

# Gender Equitable Engagement and Instruction Policy

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# Gender Equitable Engagement and Instruction Policy

*The Policy Adopters, the New Zealand Law Society, and the New Zealand Bar Association support the retention and advancement of women in the legal profession.*

## **Policy Purpose and Aims**

This policy is intended to:

- support the development, progression and retention of women lawyers in firms and at the bar, by giving them a fair allocation of work and lead roles in major cases and investigations;
- encourage lead lawyers to give women juniors greater opportunities to develop their skills and experience by giving them substantive speaking roles in hearings whenever it is practicable to do so;
- ensure clients have access to the increased choice and better service that comes with greater diversity and inclusion;
- drive cultural change within the legal profession to make it more representative of the community it serves; and
- correct underrepresentation of women lawyers in lead roles, especially in major commercial litigation.

Targets in this Policy are not intended to limit the number of women lawyers instructed. It is open to any instructing entity to adopt higher targets. In some practice areas women lawyers may be instructed to advise and appear in numbers higher than the targets. Where the number of available women lawyers is low those instructing are encouraged to increase the number of instructions to more junior women in order to grow expertise.

## **The Policy**

*This policy can be adopted by any user or provider of legal services, including clients, law firms, chambers, in-house teams and legal departments and individual lawyers.*

*Organisations or individuals adopting this policy will:*

1. when considering a new engagement or instruction, use reasonable endeavours to identify women lawyers in the practice area relevant to the matter at issue;
2. *genuinely consider engaging or instructing (or, where relevant, recommending) women lawyers to represent the client in that matter;*
3. *regularly monitor and review their level of engagement, instruction or recommendation of women lawyers;*
4. *(for clients only) report biennially on their rate of engagement or instruction of women lawyers (as set out further below); and*

5. *by 1 December 2018, use reasonable endeavours to have women lawyers with relevant expertise take a lead on at least 30% of court proceedings, arbitral proceedings, and major regulatory investigations calculated either as:*
  - (a) 30% of all court and arbitral proceedings and major regulatory investigations per year; or
  - (b) *30% of the value of all fees paid for representation in court, arbitral proceedings, and major regulatory investigations per year.*

### **How is the policy adopted?**

Adoption of this policy is by notification to the New Zealand Law Society. Once this has occurred adopters are free to publish that they have adopted the policy and to use any branding associated with the adoption of the policy.

The New Zealand Law Society will publish the names of those who have adopted this policy. Policy Adopters who fail to meet reporting obligations will be removed from the list of Policy Adopters and asked to remove any reference to the individual or entity as a Policy Adopter.

### **Why is the Policy necessary?**

The Policy Adopters, the New Zealand Law Society and the New Zealand Bar Association are committed to taking measures that improve the retention and advancement of women within the legal profession.

Women are under-represented as lead counsel, especially in significant commercial litigation. Men outnumber women as barristers and in Queen's Counsel appointments.

Underrepresentation at the top end of the profession shows barriers to women advancing in the law, and risks sending the message to young women lawyers that they have less opportunity for advancement than their male colleagues. This may result in a loss of talent which harms the legal profession as a whole.

There can be a risk of unconscious bias and habit when selecting lawyers for lead roles. This may especially be the case in major commercial litigation where significant amounts of money and corporate reputations are at stake. In these circumstances, clients and referring lawyers may default to a familiar lawyer to take the lead, as a "safe" option. This might result in the best lawyer being overlooked and could be harmful to clients' interests who should have best representation possible.

### **What are the reporting obligations?**

The New Zealand Law Society in consultation with the New Zealand Bar Association and Policy Adopters will develop a standard form for reporting.

Policy Adopters will provide a biennial confidential report of results and the measures taken to achieve the target to the New Zealand Law Society.

The New Zealand Law Society will provide anonymised aggregated data from the confidential reports received to the New Zealand Bar Association. This information will be subject to the confidentiality, privacy and other requirements that form the basis on which the policy adopters provide the information to the New Zealand Law Society.

Public reporting on the results of this policy will be in a format that does not identify any individual or entity unless the individual or entity specifically agrees to be named and identified.

Policy Adopters may also report on their results as part of their usual internal and external reporting on diversity and inclusion and/or in their annual reports.

The confidential report to the New Zealand Law Society by Policy Adopters who are clients of legal services should address separately the figures for women lawyers in respect of:

- the number of lawyers engaged by them during the year in relation to court proceedings, arbitral proceedings, and major regulatory investigations (i.e. the total number of engagements of women lawyers in respect of those categories of work and the total number of engagements of lawyers in respect of those categories of work); and
- the monetary value of those engagements (i.e. the approximate total value of fees paid in respect of those engagements in which women lawyers take a lead role and the total value of fees paid in respect of instructions where other lawyers take a lead role).

The confidential report to the New Zealand Law Society by supporting firms, chambers and individual lawyers who adopt the Policy should set out the steps they have taken to comply with items 1, 2 and 3 of the Policy.

Supporting firms, chambers and individual lawyers will also take all reasonable steps to assist clients who are Policy Adopters, as required, in meeting the reporting requirements and targets set out at items 4 and 5 of the Policy.

## **Review**

The Policy Adopters, the New Zealand Law Society and the New Zealand Bar Association recognise the need to review the policy periodically.

The New Zealand Law Society and the New Zealand Bar Association will commence a review of this policy and targets within three years with a view to increasing the targets to 35% and considering the extension of the commitments to other engagements and instructions including corporate commercial instructions.

Any review will be in consultation with the Policy Adopters.

The New Zealand Law Society may vary the policy and reporting requirements from time to time following consultation with the New Zealand Bar Association and Policy Adopters.

## **Definitions**

For the purpose of the policy:

*'Instructing or Instructions'* includes instructions to barristers and solicitors and briefs to barristers. It means the engagement of a lawyer to provide legal services in relation to *Court and arbitral proceedings and major regulatory investigations*.

*'Court and arbitral proceedings and major regulatory investigations'* includes civil and criminal work before all Courts and Tribunals, commissions of inquiry, and includes all regulatory investigations, negotiations, mediations or arbitrations and related work on these matters.

*'Woman lawyer'* means a barrister, or a barrister or solicitor practicing within a law firm or in-house who identifies as female.

*'Take a lead'* means taking a primary advocacy or other lead role in the court or arbitral proceeding and/or major regulatory investigation in relation to these areas.

POLICY ADOPTERS – CLIENTS



POLICY ADOPTERS – CLIENTS CONTINUED



POLICY ADOPTERS – SUPPORTING FIRMS, CHAMBERS AND LAWYERS

Russell  
McLeagh

MinterEllison  
RuddWatts

BUDDLE  
FINDLAY

Shortland Chambers

Te Tari Ture o te Karauna  
Crown  
Law

BELL GULLY

CHAPMAN  
TRIPP

Simpson Grierson

DLA PIPER

anderson  
lloyd.

KensingtonSwan\*

AWLA  
AUCKLAND WOMEN  
LAWYERS' ASSOCIATION

CLIFTONCHAMBERS  
SPECIALIST BARRISTERS

WILSON ■ HARLE

BROOKFIELDS  
LAWYERS

TODD & WALKER law  
LAWYERS NOTARY PUBLIC

webb  
henderson  
Legal and Regulatory Advisors

BARRISTERS • COMM

BANKSIDE CHAMBERS

RICHMOND  
CHAMBERS

MONTROSE CHAMBERS  
BARRISTERS

POLICY ADOPTERS – SUPPORTING FIRMS, CHAMBERS AND LAWYERS CONTINUED

