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**SUBMISSION OF THE VICTORIAN BAR IN  
RESPONSE TO THE INQUIRY INTO THE  
CAUSES OF POTENTIAL DISADVANTAGE IN  
RELATION TO WOMEN'S PARTICIPATION  
IN THE WORKFORCE**

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1. The Victorian Bar makes this submission to the House of Representatives Standing Committee on Employment and Workplace Relations in its Inquiry into pay equity and associated issues related to increasing female participation in the workforce (“the Inquiry”).

### **THE VICTORIAN BAR EQUAL OPPORTUNITY COMMITTEE (“the EOC”)**

2. The submission has been prepared by the Equal Opportunity Committee (“the EOC”), a standing committee of the Victorian Bar. Established in 1994 (as the Equality before the Law Committee) to implement policy changes aimed at improving equal opportunities for woman at the Victorian Bar, the EOC now reports to the Victorian Bar in respect of a broad range of discrimination issues.
3. The Victorian Bar has demonstrated leadership and commitment to addressing issues of gender inequity for women barristers. The EOC assists the Victorian Bar Council in addressing discrimination including gender at the Bar. The Committee advises the Victorian Bar Council on practical measures aimed at improving equal opportunity for all barristers, including attracting and retaining women barristers and other disadvantaged groups. It consults with the Law Council of Australia Equal Opportunity Committee, with the judiciary and with the profession. It also advises on issues of law reform as appropriate.

### **THE MANNER OF BARRISTERS’ EMPLOYMENT PRACTICES**

4. All barristers practicing as members of the Victorian Bar are required to practice as sole practitioners.<sup>1</sup> Barristers’ fees are usually determined in one of the following ways:
  - a. by direct negotiation with the instructing solicitor or client;

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<sup>1</sup> Practice Rule 114 of Part IV of the *Victorian Bar Practice Rules*, made by the Victorian Bar with the approval of the Legal Services Board under s3.2.9(2) of the *Legal Profession Act 2004*.

- b. by negotiation through the barrister's clerk;
  - c. by reference to the published scale fees applicable to various jurisdictions (eg. Magistrates Court Fees; County Court fees); and
  - d. by reference to government scale fees (Government rates; Legal Aid rates etc).
5. In general, fees are fixed individually by each barrister and will reflect that barrister's skills, expertise and seniority. There are therefore significant challenges in analysing 'pay equity' in this context, where there are a multitude of variables involved in the fixing of fees and there is limited information publicly available as to the actual fees charged by individual barristers for particular types of work.
6. The sole source of reliable comparative data on fees earned by male and female barristers practicing in Victoria is the Victorian Government Legal Services annual Briefing Reports ("the briefing reports").<sup>2</sup> The briefing reports provide a detailed breakdown of the allocation of legal work and the fees earned by barristers briefed by:
  - a. Victorian Government departments;
  - b. "Panel" firms;<sup>3</sup>
  - c. Victorian Government Solicitors Office;
  - d. Transport Accident Commission; and the
  - e. Victorian WorkCover Authority.

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<sup>2</sup> The 2006-2007 Barrister's Briefing Report ("the 2006-2007 Report") states at p.4 that whilst all attempts are made to achieve statistical accuracy in compiling the report, not all Government Departments have centralized co-ordination of legal services and therefore the data provided by some Departments may not reflect all expenditure on Barrister's Fees.

<sup>3</sup> Panel firms are firms of solicitors selected through a process of government tendering. In Victoria, panel firms must meet tender requirements and the process of allocation of work is now managed by the Victorian Government Solicitor: see the Victorian Government 'Government Legal Services Annual Report 2006-2007. Federally, government agencies and firms tendering for government work are required to comply with the Legal Services Directions but have independent discretion concerning the allocation of work to solicitors firms. Each process requires a level of observance with the equal opportunity briefing policy.

7. The briefing reports comply with the Victorian Bar Model Equal Opportunity Briefing Policy (“the Model Briefing Policy”) which has been adopted by the Victorian Government.

#### **THE MODEL BRIEFING POLICY<sup>4</sup>**

8. The Model Briefing Policy was implemented in Victoria in 2000<sup>5</sup> following the publication of the influential *Equality of Opportunity for Women at the Victorian Bar* report produced by Dr Rosemary Hunter and Helen McKelvie in 1998 (“the Hunter and McKelvie report”). That report confirmed anecdotal reports by members of the Bar and judiciary that women barristers were significantly under-represented in court appearances.
9. The core principle underlying the Model Briefing Policy is the right of women barristers to equal treatment as legal practitioners, and the recognition that gender inequality diminishes the standing of the legal profession and the community as a whole. The Model Briefing Policy is not an affirmative action policy,<sup>6</sup> but requires those voluntarily adopting the Policy to make “*all reasonable endeavours*” to:
  - a. “*identify female counsel with experience in the relevant practice area;*
  - b. *genuinely consider engaging such counsel;*
  - c. *regularly monitor and review the engagement of female counsel; and*
  - d. *periodically report on the nature and rate of engagement of female counsel.*”

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<sup>4</sup> Attached as Appendix C.

<sup>5</sup> The Model Briefing Policy was implemented by the Victorian Bar as the Equal Opportunity Model Briefing Policy. This initiative was an Australian first. In March 2004 the Law Council of Australia adopted a national “Model Equal Opportunity Briefing Policy for female barristers and advocates”. The national policy was adopted by the Victorian Bar in April 2004.

<sup>6</sup> The Explanatory Notes to the Bar Council Resolution adopting the Model Briefing Policy state: “*at the end of the day, the overriding duty remains on a legal practitioner to brief, or counsel and barristers’ clerk to recommend, the best available barrister for the particular case – whether that be male or female*”.

10. The Model Briefing Policy recommends that organizations adopting the Policy develop the capacity to collect data and report on the comparative allocation of work between male and female barristers showing, specifically, the number, practice area, type (including hearing type) and gross value of such services.
11. At present the Model Briefing Policy does not recommend the collection of data (such as a breakdown of gross fees by reference to barristers' seniority) that would allow direct comparison of the fees paid to female and male barristers of similar seniority and experience. The Briefing Reports nevertheless provide the best available evidence of pay equity as it affects barristers.
12. The Briefing Reports reveal a significant disparity between the average fees earned by male and female barristers. The consistency of that disparity provides a reasonable basis to conclude that female barristers are receiving lower fees than their similarly qualified and experienced male colleagues.<sup>7</sup> At the very least it confirms the existence of an indirect form of pay inequity through the briefing of women primarily in junior roles, or in less complex or shorter matters.

**THE 2006-2007 VICTORIAN GOVERNMENT BARRISTER'S BRIEFING REPORT ("the 2006-2007 Report")<sup>8</sup>**

13. As at April 2007, women comprised 23% of Junior Counsel members of the Victorian Bar; 7% of Queen's Counsel or Senior Counsel; and 20% overall of Victorian Practising Counsel.<sup>9</sup> The 2006-2007 Report reveals that whilst women receive a higher proportion of government briefs than their representation at the Bar, they receive a significantly lower proportion of fees for that work:<sup>10</sup>

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<sup>7</sup> See paragraph 21.

<sup>8</sup> Attached as Appendix A.

<sup>9</sup> 2006-2007 Report p.5. As at 19 February, 2009 women comprise 25% of junior counsel; 7% of QC and SC; and 22% overall.

<sup>10</sup> 2006-2007 Report Table 1 p.6.

**TABLE A**

Panel Arrangements	% briefs to women	% fees invoiced by women	Gap between % briefs and % fees invoiced
2006/2007	52%	28%	24%
2005/2006	52%	32%	20%
2004/2005	53%	26%	27%
2003/2004	42%	21%	21%

14. Table A shows that although the number of briefs going to women has increased 10% since 2003 from 42% to 52%, the fees received by women for that work has increased by only 7%. Furthermore, despite the increase in briefs to women, the gap between the proportion of briefs going to women, and the percentage of fees invoiced by women for that work has increased by 3% since 2003. It is to be noted that government spending on legal services increased in 2006/7 by 17.6 %.<sup>11</sup>

15. In the 2006-2007 year, welfare and child protection matters accounted for some 17% of total briefs received by women. The following table shows the allocation of briefs for the period since 2003 excluding welfare and child protection matters:<sup>12</sup>

**TABLE B**

Area	Total no. briefs to women	Total briefs	Percentage briefs to women	Percentage fees invoiced by women	Gap between % briefs and % fees invoiced
<i>Departments</i>					
2006/2007	104	297	35%	28%	7%
2005/2006	141	380	37%	30%	7%
2004/2005	99	334	30%	24%	6%
<i>Panel Firms</i>					
2006/2007	75	266	28%	27%	1%
2005/2006	111	374	30%	31%	+1%
2004/2005	56	251	22%	13%	9%
2003/2004	67	270	25%	14%	11%
<i>VGSO</i>					
2006/2007	258	832	31%	20%	11%
2005/2006	122	382	32%	20%	12%
2004/2005	107	388	28%	24%	4%
2003/2004	129	481	27%	24%	3%
<b>Total</b>	<b>437</b>	<b>1395</b>	<b>31%</b>	<b>24%</b>	<b>7%</b>

<sup>11</sup> Victorian Government 'Government Legal Services Annual Report 2006-2007', attached as Appendix B.

<sup>12</sup> 2006-2007 Report Table 3

16. The above figures also reveal a significant discrepancy between the percentage of work briefed to female barristers and the gross fees invoiced. It is of particular concern that for the period 2003 to 2007 the gap between the percentage of briefs to women and the percentage of gross fees paid to women has increased for government department work by 1% (6% to 7%); and for VGSO work by 8% (3% to 11%).

### AVERAGE BRIEF FEES

17. The following tables summarise average brief fees paid to barristers by reporting entities:

#### GOVERNMENT DEPARTMENTS<sup>13</sup>

Component	No. Briefs to women	No. Briefs to men	Average brief fee women	Average brief fee men
Administrative law & Government	31	58	6570	11063
Commercial law	12	47	2956	5838
Employment law	8	20	9635	3952
Litigation	18	26	3383	8859
Other legal Services (primarily child and welfare protection matters)	2120	1386	436	609
Property	3	10	10537	9547
Resources	1	1	9225	685
<b>Total</b>	<b>2193</b>	<b>1548</b>	<b>612</b>	<b>1399</b>

#### PANEL FIRMS<sup>14</sup>

Component	No. Briefs to women	No. Briefs to men	Average brief fee women	Average brief fee men
Administrative law & Government	14	33	8371	10885
Commercial law	0	6	n/a	6652
Employment law	19	41	23342	23891
Intellectual Property and Technology Law	0	3	n/a	2150
Litigation	41	97	3551	4684
Other legal Services	0	4	n/a	1074
Property	0	4	n/a	32030
Resources	1	3	62620	32830
<b>Total</b>	<b>75</b>	<b>191</b>	<b>10253</b>	<b>10840</b>

<sup>13</sup> Sourced from the information contained in the 2006-2007 Report, Government Departments table p.11.

<sup>14</sup> Sourced from the information contained in the 2006-2007 Report, Panel Firms table p.11.

## VGSO<sup>15</sup>

Component	No. Briefs to women	No. Briefs to men	Average brief fee women	Average brief fee men
Administrative law & Government	99	116	3014	3640
Commercial law	26	7	2797	2757
Employment law	8	16	4221	5117
Intellectual Property and Technology Law	0	1	n/a	5400
Litigation	48	169	2305	4507
Other legal Services	37	45	4778	3892
Property	3	105	3808	10938
Resources	37	115	3376	6138
<b>Total</b>	<b>258</b>	<b>574</b>	<b>3212</b>	<b>5785</b>

## STATUTORY AUTHORITY – WORKCOVER AND TAC<sup>16</sup>

Component	No. Briefs to women	No. Briefs to men	Average brief fee women	Average brief fee men
Administrative law & Government	10	15	4157	4288
Employment law	17	105	2117	4735
Litigation	754	3401	1989	3423
Other legal Services	1	3	4500	8033
<b>Total</b>	<b>782</b>	<b>3524</b>	<b>2023</b>	<b>3469</b>

18. With the exception of fees earned by women briefed by Panel Firms, the figures show a consistent and significant discrepancy between the average brief fee earned by male and female members of counsel. The statistics show that<sup>17</sup>:

- a. a woman briefed by a government department will receive on average 44% of the fee paid to a male barrister;
- b. a woman briefed by the VGSO will receive on average 56% of the fee paid to a male barrister;
- c. a woman briefed by a statutory authority will receive on average 58% of the fee paid to a male barrister.

<sup>15</sup> Sourced from the information contained in the 2006-2007 Report, VGSO table p.11.

<sup>16</sup> Sourced from the information contained in the 2006-2007 Report, Statutory Authority table p.11.

<sup>17</sup> These comparisons are based on direct comparison of results, are not actuarial calculations and do not take into account any possible variation in the method of calculating reported results.



19. Of particular concern are the statistics relating to briefing of women in litigation matters where:

- a. a woman briefed in a litigation matter by a government department is likely to receive only 38% of the fee paid to a male barrister;
- b. a woman briefed in a litigation matter by a panel firm is likely to receive only 76% of the fee paid to a male barrister;
- c. a woman briefed in a litigation matter by the VGSO is likely to receive only 51% of the fee paid to a male barrister; and
- d. a woman briefed in a litigation matter by a statutory authority is likely to receive only 58% of the fee paid to a male barrister.

20. It is to be noted that litigation matters account for 52% of matters briefed by panel firms and 96% of matters briefed by statutory authorities.

21. Whilst some of this variation may be due to the small numbers of female senior counsel (typically the highest earning barristers);<sup>18</sup> and the prevalence of women in less well paid areas (such as welfare and child protection matters), it appears that women barristers appear to be achieving consistently lower fees even in those jurisdictions where greater homogeneity of experience can be assumed.

22. For example, in the Children's Court – a jurisdiction in which women receive 61% of the total work available - female barristers receive, on average, only 68% of the fee paid to male barristers. In the County Court a female barrister will receive, on average, only 49% of the average fee of her male colleague. These two jurisdictions account jointly for 73% of total briefing of barristers. The following table sets out average brief fees by jurisdiction.<sup>19</sup>

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<sup>18</sup> 7 % of all silks at the Victorian Bar are women, and as at the time of the 2006-2007 Report.

<sup>19</sup> 2006-2007 Report p.13.

<b>Jurisdiction</b>	<b>No total briefs</b>	<b>No briefs to women</b>	<b>Average brief fee women</b>	<b>Average brief fee men</b>
VCAT	163	128	4336	11061
Coroners Court	43	20	5139	8242
Children's Court	3444	2089	382	565
Magistrates Court	1290	189	1676	1726
County Court	2934	576	2061	4172
Supreme Court	683	195	3493	5782
High Court	23	5	7882	13620
Federal Court	85	27	11219	10504
Family Court	12	6	2121	2659
Tribunals	9	3	6447	15226

23. Whilst fees for women appearing in the Magistrates' Court are comparable to those of male barristers, female barristers are briefed in only 15% of the total Magistrates' Court work briefed to barristers.

24. The above figures are reinforced by informal analysis undertaken by the Victorian Bar of barristers' income levels. The most recent survey conducted on a sample of approximately 100 barristers in August 2007 revealed that:

- a. 19% of the female barristers surveyed earned under \$100,000 annually, compared with 14% of surveyed male barristers.
- b. 50% of the female barristers surveyed earned less than \$200,000 annually, compared with 31% of surveyed male barristers.
- c. 77% of the female barristers surveyed earned less than \$350,000 annually compared with 45% of surveyed male barristers.

## **APPEARANCE DATA**

25. The EOC considers that the above figures confirm, at the very least, the existence of an indirect pay inequality arising from gendered briefing patterns. Those patterns are well documented as a result of the substantial research conducted over the last decade by the Victorian Bar and Australian Women Lawyers into the frequency, duration and nature of female barristers' appearances before Australian courts and tribunals.

26. Following the publication of the Hunter and McKelvie report and the Victorian Bar's adoption of the Model Briefing Policy in 2000, the EOC conducted informal surveys in 2001, 2002 and 2005. The survey results confirmed continued anecdotal reports that women barristers remained significantly under-represented in court appearances, particularly at senior levels and in more complex matters.

27. In August 2006 the Australian Women Lawyers published the first national Gender Appearance Survey of State and Territory Supreme Court and of the Federal Court.<sup>20</sup> The survey was conducted during periods in 2004 and 2005. The results of the survey were compiled in a report available on AWL's website.<sup>21</sup> The Explanatory Memorandum to the survey<sup>22</sup> report states that the results of the survey indicated that there was substance to the anecdotal reports that gender briefing patterns persist and that women are not being briefed to appear in more senior or complex matters. In particular, the Explanatory Memorandum notes the following statistics:

- a. In the New South Wales Supreme Court 27.8% of the appearances before a Master were by women, whereas only 9.9% of the appearances before the Court of Appeal were by women;
- b. In the New South Wales Supreme Court only 14.2% of the appearances in civil matters were by women
- c. In the Federal Court only 5.8% of the appearances by senior counsel in were by women;
- d. In the Federal Court the average length of hearing for male senior counsel was 119.7 hours, whereas for female senior counsel the average length of hearing was 2.7 hours;

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<sup>20</sup> The survey excluded Victoria, due to the continuing work undertaken by the Victorian Bar in relation to gender appearance studies. The Family Court was also excluded in order to concentrate on the Courts where the absence of women as advocates was the most obvious based upon anecdotal reports from judges and legal practitioners.

<sup>21</sup> See [www.australianwomenlawyers.com.au](http://www.australianwomenlawyers.com.au). Attached as Appendix E.

<sup>22</sup> Attached as Appendix E.

- e. In the Federal Court the average length of hearing for a male who was junior to senior counsel was 223.6 hours, whereas for a female junior counsel in the same position it was 1.4 hours;
- f. In the Supreme Court of the Australian Capital Territory no women appeared as senior counsel in civil matters;
- g. In the Supreme Court of the Australian Capital Territory no women appeared as junior to senior counsel in civil matters;
- h. In the Supreme Court of the Australian Capital Territory only 5.3% of the appearances in civil matters were by women;
- i. In the Supreme Court of the Australian Capital Territory only 1.7% of the appearances in civil trials were by women;
- j. In the Supreme Court of the Northern Territory no women appeared as senior counsel in civil matters;
- k. In the Supreme Court of the Northern Territory no women appeared as junior to senior counsel in civil matters;
- l. In the Supreme Court of the Northern Territory no women appeared as senior counsel in criminal matters;
- m. In the Queensland Court of Appeal only 9.4% of the appearances were by women;
- n. In the Supreme Court of Queensland only 7.2% of all appearances were by women;
- o. In the Supreme Court of Queensland no women appeared as senior counsel in civil matters.

28. A further comprehensive survey of appearances in the Supreme Court, Courts of Appeal, Federal Court, Family Court and the High Court was commissioned in 2008 by the Law Council of Australia in association with Australian Women's Lawyers. The survey will be undertaken in 2009 with results due to be published late in the year.

## ADEQUACY OF DATA

29. The EOC considers that the above figures provide considerable cause for concern – a conclusion that government is utilising the services of women to obtain discounted legal services is clearly available on the basis of the above statistics.
30. In an era where over half university law graduates are women,<sup>23</sup> women appear to continue to be significantly disadvantaged in their earning capacity and career progression as barristers. Although it has not been confirmed by statistical analysis, we consider that this entrenched disadvantage is likely to contribute to some degree to the higher attrition rates of female barristers compared with their male colleagues.<sup>24</sup>
31. The 2006-2007 Briefing report notes the significance of reporting in influencing the more equitable distribution of work by increasing accountability.<sup>25</sup> The EOC considers mandatory reporting of briefing patterns and fee levels to be critical in addressing income inequality between male and female barristers. In particular, given the multitude of variables that may be involved in the selection of a barrister – such as seniority and expertise - it is essential in our opinion that a more rigorous approach is adopted to the collection of data to enable meaningful comparisons to be drawn between the fees earned by male and female barristers.

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<sup>23</sup> This observation is drawn from a report prepared by Beaton Consulting for the Victorian Government following a review of the Panel arrangements for Legal Services to Government Panel and appears to have been reasonably consistent for at least 20 years.

<sup>24</sup> Victorian Bar analysis of demographics demonstrates women leave the bar at an average of 7 years seniority compared to 15 years for men. Typically, barristers do not apply for appointment as senior counsel before 10-12 years seniority, which fact is reflected in a comparatively low proportion of women applying for and being appointed as senior counsel each year.

<sup>25</sup> 2006-2007 Report p.4.

*Data on other States and Commonwealth Government briefing*

32. Comparable data on gender appearances from other States is not available beyond the information contained in the Australian Women Lawyers Gender Appearance Survey 2006<sup>26</sup>. Anecdotally however it is expected to reflect the situation in Victoria or reveal an even greater disproportion of fees being paid to women barristers.<sup>27</sup>
33. At the Commonwealth level, the Legal Services Directions administered by Australian Government Attorney-General's Department did not, until recently, require mandatory reporting on legal services expenditure by Commonwealth Agencies. As a result there was significant inconsistency in reporting by such agencies, with over a third failing to report on the actual value of briefs to male and female counsel and 11% failing to report on legal services expenditure.<sup>28</sup>

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<sup>26</sup>

Appendix E.

<sup>27</sup>

Other States have adopted equal opportunity briefing policies since Victoria. It is expected barristers briefing will reflect the situation in Victoria or reveal an even greater disproportion of fees being paid to women barristers because the composition and seniority of women barristers in other jurisdictions is significantly lower than Victoria (See Attachment H). The recent Law Society Practising Certificate Survey 2008-09 Prepared for The Law Society of New South Wales 13th August 2008 noted, in regard to the income male and female solicitor respondents to the survey:

As in previous surveys, male respondents reported higher incomes than females overall. A total of 44% of all men, but only 28% of women, reported incomes over \$100,000; while 21% of all women, as against 17% of men, had incomes of \$50,000 or less. However, as earlier sections of this report explain, there are a number of differences between male and female practitioners (for instance differences in age, years since admission, employment sector and part time employment) which may help to explain such differences in income. In order to obtain the best possible income comparison between major groups of male and female practitioners, income data were analysed for all males and females *working full-time in private practice*, classified by *years since admission*.

The comparative incomes of male and female solicitors by years since admission, and the estimated mean income of males and females, are illustrated...These results show that male incomes remained generally higher than female incomes. If, for the sake of simplicity, we use the *estimated mean* figures set out in the bottom line of Table 12 we see that, on average, newly admitted male solicitors reported incomes of \$53,500, compared to \$51,500 for females – a much closer gap in income than reported in 2007 (\$57,300 for males, \$47,700 for females). The largest gap in incomes between the sexes was amongst solicitors who had been admitted for 30 or more years, where the average reported income for females was \$79,600 and for males, \$105,100.

<sup>28</sup>

See Appendix H.

34. New reporting requirements introduced by the *Legal Services Amendment Directions 2008 (No.1)* effective from 1 July 2008 require Commonwealth agencies to report on legal services expenditure in a similar manner to the reporting provided in Victoria.<sup>29</sup>
35. A rough analysis of data published by commonwealth agencies was undertaken by the EOC in 2008 and again for the purposes of this submission.<sup>30</sup> The data is consistent with the Victorian statistics showing that women are receiving significantly lower average brief fees than their male colleagues despite changes to the Legal Services Directions introduced in 2005 and 2008.

*Data on briefing by law firms of non-government work*

36. Although the Model Briefing Policy has been adopted by a significant number of Victorian firms and it appears that many collect data and report internally on their briefing arrangements, in the majority of cases the data remains unpublished, or, provided, in a very limited number of cases, on strictly confidential basis to the EOC.

*Data on briefing via Barrister's clerks*

37. As stated above, Barrister's clerks are involved to some extent in the allocation and distribution of briefs and negotiation of Barrister's fees. There are currently 13 clerks at the Victorian Bar, most of whom have adopted the Model Briefing Policy. There

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<sup>29</sup> See the *Legal Services Directions 2005*, Appendix D. Clauses 4C and 4D state:

**Rules about selection of counsel**

4C All barristers are to be selected for their skills and competency independently of their gender. An agency is to ensure that arbitrary and prejudicial factors do not operate to exclude the engagement of female barristers or to limit the range of barristers being considered for the brief.

4D In selecting counsel, all reasonable endeavours are to be made to:

- (a) identify all counsel in the relevant practice area
- (b) genuinely consider engaging such counsel, and
- (c) regularly monitor and review the engagement of counsel.

*Note* Agencies are encouraged to publish annually, in a manner which does not disclose the rates paid to individual counsel, the number and gender of counsel engaged on their behalf, whether engaged directly or through external lawyers, and the comparative value of the briefing for each gender.

<sup>30</sup> Attached as Appendix H.

is, however, no requirement for clerks to report on gendered briefing patterns and the fees earned by women by comparison with their male colleagues.

## **RECOMMENDATIONS RELATING TO FEES AND BRIEFING PRACTICES**

38. The EOC recommends that the following action is required to address inequitable briefing practices:

- A. implement an investigation into the causes of the apparent pay inequity between male and female barristers;
- B. require all states and the commonwealth to implement mandatory reporting on legal services expenditure reporting on the briefing of women and men by number of briefs and by total fees paid;
- C. require improvements in reporting requirements to enable accurate comparisons to be made between fees paid to male and female barristers of similar experience and seniority;
- D. require governments to require Panel Firms to report on all briefing practices – not just the briefing of government work;
- E. encourage transparency and public reporting by all law firms adopting the Model Briefing Policy;
- F. improve education regarding pay equity issues relating to women barristers, particularly of government briefing entities;
- G. introduce specific briefing targets for state and commonwealth briefing regarding the proportion of fees paid to women barristers.



The Bar acknowledges with gratitude the assistance of Fiona McLeod SC, Chair of the Equal Opportunity Committee, a Standing Committee of the Victorian Bar Council, Meredith Schilling and Carmella Ben-Simon, both members of the Equal Opportunity Committee, in the preparation of this submission.

6 March 2009

A handwritten signature in dark ink, appearing to read 'G John Digby', is centered on the page. The signature is fluid and cursive, with a prominent initial 'G' and a long, sweeping tail.

**G JOHN DIGBY QC**  
Chairman  
Victorian Bar Council