

2009 Court Appearance Survey

Suggested Best Practices Action Plan

This Best Practices Action Plan (**Action Plan**) provides a practical guide for implementing the overarching recommendations of the Law Council of Australia's *Strategy for Advancing Appearances by Female Advocates in Australian Courts* (**Strategy**).

The Action Plan is designed to assist Australian bar associations to develop strategies and initiatives aimed at recruiting, retaining and advancing female barristers. The actions contained in this document are further aimed at improving briefing practices at the Bar. For jurisdictions where the bar associations are small and there exists a fused profession, this Action Plan should be modified for use by the relevant law societies. The Action Plan is designed to be read in conjunction with the Strategy.

Similar initiatives have been adopted in a range of professions and publicly listed companies. For instance, In June 2010, the Australian Securities Exchange (ASX) Corporate Governance Council released final changes to its *Corporate Governance Principles and Recommendations* about, among other things, gender diversity. Entities listed on the ASX will need address their achievements against gender objectives in their annual report, as set by their board, and report on the proportion of women on the board, in senior management and employed throughout the whole organisation.^{1,2}

There are two overarching recommendations contained in this document. Each bar association should:

1. designate a Committee of the association to implement the recommendations of the Law Council's Strategy; and
2. create a system that monitors the extent to which the association has succeeded in implementing this Action Plan.

Further recommendations in relation to principles of leadership, recruitment, retention and briefing practices are included below.

Leadership

The objective of the Leadership principle is to ensure that female barristers are well represented in senior positions of leadership at the Bar. Since the early 1990s, the majority of Australian law graduates have been female (in 2009, 66% of law graduates were female) and increasing numbers of women are entering the legal profession. Despite this, positions of leadership continue to be male-dominated. This is supported by the figures from the Law Council's *2009 Court Appearance Survey* which indicated that female barristers comprised 19% of the Australian Bar population and only 6% of all Queen's Counsel and Senior Counsel populations.

Research suggests that negative perceptions by females of their opportunities for career advancement in the legal profession are exacerbated by noticeably small number of females in senior positions. This potentially contributes to higher levels of attrition among female barristers.³

Bar associations can take a number of actions to address the discrepancy between the numbers of female and male barristers in leadership roles, including:

- ◇ ensure that senior management⁴ demonstrates a commitment to promote and advance female barristers. This commitment should be demonstrated by the Presidents/Chairs of the bar associations and Chairs of the associations' respective Committees and Working Groups;
- ◇ establish an Equal Opportunity Committee (or, if more appropriate, a Diversity Committee), with a mandate to address equalising opportunities for all barristers. This Committee should consist of an appropriate member/s of senior management of the bar association and should include other Senior Counsel representation;

- ◇ ensure that the Chair of the Committee is a permanent member of the bar association's governing bodies and that the recommendations of the Committee are considered initiatives;⁵
- ◇ ensure that the Presidents/Chairs of the bar associations advance diversity issues whenever possible, through general statements or otherwise;
- ◇ ensure, as far as practicable, that its senior management and all its Committees and Working Groups include female barristers. If necessary, this may require an expansion in size and accommodation of meeting times to ensure that these are convenient for all members;
- ◇ ensure that female barristers are actively involved in the conduct of meetings and decision-making;
- ◇ ensure that the Bar Readers course addresses the cultural barriers potentially faced by female barristers and unacceptable forms of behaviour, including discriminatory conduct, sexual harassment and exclusionary practices;
- ◇ provide continued professional development (CPD) seminars on discriminatory behaviour as part of the ethics component of the relevant CPD programs; and
- ◇ ensure that, where still applied, titles for senior management are expressed in gender neutral terms, for example 'Chairman' should be replaced with 'Chair'.

Law societies and institutes should support the implementation of these measures and encourage their members to brief female barristers.

Recruitment

The objective of this principle is to increase the number of female barristers recruited to the Bar. Females represent a significantly lower proportion of the Bar population than males. This is demonstrated by the Law Council's *2009 Court Appearance Survey*, which notes that at 31 December 2008 female junior counsel accounted for only 22% of all junior barristers and total female counsel (including junior counsel, Queen's Counsel and Senior Counsel) accounted for only 19% of the total Bar population.

Each bar association should:

- ◇ Maintain and publish information regarding recruitment rates of female barristers to the Bar.
- ◇ Regularly provide information to law students and young lawyers about coming to the Bar.
- ◇ Where possible, ensure that chambers have proportionate representation of female junior and Senior Counsel.
- ◇ Encourage sets of chambers to engage in activities to promote women, including room sharing and encouraging women to join well established floors.
- ◇ Create a guide and/or hold information sessions regarding the process of and preparation for successfully joining the Bar.
- ◇ Organise regular networking and social functions for females considering becoming barristers to meet members of the judiciary, Senior Counsel, junior counsel and briefing solicitors.

Retention

The objective of the retention principle is to ensure that female barristers are not only recruited to the Bar, but also remain at the Bar. Presently, the Bar retains a much smaller proportion of female barristers compared to male barristers, with attrition rates much higher among female junior counsel.

This could be due to a number of factors, including obstacles faced by female barristers in advancing their career though the Bar and the difficulties faced by women in returning to the Bar after taking time off from work (for example, after giving birth and child-rearing).

By undertaking initiatives aimed at increasing retention rates, bar associations can assist female barristers to remain at or return to the Bar. Launching innovative programs and undertaking the initiatives below will go towards fostering the view among women that the Bar is committed to achieving the advancement of female barristers in their careers.

Each bar association should:

Demographics and targets

- ◇ maintain and publish information regarding retention rates of female barristers at the Bar;
- ◇ clearly define the criteria for appointment to Senior Counsel;
- ◇ identify the reasons for departure from the Bar through exit interviews with all barristers and attempt to address the underlying causes to prevent future turnover;

Mentoring

- ◇ identify emerging female leaders and provide them with assistance and encouragement for advancement through appropriate initiatives such as mentoring;
- ◇ develop a formalised mentoring program which provides training and accreditation for mentors;
- ◇ ensure that the effectiveness of the mentoring program is evaluated on a regular and ongoing basis and any inadequacies in its delivery are addressed;
- ◇ encourage the fostering and maintenance of informal mentoring relationships;

Networking

- ◇ promote emerging female barristers through initiatives such as networking and profiling;
- ◇ provide opportunities for female barristers, senior management and Senior Counsel to develop relationships, particularly through affinity groups (such as women lawyers associations and other interest groups);

Development and Training

- ◇ develop targeted training for female barristers which incorporates case development and management, leadership and networking skills;
- ◇ recognise participation by female barristers in outside networks, Bar Committees and professional associations devoted to women's advancement;
- ◇ organise regular networking functions for female barristers to meet members of the judiciary, Senior Counsel, junior counsel and briefing solicitors;
- ◇ organise regular and continuing anti-discrimination and anti-harassment training for all barristers. Separate training should be conducted at different levels of seniority and should include advice on how to respond to discrimination and harassment complaints;
- ◇ establish anti-discrimination policies outlining complaints and investigation procedures;
- ◇ hire consultants to advise on appropriate and necessary training for female barristers and conduct evaluations of its effectiveness on an ongoing basis;
- ◇ explore CPD events directed at senior partners and associates regarding how to address the career development of female barristers recruited to the Bar;

Flexibility / Work-Life Balance

- ◇ implement initiatives which will assist female barristers in returning to the Bar following maternity leave, such as establishing nearby or in-home childcare schemes (currently implemented by the New South Wales Bar Association),⁶ waiving professional subsidies for a period of six months, and deferring rent payment/floor fees for a period of six months following the return to the Bar;

- ◇ develop and implement a parental leave policy, reviewed on an annual basis, including adequate consideration of the effectiveness of the policy and rate of subsidy;
- ◇ ensure responsiveness to differences in family commitments and provision of care by, for example, holding Committee meetings during times convenient for all members;
- ◇ develop programs that assist barristers in managing work and personal life;

Success targets

- ◇ provide assistance for female barristers, particularly those who are new to the Bar, in developing a business plan for their practice and career advancement as a successful barrister.⁷

Briefing Practices

The objective of this principle is to increase the number and quality of briefs given to female barristers, particularly by private law practices. The findings of the Law Council's *2009 Court Appearance Survey* note that when appearing in matters resulting from briefings by private law firms, appearances by female barristers were substantially lower than would be expected based on the proportion of women at the Bar. The findings also note that female barristers appeared on behalf of briefing entities other than private law practices in higher proportions than they existed at the Bar.

This finding may reflect that the Commonwealth and some state governments have made a commitment to the advancement of female barristers by adopting the Law Council's Equitable Briefing Policy and implementing internal policies aimed at addressing equal opportunity.

To address the discrepancy between briefing of female barristers by private law firms and other briefing entities, each bar association should:

- ◇ compile a directory of female barristers;
- ◇ promote the directory of female barristers;
- ◇ request male Senior Counsel to recommend suitably qualified female barristers when considering who to refer as junior counsel;
- ◇ request male Senior Counsel to recommend suitably qualified female Senior Counsel, when such a recommendation is requested;
- ◇ request Senior Counsel to allocate high profile matters evenly among junior counsel;
- ◇ where possible, require chambers' clerks to maintain and publish records of the volume and distribution of floating work according to gender and area of law;
- ◇ devise ways in which briefing fee data for barristers could be obtained on a confidential basis, for the following periods: (a) one year from joining the bar; (b) seven years from joining the bar; and (c) fifteen years from joining the bar;⁸
- ◇ liaise with State and Commonwealth Governments to implement reporting requirements on legal services expenditure, which details the number of briefs and by total fees paid, by gender, to enable accurate comparisons between fees paid to male and female barristers of similar experience and seniority;
- ◇ liaise with State and Commonwealth Governments to ensure that gender equality is a key performance indicator for private law practices providing legal services to government agencies;
- ◇ consider ways in which they can provide incentives for law firms that report above average numbers of briefs for female advocates; and
- ◇ develop professional relationships with other peak professional bodies with the aim of encouraging those bodies to actively consider briefing women.

Endnotes

- 1 See Australian Securities Exchange Corporate Governance Council, Marked-Up Amendments dated 30 June 2010 to the Second Edition August 2007 of the Corporate Governance Principles and Recommendations, available at http://www.asx.com.au/about/pdf/cg_marked_up_amendments_30_june_10.pdf.
- 2 Similarly, in 2008 the ANZ Bank released its business case for diversity entitled Banking on Women, which aims to remove barriers to female career progression and boost the number of women in leadership positions within the finance industry, see ANZ, Banking on Women, available at <http://www.anz.com/aus/Corporate-Responsibility/newsletter/EOWA-booklet.pdf>.
- 3 New York City Bar Committee on Women in the Profession, Best practices for the Hiring, Training, Retention, and Advancement of Women Attorneys, 7 February 2006, p. 16.
- 4 Senior management may include governing bodies of the respective bar associations, and if relevant, senior staff members.
- 5 It is acknowledged that some bar councils are elected, rather than appointed and that this recommendation may not be implementable without constitutional change within those councils.
- 6 New South Wales Bar Association, In-Home Childcare Scheme, see http://www.nswbar.asn.au/docs/professional/prof_assist/childcare.php.
- 7 The Law Council is aware that some Lists, such as the Greens List in Melbourne, provide their new members with assistance in developing a two-year business plan, with the assistance of a coach/business developer. The purpose of the business plan is to assist new barristers in achieving professional success at the Bar through application of a systematic plan.

Under the arrangement, new members meet with the coach to discuss their goals, visions and business objectives. Following the initial meetings and discussions, new barristers are provided with a pro forma dealing with the following aspects of the business plan:

- current and short-term practice as a barrister, which considers issues such as current practice, barrister's desired areas of growth and areas of development and where and how the barristers intends to get there;
- services and marketing, which considers issues such as factors which will give the barrister a competitive advantage, and pricing and fee structure;
- understanding the client, which considers issues such as how well the barristers knows the clients and potential clients and who the client is;
- understanding the competition, which considers issues such as who they are, their strengths, weaknesses, fee structure, etc;
- barrister's niche, which considers what the barrister's niche is, as based on the analysis of the previous areas;
- promotion, which considers issues such as how the barristers wants to be viewed by the client, and the medium (and the associated cost) for reaching solicitors and clients;
- business operations, which considers issues such as quality of service deliver, premises, support services and account management;
- financial plan, which considers issues such as fees projections, cost of service and business expenses; and
- priorities and action plans, which considers issues such specific actions and priorities at different time intervals during the two-year business plan.

Assistance with business plan development, such as that detailed above, would be a valuable incentive for women considering coming to the Bar, could assist those already practising at the Bar and could lead to an increase in the number and quality of briefs given to female barristers. Furthermore, such an initiative also recognises the role and the responsibility of female barristers in developing sound business practices and in identifying appropriate professional targets.

- 8 Anecdotal evidence suggests that the discrepancy in briefing fees between male and female barristers becomes most pronounced after seven years of practice at the bar. It is assumed that advancement to senior levels of the bar occurs after 15 years of practice at the bar.