

NSW Government Equitable Briefing Report

2023-2024 Financial Year



Acknowledgement of Country

The Department of Communities and Justice acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

NSW Government Equitable Briefing Report

Published by the Department of Communities and Justice

<https://dcj.nsw.gov.au/legal-and-justice/strategies-and-plans/information-for-government-lawyers/equitable-briefing-policy.html>

Acknowledgements

Transport for NSW as lead agency for the NSW Government Legal Services Panel.

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NSW Government Equitable Briefing Policy for Women Barristers

Background

NSW Government 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) applies to all NSW Government sector agencies. Premier and Cabinet Circular *C2018-06 – Briefing Senior Counsel* also sets out the requirements under the Policy.

The Policy was modelled on the Law Council of Australia’s Equitable Briefing Policy. In selecting barristers, NSW Government agencies should make all reasonable and genuine endeavours 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 and is founded on principles of equity. Under the Policy, when government agencies engage barristers or advocates, they are to take reasonable endeavours to:

- Identify female barristers 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.

Reporting Requirements and Methodology

The NSW Attorney General is responsible for monitoring compliance with the Policy. The Attorney General is also responsible for confirming that Senior Counsel is required for a particular matter, approving the proposed Senior Counsel and 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.

Reporting on the Policy is dependant upon the quality of the data provided by the respective agencies and law firms. Work continues to improve the quality of this data and resulting reporting.

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 2023-2024 FY were used for the preparation of this Report. For the purpose of this Report, the number of all barristers in NSW as at 30 June 2024 who have a NSW Practising certificate are considered. The barristers may or may not be members of the NSW Bar Association (which is a voluntary association).

A brief given to a barrister means the engagement of legal services provided by barristers and includes barrister's work in judicial (before Courts), non-judicial (before a tribunal, through commissions of inquiry, investigations, negotiation, mediation or arbitration) and advisory work.

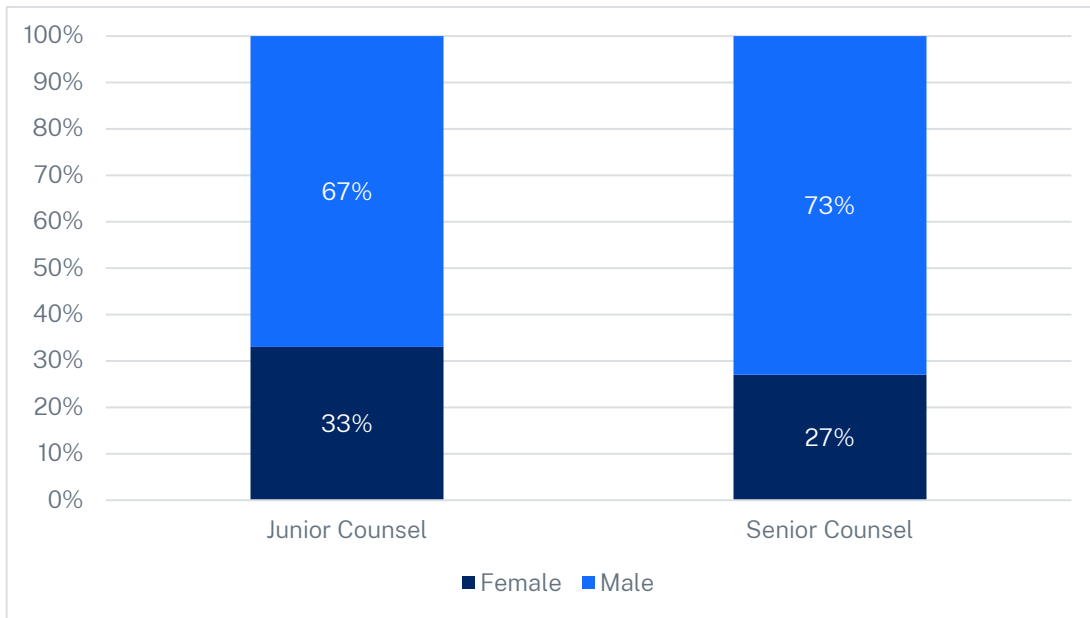
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Equitable Briefing Report 2023-24 Financial Year

Overview of Government Briefings

During the 2023-2024 FY, NSW Government Agencies briefed counsel on 4,256 occasions. Briefs to female junior counsel made up 33% of total junior counsel briefings (above the target of 30%), whilst briefs to senior counsel made up 27% of total senior counsel briefings (above the target of 20%).

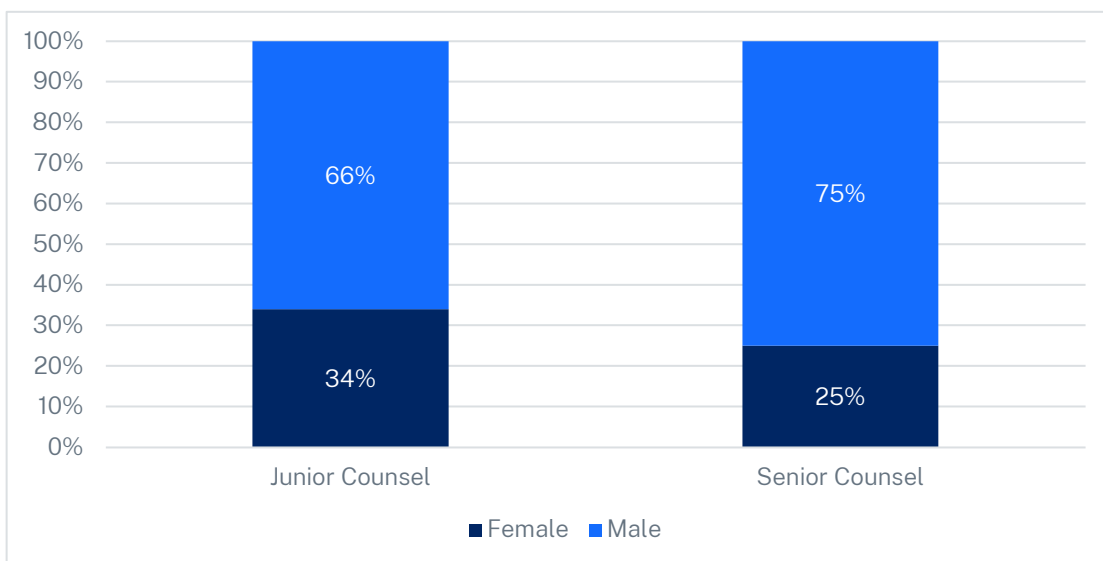
Graph 1: Percentage of all briefs to female and male counsel in 2023-2024 FY



Value of Briefs to Counsel

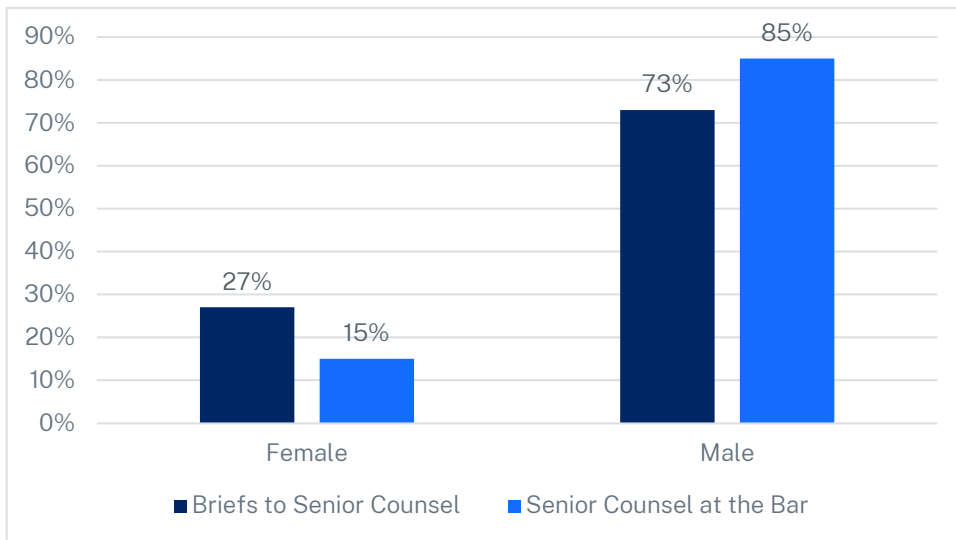
Total Counsel fees for 2023-2024 FY were \$43.3 million with 34% (\$10.8 million) relating to female Junior Counsel and 25% (\$2.9 million) relating to female Senior Counsel, above the targets of 30% and 20% respectively.

Graph 2: Value of briefs to female and male Counsel in 2023-2024 FY

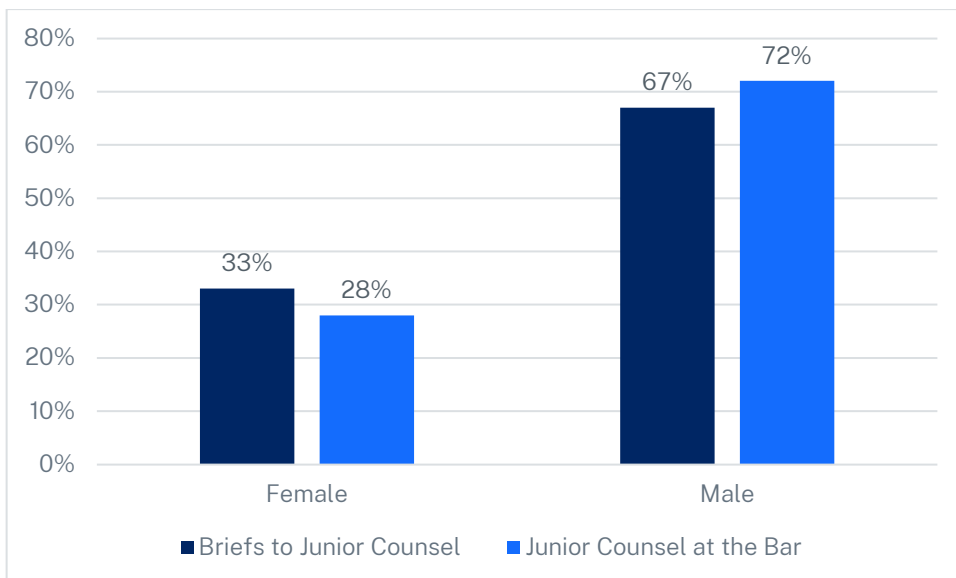


Briefing Data compared to available Counsel at the Bar

Graph 3: Comparison between the percentage of female Senior Counsel briefed by NSW Government in 2023-2024 FY and the percentage of female Senior Counsel at the Bar



Graph 4: Comparison between the percentage of female junior counsel briefed by NSW Government in 2023-2024 FY and the percentage of female junior counsel at the Bar



Conclusion

For the 2023-24 FY NSW Government agencies continue to exceed the aspirational targets set by the Policy and have briefed counsel at rates above the proportional rate of female counsel available at the Bar. The NSW Government continues to work with agencies and external legal service providers to achieve policy targets and genuinely provide equal opportunities to female and male counsel in all areas of government work.

