed Fund.

Females at the Bar account for 24% of all counsel. Whilst there are proportionally less female counsel available to receive briefs, briefings by NSW Government agencies to female counsel made up 34% of total briefings.

Briefs to female Senior Counsel made up of 35% of total Senior Counsel briefs, whilst female counsel made up 14% of available Senior Counsel. Briefs to female Junior Counsel made up 34% of total Junior Counsel briefs, whilst female made up 26% of available Junior Counsel.

Equitable Briefing data for 2021-2022 FY demonstrates that NSW Government agencies are complying with the Policy. The Department of Communities and Justice actively promotes the Policy to both internal and external legal service providers through regular reporting and compliance monitoring, including through the General Counsel Group.



# Total Government Briefings in the 2021-2022 FY

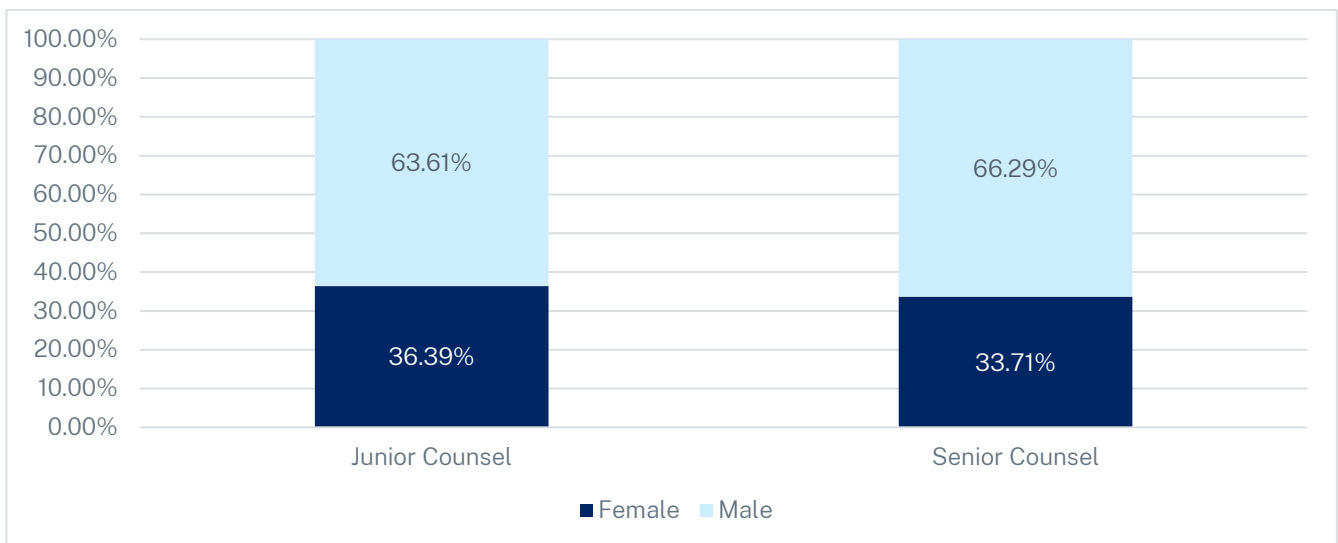
During the 2021-2022 FY, NSW Government Agencies briefed counsel on 4,263 occasions.

Comparing the number of briefs during 2021-2022 FY to the number of available barristers, briefs to female counsel made up 34% of total briefings, whilst total female counsel at the Bar made up 24% of available counsel.

## Total Briefs to Counsel

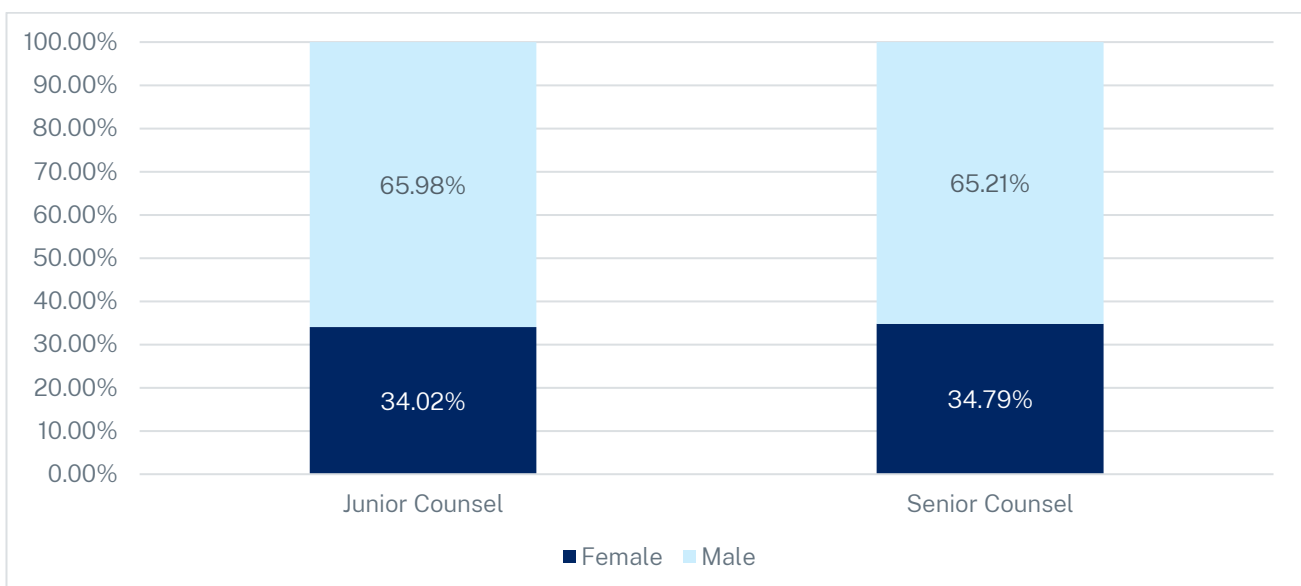
Total counsel fees paid in 2021-2022 FY were \$43.6m, with 36% (\$12.5m) of fees relating to female Junior Counsel and 34% (\$3.1m) of fees relating to female Senior Counsel (Graph 1).

Graph 1: Value of briefs to female and male Counsel in 2021-2022 FY



In the 2021-22 FY, 34% of Junior Counsel briefs were for female counsel and 35% of Senior Counsel briefs were for female counsel.

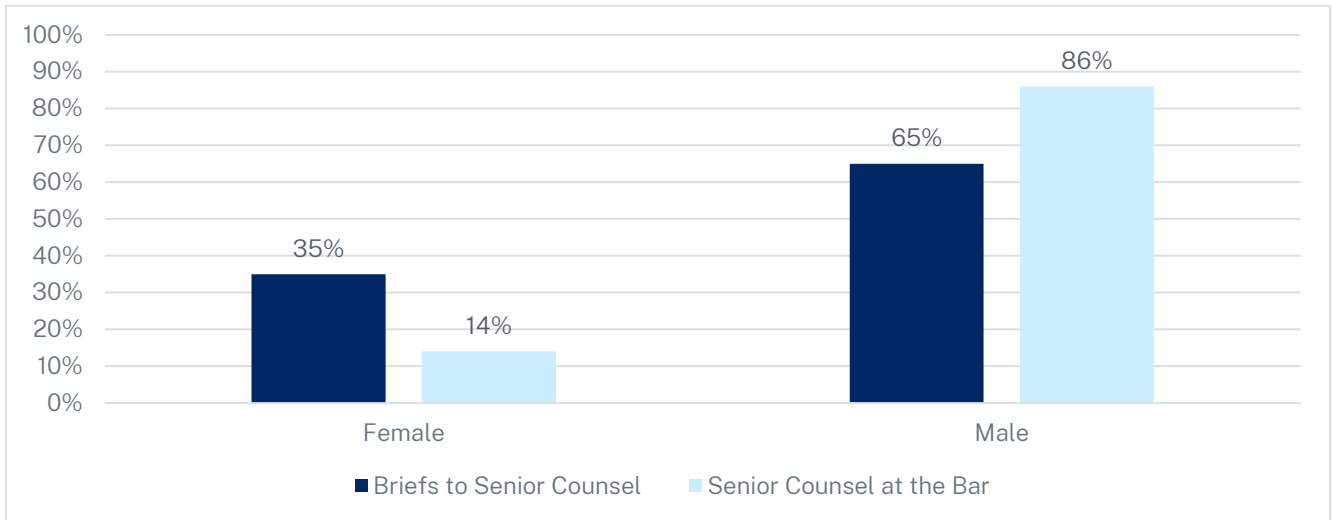
Graph 2: Percentage of all briefs to female and male counsel in 2021-2022 FY



## Senior Counsel Briefing Data

During the 2021-2022 FY 35% of Senior Counsel briefs by NSW Government agencies were to female counsel compared to 14% of available Senior Counsel at the Bar being female.

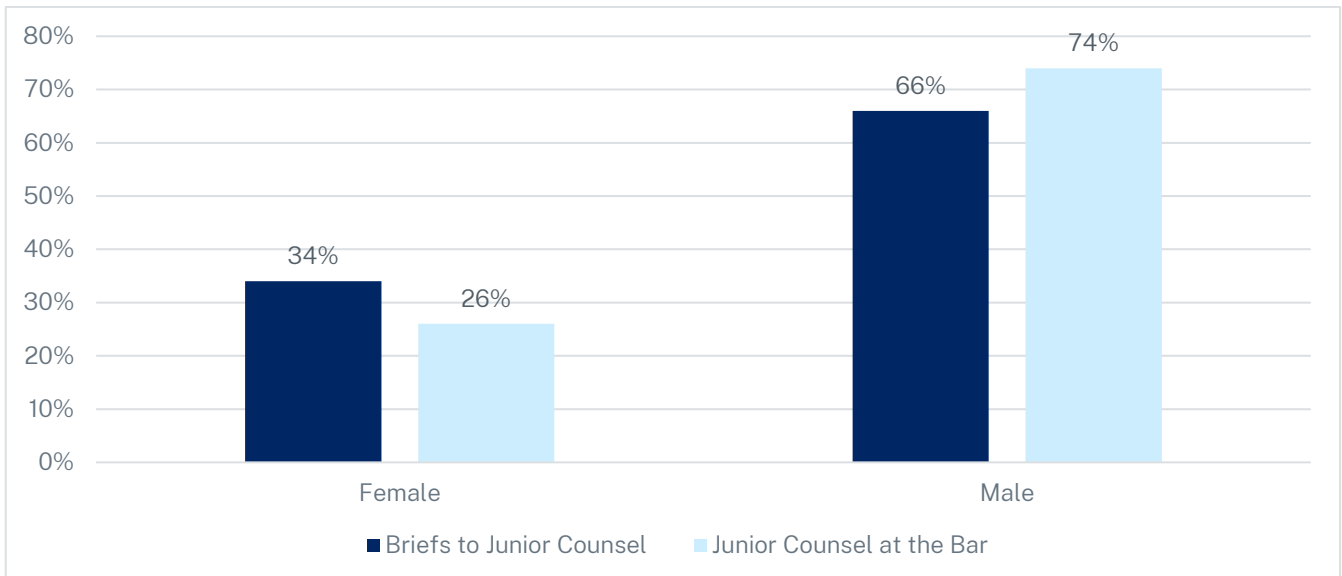
**Graph 3: Comparison between the percentage of female Senior Counsel briefed by NSW Government and the percentage of female Senior Counsel at the Bar**



## Junior Counsel Briefing Data

During the 2021-2022 FY 34% of Junior Counsel briefs by NSW Government agencies were to female counsel, with 26% of available Junior Counsel at the Bar being female.

**Graph 5: Comparison between the percentage of female junior counsel briefed by NSW Government and the percentage of female junior counsel at the Bar**



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## Conclusion

The NSW Government continues to brief at rates above the proportional rate of female counsel available at the Bar. The NSW Government continues to work with agencies and external legal services providers to achieve policy targets and genuinely provide equal opportunities to female and male counsel in all areas of government work.

NSW Government agencies continue to exceed the aspirational targets set by the Policy and the 2021-22 FY figures demonstrate that Government agencies are achieving the targets set out in the Policy.

