
NSW Government Equitable Briefing Report

2020-2021 Financial Year



Contents

NSW Government Equitable Briefing Policy for Women Barristers	3
Background.....	3
Reporting Requirements.....	4
Women Barristers at the NSW Bar Association.....	5
Equitable Briefing Report 2020-21 Financial Year	6
Overview	7
Total Government Briefings in the 2020-2021 FY	8
Value of Briefs to Counsel.....	8
Senior Counsel Briefing Data.....	9
Junior Counsel Briefing Data.....	10
Conclusion	11

1

NSW Government Equitable Briefing Policy for Women Barristers

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 (the Policy) operates to entrench equitable briefing practices in all NSW Government agencies that brief barristers. The NSW 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 NSW Policy is modelled on the Law Council of Australia’s Equitable Briefing Policy and reflects the key objectives and aims of that 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; and
- 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 nature and rate of female counsel engaged.

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

The Law Council recently conducted a review of its Equitable Briefing Policy which was published on 1 June 2022. Under that review it was considered appropriate to maintain the current target thresholds, with those targets to be reviewed against outcomes in the 2023-2024 reporting year.

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 address discrepancies with the data provided by firms.

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 2020-2021 financial year recorded female counsel representing 24% of all counsel at the Bar (junior and senior counsel). That is, of 2,407 counsel with practising certificates, 583 were female. 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 2021 the Bar Association recorded:

- Female senior counsel represented 13% of all senior counsel in NSW, being 50 of 381 senior counsel; and
- Female junior counsel represented 26% of all junior counsel in NSW, being 533 of 2026 junior counsel.

2

Equitable Briefing Report 2020-21 Financial Year

Overview

In the 2020-2021 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:

1. Direct briefs: Data provided by government agencies; and
2. Indirect briefs: Data provided by external law firms under the NSW Legal Services Panel (Panel and Off Panel) and Treasury Managed Fund Panel. Also included is data provided by the Crown Solicitor's Office (CSO) for core matters and agency funded non-core matters.

Females at the Bar account for on average 24% of all counsel; this means that there are proportionally less female counsel available to receive briefs. Despite this, over the last seven financial years, briefings by NSW Government agencies to female counsel have been consistent at around 32%-35% (see Graph 1).

The proportion of female senior counsel engaged by Government has increased, with 36% of all senior counsel engagements briefed to female senior counsel in 2020-2021 FY. This is well above the prevailing percentage of female senior counsel members at the Bar, which was 13% of senior counsel as at 30 June 2021. The percentage of female senior counsel engaged by NSW Government agencies has more than doubled since 2012-2013 FY, demonstrating the meaningful impacts of proactively addressing equity issues.

Whilst the percentage of female counsel at the Bar has increased by 3% since 2014-2015 FY, the percentage of fees paid to counsel has increased by 15% in that same period. This is despite the fact that the number of government briefings to female counsel has remained relatively steady over the same period (32% to 35%).

Equitable Briefing data for 2020-2021 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.

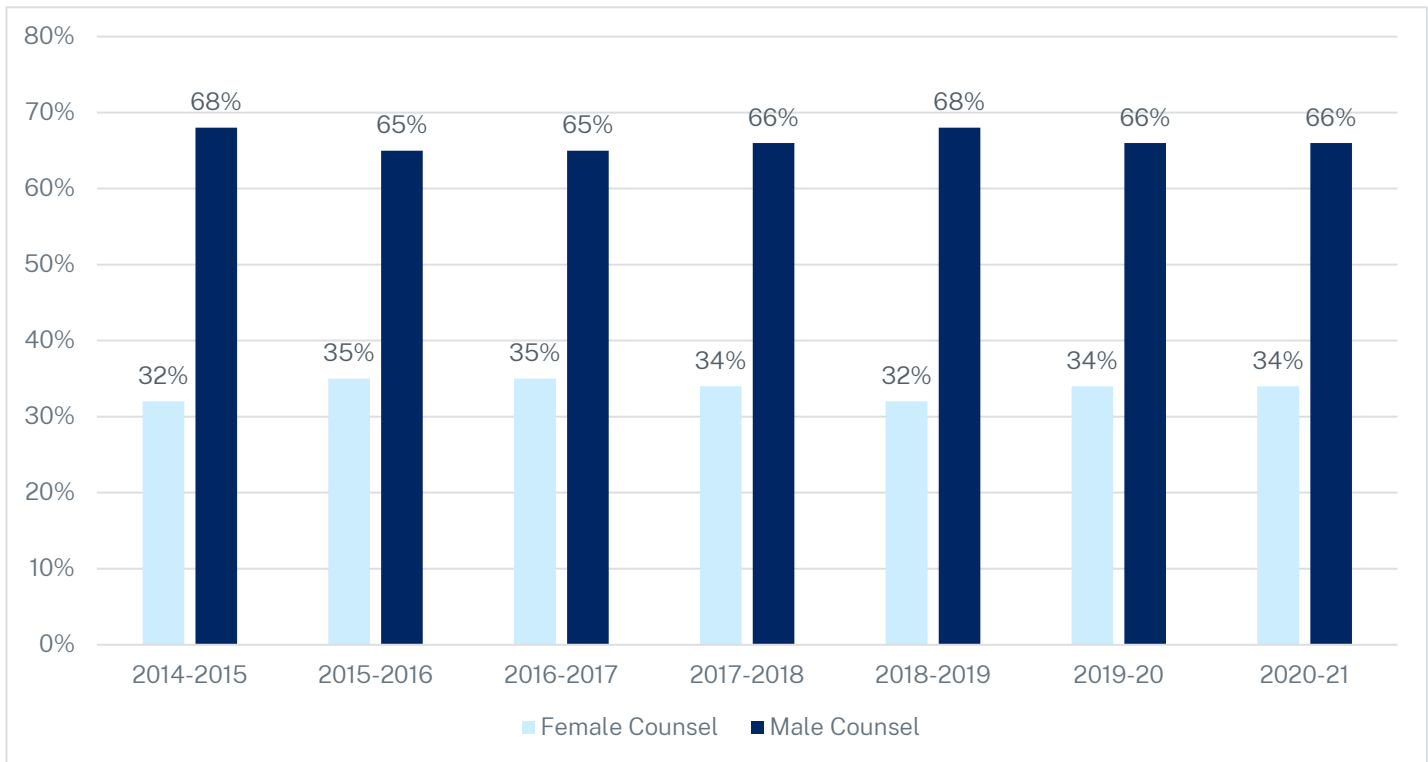
Total Government Briefings in the 2020-2021 FY

During the 2020-2021 FY, NSW Government Agencies briefed counsel on 3,526 occasions. Female counsel received 1,202 government briefs, while male counsel received 2,324 government briefs.

Table 1 Total Number of counsel briefed in 2020-2021 FY	
Female	1202 (34%)
Male	2324 (66%)
Total	3526

Comparing the number of briefs during 2020-2021 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.

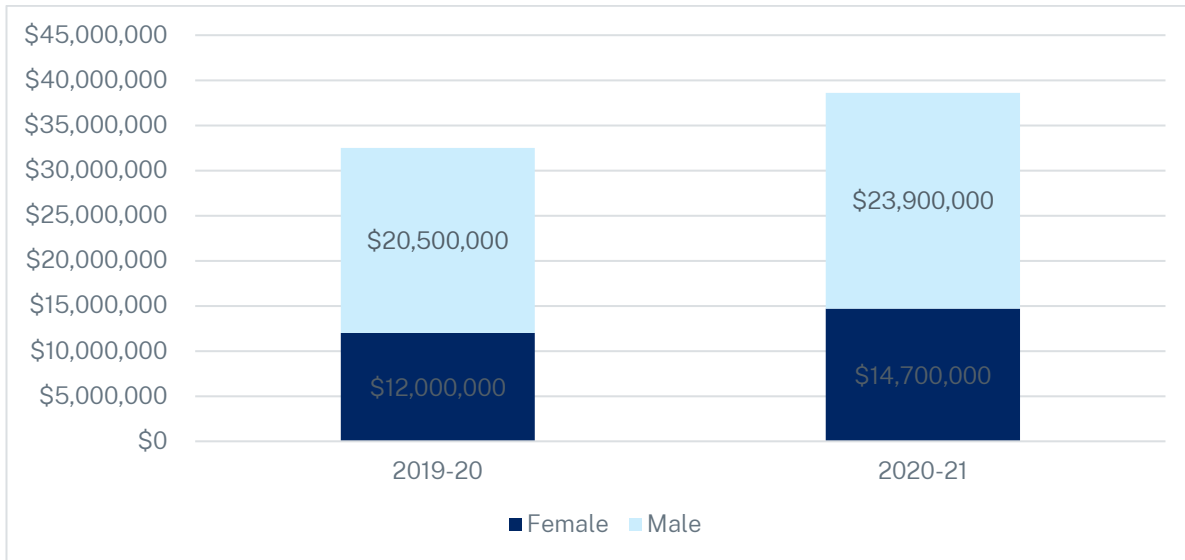
Graph 1: Briefing of counsel by Government over the last 7 financial years



Value of Briefs to Counsel

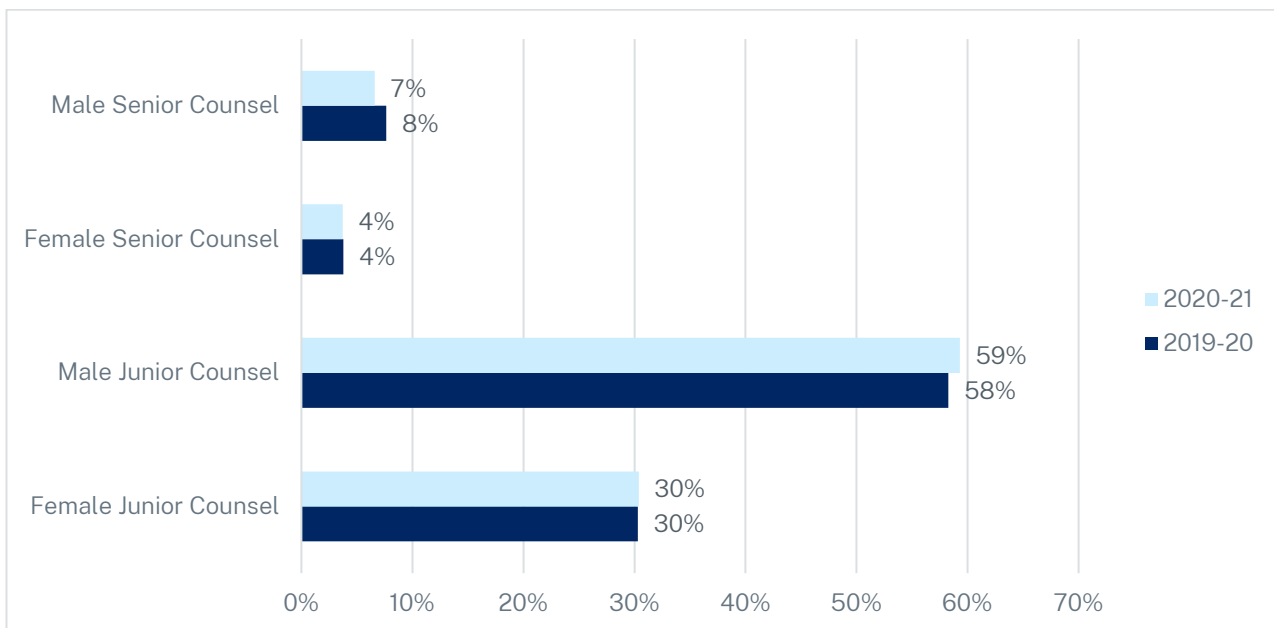
Total counsel fees paid in 2020-2021 FY were \$38.7m, with 38% of those fees relating to female counsel and 62% of fees relating to male counsel. As demonstrated in graph 2 below, this is a marginal increase in the value of briefs to female counsel when compared with the 2019-20 FY.

Graph 2: Value of briefs to female and male Counsel over the last two years



In the 2020-21 FY, female senior counsel received 4% of all briefs and female junior counsel received 30% of all briefs (consistent with the previous year).

Graph 3: Percentage of all briefs to female and male counsel over the last two years



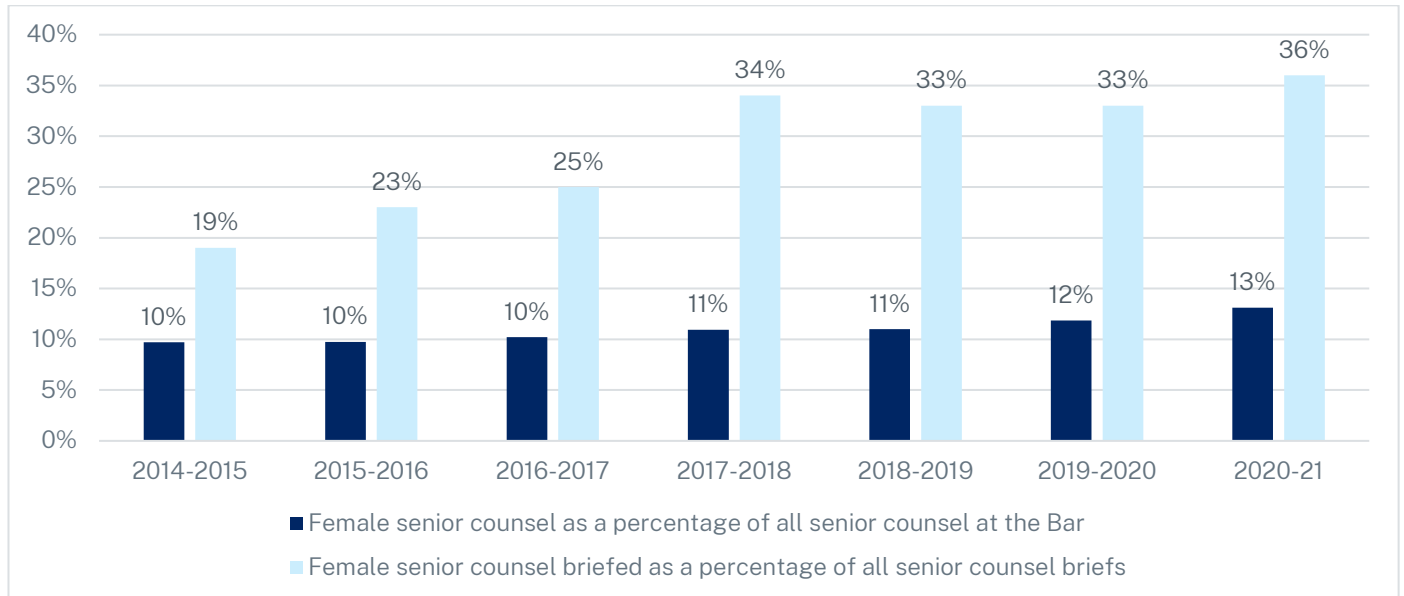
Senior Counsel Briefing Data

During the 2020-2021 FY NSW Government agencies briefed female senior counsel on 131 occasions. This accounts for 36% of all briefs to senior counsel, which is well above the proportion of female to male senior counsel at the Bar (13% and 87% respectively).

Table 2
Total Number of senior counsel briefed in 2020-2021 FY

Female	131 (36%)
Male	233 (64%)
Total	364

Graph 4: Comparison between the percentage of female senior counsel briefed by NSW Government and the percentage of female senior counsel at the Bar



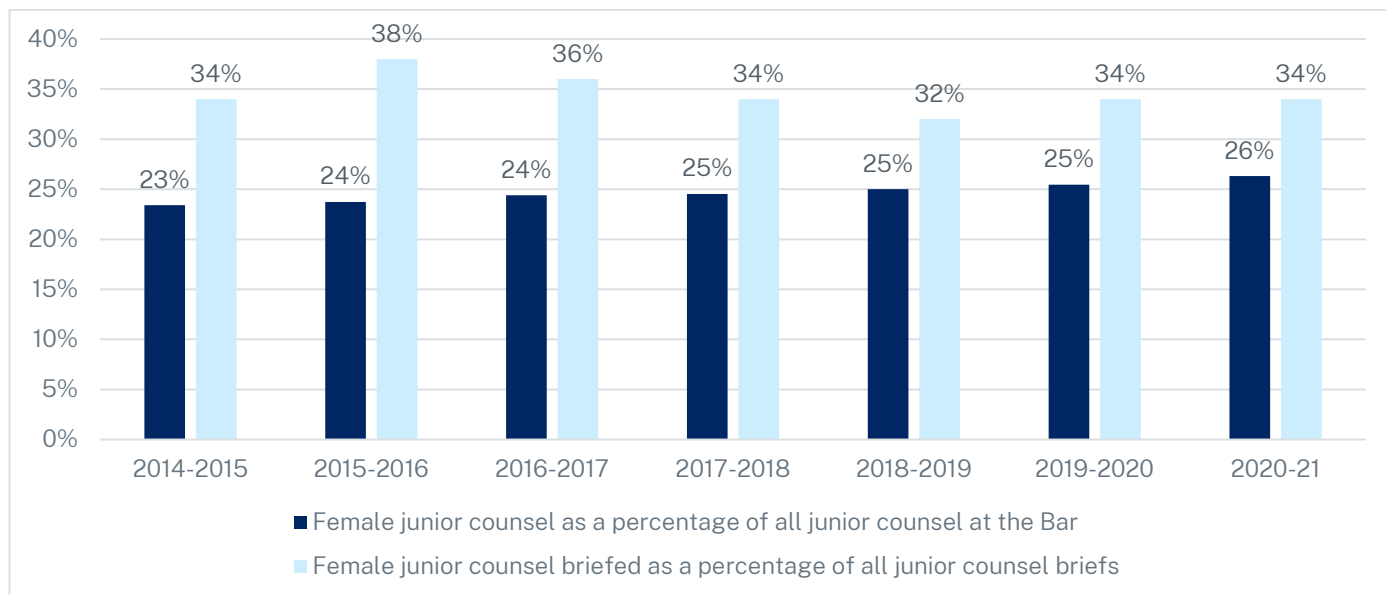
Junior Counsel Briefing Data

During the 2020-2021 FY NSW Government agencies briefed female junior counsel on 1,071 occasions. This accounts for 34% of all briefs to junior counsel, which was well above the proportion of female to male junior counsel at the Bar (26% and 74% respectively).

Table 3
Total Number of junior counsel briefed in 2020-2021 FY

Female	1071 (34%)
Male	2091 (66%)
Total	3162

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



Conclusion

The NSW Government has been tracking well over the last seven years with briefing 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 2020-21 FY figures demonstrate that Government agencies are achieving the targets set out in the Policy.

