



Welcoming the Gender Equitable Engagement and Instruction Policy

Jenny Cooper QC and Gretta Schumacher *

In 2018, women constitute the majority of practising lawyers, and yet represent fewer than 35% of law firm directors, fewer than 24% of partners in law firms, and only 18.7% of QCs. Can the recently launched Gender Equitable Engagement and Instruction Policy address these woeful figures?

A global conversation about gender issues has been sparked in the last 12 months by the #metoo and #timesup movements. As that conversation has reached the legal profession, it's clear that sexual discrimination, including both conscious and unconscious bias, still affects women in the law. Nine years after the New Zealand Bar Association (NZBA) first launched an Equitable Briefing Policy in 2009 it still feels as though there is a long way to go to achieve the goal of gender equity.

In 2018, women constitute the majority (just) of practising lawyers. But despite this, women still make up fewer than 35% of law firm directors, fewer than 24% of partners in law firms, and only 18.7% of Queen's Counsel. Although not all lawyers (whether male or female) necessarily aspire to be directors or partners or to join the

ranks of QCs, these are clearly positions which provide higher levels of status and influence within the profession. In particular, law firm partners and leaders at the bar play a key role in defining the values and culture of our profession. The under-representation of women in these leadership roles matters.

Happily, there is reason for optimism. In December last year, the NZBA and the New Zealand Law Society jointly launched the Gender Equitable Engagement and Instruction Policy. The Policy includes a specific target for at least 30% of lead roles in court proceedings, arbitral proceedings and major regulatory investigations to go to women barristers or solicitors. Crucially, it also imposes reporting obligations on Policy adopters to track whether the target is being met.



One of the most encouraging features of the new Policy is the widespread and enthusiastic support it has received from clients, firms, and the bar. The Policy adopters at the launch date included a number of major law firms, namely Anderson Lloyd, Bell Gully, Buddle Findlay, Chapman Tripp, DLA Piper New Zealand, Kensington Swan, Minter Ellison Rudd Watts, Russell McVeagh and Simpson Grierson. Initial Policy adopters also included major corporates such as ANZ, Auckland Airport, Chorus, Contact, Countdown, Fonterra, Lion, Meridian, Samsung, Spark, Stuff, Watercare, and Westpac. Crown Law was also an initial adopter and Shortland Chambers led the way as the first chambers to adopt the Policy, with Bankside Chambers, Clifton Chambers and Richmond Chambers following thereafter.

One of the reasons for the Policy's success in attracting support is that it reflects the values that many firms and clients are seeking to promote within their own organisations. Speaking about ASB's reasons for recently becoming a Policy adopter, General Counsel and Company Secretary Graeme Edwards commented that: "The Policy's objectives are aligned with ASB's values and our own diversity and inclusion initiatives. While ASB already regularly instructs women lawyers in lead roles, adoption of the Policy is a tangible way of evidencing our commitment to diversity and holding ourselves accountable."

Crown Law is another key supporter of the Policy. Asked about Crown Law's reasons for supporting the Policy, the Solicitor General, Una Jagose QC, explained that:

"Solicitor-General Dr David Collins QC (now Collins J) first adopted the NZBA's equitable briefing policy in 2011. Crown Law has had a policy of working to develop diversity of the bar through its external briefing practices for some

7 years now. Doubtless we can do better and in adopting this Gender Equitable Engagement and Instruction Policy we are redoubling our commitment. We like the Policy's clear expression delineating "why" from "what" – that allows Policy adopters, whether clients or lawyers, to understand why we pursue equitable engagement practices. So, the connection between the Policy's functional/measurable part (a target of at least 30% of litigation lead by women) and the ambition that lies behind it is a critical part of the Policy. The ambition to drive cultural change in the profession to deliver greater diversity, to correct the under-representation of women in lead roles (especially in commercial litigation), to support the development progression and retention of women in firms and at the bar is something we are proud to sign up to."

While many of the initial Policy adopters are large firms and corporates, it is important to be clear that the Policy is not just for them. It is aimed at all forms of litigation and at firms and clients of all sizes and in all regions. Everyone is encouraged to sign up. This includes members of the bar - barristers have an influential role on the distribution of work, both at the bar and within firms.

Explaining why Shortland Chambers chose to become a Policy adopter, its Chair, Daniel McLellan QC, said:

"The decision to support this initiative was an easy one for Shortland Chambers. It reflects our own ambition to continue to build a membership that reflects society. Gender equity is just one part of this, but there is an immediate need to recognise that women are significantly under-represented in senior roles in many firms and barristers' chambers, and in major litigation. Despite the efforts of practitioners and clients to remedy the imbalance, progress has been slow.

This strong and creative initiative by the NZLS and NZBA, with the support of many lawyers and consumers, is welcome and Shortland Chambers was pleased to be the first chambers to endorse it."

The NZBA encourages all members to adopt the Policy. We look forward to supporting all our members, chambers, colleagues and clients in adopting and administering the Policy. For more information about the Policy see our FAQs below, or the NZBA website.



FAQs about the Gender Equitable Engagement and Instruction Policy

1. What types of legal work does the Policy apply to?

The Policy's target of at least 30% (calculated either by number or by value of fees) of leading roles going to women applies specifically to court proceedings, arbitral proceedings and major regulatory investigations. This includes criminal, civil, and specialist court proceedings and investigations.

The goal of ensuring the fair allocation of work is of course equally applicable to all legal work, not just litigation. With this in mind, NZBA and NZLS intend to review the scope of the Policy as part of a review of the Policy as a whole, to be carried out within 3 years.

2. Why is the target only 30%?

There are several reasons why 30% was adopted as the initial target (noting that it is to be reviewed within 3 years with a view to increasing it to 35%):

- First, there is still apprehension in some quarters about having any target at all. We wanted to get widespread support for the Policy by having an achievable initial target which can be increased over time, rather than set one that could be portrayed as unrealistic and risk the Policy failing to get traction.
- Secondly, while we don't yet have data on the issue, we suspect that achieving the target would be a significant improvement on the status quo. NZBA is currently undertaking a research project, generously funded by The Law Foundation, on the gender ratio of senior and junior counsel appearing in the Court of Appeal and Supreme Court. This will shed more light on the current situation and will help us to make appropriate adjustments to the target figure when the Policy is reviewed.
- Thirdly, while approximately 50% of lawyers are women, women comprise only 39% of barristers and 18.7% of QCs. While we want that to change, it will take time – hence our aim to steadily increase the target over time.
- Finally, it is important to note that 30% is the target minimum not a cap. Figures above the target are certainly to be welcomed and encouraged.

3. Who has adopted the policy so far?

Policy adopters at the launch date were: ANZ, Anderson Lloyd, Auckland Airport, Bell Gully, Buddle Findlay, Chapman Tripp, Chorus, Contact, Countdown, Crown Law, DLA Piper New Zealand, Fonterra, Kensington Swan, Lion, Meridian, Minter Ellison Rudd Watts, Russell McVeagh, Shortland Chambers, Simpson Grierson, Samsung, Spark, Stuff, Watercare, and Westpac.

Since the launch, others have been added to the list including ASB, Air New Zealand, the Broadcasting Standards Authority, Wilson Harle, Bankside Chambers, Clifton Chambers and Richmond Chambers.

We hope to broaden the list of policy adopters over time to include smaller and mid-sized firms, barristers, and as many public and private sector users of legal services as possible.

4. Can barristers sign up as Policy adopters?

Yes, and we encourage them to do so, either individually or through their chambers. While barristers may not generally instruct other lawyers, they can implement and support the Policy in other ways, including:

- Considering and including female lawyers (either solicitors or barristers) when asked to give recommendations and referrals to clients;
- Using gender equitable selection processes to fill roles within chambers; and
- Providing opportunities for the development of female lawyers, including by giving speaking roles to women appearing as junior counsel in court and arbitral proceedings whenever it is practicable to do so. The recent announcement by the Court of Appeal encouraging greater participation of junior counsel in hearings is a welcome step in this regard.

5. What are the reporting obligations for Policy adopters?

Policy adopters are required to provide a confidential report to NZLS every two years. The format of the reporting is still being developed and will be different for clients, firms and barristers. Clients will need to include information on the number of male and female lawyers engaged by



them in relation to court proceedings, arbitral proceedings and major regulatory investigations. That obligation will not apply to firms and barristers, but they will need to report on steps they have taken to implement and support the Policy.

6. Does the Policy apply to internal instructions to in-house counsel?

Yes. Instructions to in-house counsel are included in just the same way as instructions to external counsel. Therefore, where a female in-house counsel takes the lead role in a court proceeding, arbitral proceeding, or major regulatory investigation, that will count towards her employer meeting the 30% target. Non-legal services and instructions to non-lawyers (e.g. investigators, experts or managers) will not count and are not part of the Policy targets or monitoring obligations.

7. How can I find a female barrister?

For a quick way to remind yourself of all the talented women practising at the bar and where to find them, you can search for female barristers using the "Find a Barrister" search page on the NZBA website. The "Advanced Search" menu enables you to search by gender. Or ask around for recommendations.

8. How can I sign up or help to promote the Policy?

To adopt the Policy, you simply need to notify NZLS by email to equitable@lawsociety.org.nz. NZLS and NZBA publish the names of all Policy adopters and adopters are also free to publish the fact that they have adopted the Policy. We encourage all NZBA members to adopt the Policy and to promote it to their colleagues, instructing solicitors, and clients. A full copy of the Policy is available on the NZLS and NZBA websites, www.lawsociety.org.nz and www.nzbar.org.nz.

For more information feel free to contact any member of the NZBA Gender Equity Committee. We welcome all feedback, questions and comments on the Policy. 📧

Gender Equity Committee members:

Jim Farmer QC (Co-chair)

Kate Davenport QC (Co-chair)

Paul Radich QC

Jenny Cooper QC

Karen Feint

Simon Foote

Lisa Hansen

Lara Mannis

Jane Meares

Gretta Schumacher

Why equitable briefing matters

The lack of women in the higher ranks of the profession affects both those already in the profession and those first entering it.

In an AUT study, when asked about their prospective careers in a law firm, 85% of female respondents reported they perceived barriers to their progression in their current firm. Only 20% of females (compared to 40% of males) considered they had a moderate level of opportunity available to them.

In 2016, a Law Society survey of junior lawyers indicated that new female lawyers considered overwhelmingly that it was more difficult for women to progress in the law than men. A survey of 531 female lawyers in their first five years of practice found that 67% felt that their gender had a bearing on their prospects in the legal profession.

This perception by female lawyers of a lack of opportunities for them to progress in their chosen career has a negative impact on the lives of many individual women, and also on the profession as a whole through the loss of talented female lawyers who leave the profession; the loss of female lawyers who never enter certain areas of the law because of real or perceived barriers; and the under-utilisation of talented lawyers because of inequity in briefing practices. These are the problems the Policy seeks to address.

(Sources: <https://www.nzlawyermagazine.co.nz/news/women-lawyers-now-outnumber-men-in-nz-245958.aspx>; [https://www.radionz.co.nz/news/national/295517/equal-number-of-female,-male-lawyers-for-first-time](https://www.radionz.co.nz/news/national/295517/equal-number-of-female,-male-lawyers-for-first-time;); <https://www.lawsociety.org.nz/law-society-services/women-in-the-legal-profession/by-the-numbers>).

