

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Budget Estimates 2017 - 2018

Agency - Fair Work Commission

Department of Employment Question No. EMSQ17-004116

Senator Cameron asked on 30 May 2017 on proof Hansard page 18

Question

FWC - Legal services directions on briefing practices

Senator CAMERON: Could someone describe the factors that have led to the very low number of Fair Work Commission briefs being issued to female counsel?

Ms Carruthers: I will need to take that on notice. I know we do report each year under the Legal Services Directions on our briefing practices. I do not have last year's report with me.

Answer

The Fair Work Commission (Commission) is governed by the requirements of Appendix D of the *Legal Services Directions 2017* regarding the engagement of Counsel.

The following factors influence the engagement of particular Counsel:

- where Counsel are briefed indirectly through external solicitors, they are commonly engaged on recommendation of those solicitors;
- where both Senior and junior Counsel are engaged, junior Counsel are commonly proposed by Senior Counsel;
- whether particular Counsel is engaged will depend on the nature of the matter and their expertise, availability to deliver the legal services within the required timeframe and the absence of any conflict of interest; and
- some areas of Commission work require particular expertise, seniority and experience for which only a limited number of Counsel may be suited.

Between 1 July 2016 and 31 May 2017, the Commission has directly or indirectly briefed 12 female Counsel out of a total of 36 briefs.

The Registered Organisations Commission (ROC) commenced operation on 1 May 2017. With the transfer of matters to ROC under machinery of government changes, only seven of the 36 briefs referred to above relate to matters that remain with the Commission. Of these seven matters, female Counsel has performed work under five briefs and male Counsel has performed work under two briefs.