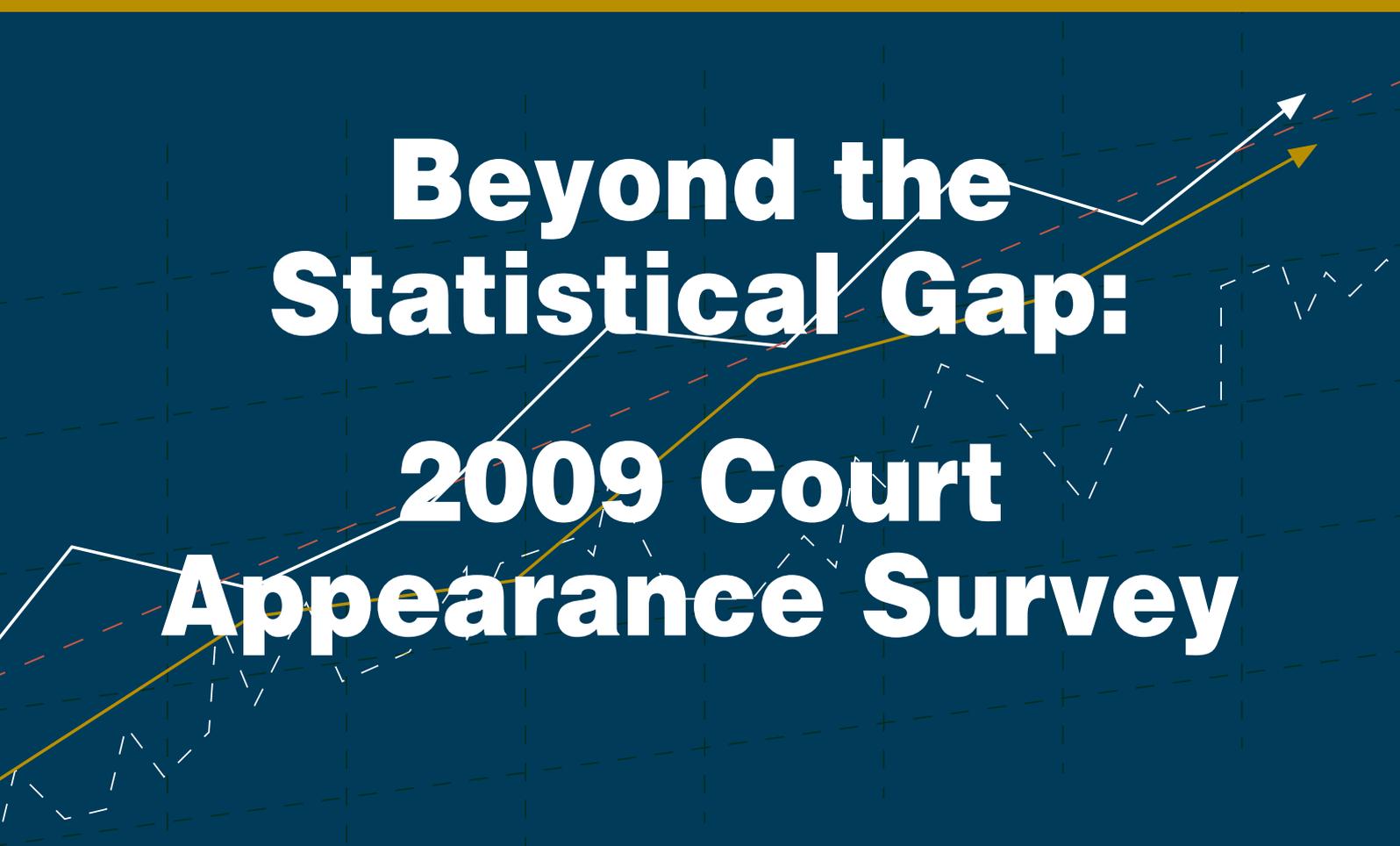




Law Council
OF AUSTRALIA



**Beyond the
Statistical Gap:
2009 Court
Appearance Survey**

**Beyond the
Statistical Gap:
2009 Court
Appearance Survey**

Strategy for Advancing
Appearances by
Female Advocates in
Australian Courts

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Executive Summary

In 2009, the Law Council of Australia released the findings of the *2009 Court Appearance Survey – Beyond the Statistical Gap* (2009 Court Appearance Survey) which was conducted in order to examine the nature and extent of appearances by legal practitioners before Australian superior courts. There were three key findings of the 2009 Court Appearance Survey:

- ◆ Male and female barristers appeared in the survey population in exactly the same gender proportion as they existed in the Bar population (81 percent male; 19 percent female);
- ◆ When appearing in matters resulting from briefings by private law firms, appearances by male barristers were substantially higher and those by female barristers were lower than would be expected based on the proportions that they exist in the Bar population (86 percent male; 14 percent female); and
- ◆ Average appearance time for male barristers was significantly longer than that for female barristers (3.8 hours male; 2.8 hours female).

The main purpose of this document is to provide a strategic framework for addressing the findings of the 2009 Court Appearance Survey. In order to provide the context for this framework, the findings of previous research into gender participation rates in the legal profession and the results of the 2009 Court Appearance Survey are discussed.

There are three strategic objectives of the Strategy for Advancing Appearances by Female Advocates in Australian Courts (Strategy):

- ◆ Promote an increase in the proportion of women going to, remaining and advancing at, the bar;
- ◆ Promote an increase in the number and quality of briefs given to female barristers, particularly by private law firms; and
- ◆ Promote discussion of, and educate the legal profession about, the issues contributing to shorter appearance times of female barristers in certain jurisdictions.

To successfully implement this Strategy, there are three areas which need to be addressed, these being the discrepancy between:

- ◆ Proportion of women who are joining, remaining and advancing at the bar and the proportion of women joining the legal profession;
- ◆ Engagement of female barristers in appearance work by private law firms and other briefing entities; and
- ◆ Appearance times for female and male barristers.

In order to meet the objective of increasing the proportion of women going to, remaining and advancing at the Bar, the Strategy recommends that:

1. The Law Council's Recruitment and Retention of Lawyers Working Group, in conjunction with the Equalising Opportunities in the Law Committee (EOL Committee), be requested to critically examine the existing recruitment and retention strategies relevant to female barristers.
2. The Court Appearance Survey be repeated in 2014 in order to measure the effectiveness of any recruitment and retention strategies implemented as a result of the recommendations of this Strategy.

In addressing the discrepancy between the engagement of female barristers in appearance work by private law firms and other briefing entities, the Strategy regards the Equitable Briefing Policy as one of the key instruments in promoting structural and institutional change. However, this discrepancy may also require a consideration of engagement by female barristers in networking and lobbying activities, the challenges faced due to perceptions and negative stereotypes by clients and briefing solicitors, and the need to conduct further qualitative research into the benefits experienced by 'other entities' in briefing female barristers. The Strategy recommends that:

3. The Law Council's Equitable Briefing Policy Working Group be requested to develop a formal communications strategy for the purpose of promoting the Equitable Briefing Policy and the development of the facilities on the Law Council's website for its formal adoption by briefing entities.
4. The Law Council's EOL Committee be requested to specifically consider professional support and lobbying issues relevant to female barristers as a standing agenda item.

5. The Victorian Women Barristers' Association (WBA), New South Wales Women Barristers Forum (WBF) and other relevant groups at the Bars, law societies and institutes continue to develop networking opportunities that may be appropriate and useful to female barristers.
6. The Bar Associations, in conjunction with their respective law societies and institutes, further promote discussion of equality issues concerning female barristers and consider ways in which this discussion can be most effectively communicated to the legal profession.
7. Senior counsel be encouraged by their Bar Associations to actively turn their minds to the existence of suitably qualified female barristers when considering who to recommend as junior counsel.
8. The respective law societies and institutes encourage solicitors to actively turn their minds to the existence of suitably qualified female barristers when considering who to recommend as junior counsel.
9. The respective law societies and institutes encourage solicitors to make a greater effort to identify female barristers working in their fields and to consider their briefing practices and processes within the context of their equal employment opportunity policies.
10. Further qualitative research be conducted into the benefits experienced by other entities in briefing female barristers.
11. Information be provided in a collaborative effort by the Bar Associations, law societies and institutes regarding the existence of suitably qualified female barristers.

In addressing the discrepancy between the appearance times for female and male barristers, the Strategy recommends that:

12. The Victorian, Australian Capital Territory, Queensland and Western Australian Bar Associations, in conjunction with their respective law societies and institutes, engage in discussion of the potential issues contributing to the significant difference in appearance times between male and female barristers in these jurisdictions.
13. The Victorian, Australian Capital Territory, Queensland and Western Australian Bar Associations, in conjunction with their respective law societies and institutes, consider the potential issues contributing to the significant difference in appearance times between male and female barristers in these jurisdictions can be most effectively communicated and endeavour to educate the legal profession about the issues they consider may be contributing to this difference.
14. All Bar Associations, in conjunction with their respective law societies and institutes, promote the Law Council's Equitable Briefing Policy.

In order to successfully advance the specific recommendations identified above, the Strategy further recommends that:

15. The Bar Associations, law societies and institutes, and other relevant bodies hold workshops to discuss the findings of the 2009 Court Appearance Survey and this Strategy and to devise further practical suggestions in response to the findings.
16. The recommendations contained in this Strategy be adopted and implemented within the identified time periods by the relevant Bar Associations and law societies.
17. Those responsible for implementing various recommendations contained in this Strategy report regularly to the Law Council Board of Directors on actions taken in that respect.
18. The results of the implementation process be monitored and evaluated after two years by the Law Council of Australia, unless this Strategy includes other time periods as relevant to its recommendations.
19. The Bar Associations and law societies liaise with the Women Lawyers Associations in respective states and territories.
20. The bar associations, law societies and institutes provide an annual report to the EOL Committee in relation to the performance of the above recommendations.

The Strategy also considers target audiences, potential stakeholders and key messages relevant to the campaign.

Introduction

The Victorian Bar Council study into court appearances conducted in 1998 indicated that gendered briefing practices existed in Victoria. In response to these findings the Law Council of Australia (Law Council) developed, and in 2004 adopted, the Model Equal Opportunity Briefing Policy, now titled the Equitable Briefing Policy.¹ The Equitable Briefing Policy was designed to raise awareness of discriminatory briefing practices and to assist the development of strategies to address these practices.

In 2006, the Australian Women Lawyers Association (AWL) published the findings of the *Gender Appearance Survey* (AWL Survey) which indicated that gendered briefing practices of advocates existed around Australia. The purpose of the AWL Survey was to examine the appearance rates of female advocates in Australian State and Territory Supreme Courts and the Federal Court.² The findings suggested that there existed a difference in the number, nature and complexity of cases in which female advocates appeared compared to their male counterparts.

In 2007, the Law Council's Equalising Opportunities in the Law Committee (EOL Committee) proposed that a further survey be conducted to examine gender appearance rates in Australian superior courts. This proposal was approved by the Law Council Directors in 2008. In 2009, an independent consultancy firm conducted the *2009 Court Appearance Survey – Beyond the Statistical Gap* (2009 Court Appearance Survey).³

There were three key findings of the 2009 Court Appearance Survey:

- ◆ Male and female barristers appeared in the survey population in exactly the same gender proportion as they existed in the Bar population (81 percent male; 19 percent female);
- ◆ When appearing in matters resulting from briefings by private law firms, appearances by male barristers were substantially higher and those by female barristers were lower than would be expected based on the proportions that they exist in the Bar population (86 percent male; 14 percent female); and
- ◆ Average appearance time for male barristers was significantly longer than that for female barristers (3.8 hours male; 2.8 hours female).

As a result of the different methodologies employed, the findings of the AWL study are not directly comparable to those of the 2009 Court Appearance Survey. However, it is important to note that the purpose of both studies was to examine the extent to which female advocates appeared in Australian courts. Furthermore, the AWL survey and the 2009 Court Appearance Survey are the only two studies to date to have examined the issue of appearances by female advocates on a national level.

The main purpose of this document is to provide a strategic framework for addressing the findings of the 2009 Court Appearance Survey. In order to provide the context for this framework, the findings of previous research into gender participation rates in the legal profession and the results of the 2009 Court Appearance Survey are discussed.



“We stand at the beginning of a new epoch in the history of humankind’s thought, as we recognise that sex is irrelevant to thought, that gender is a social construct and that woman, like man, makes and defines history.”

— Gerda Lerner, *The Creation of Feminist Consciousness*

Gender Participation in the Legal Profession

At the turn of the twentieth century women were ‘let into’ the legal profession in the common law world. However, it was not until the 1970s that women entered the Australian legal profession in substantial numbers.

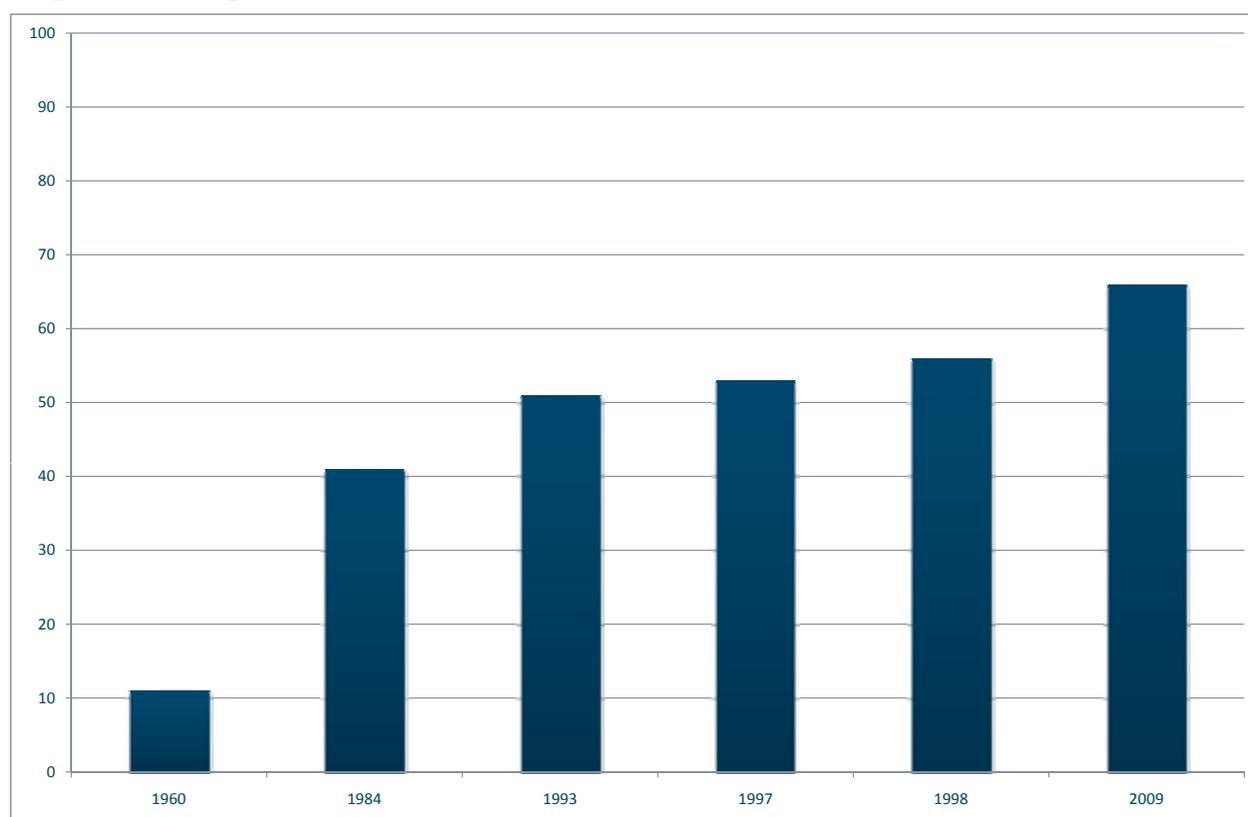
Law Students

The number of women studying law has increased gradually since the 1960s and 1970s, when the expansion of tertiary education and equity policies led to an increase in number of women undertaking tertiary education generally. In 1960, women comprised 11 percent of law graduates. Since the 1990s, the majority of Australian law graduates have been women, as indicated in Table 1 below. In 2009, 66 percent of law graduates were female.⁴

Table 1: Percentage of Female Law Graduates, 1960-2009^{5,6,7,8}

Year	Percentage of Females
1960	11
1984	41
1993	51
1997	53
1998	56
2009	66

Graph 1: Percentage of Female Law Graduates, 1960-2009



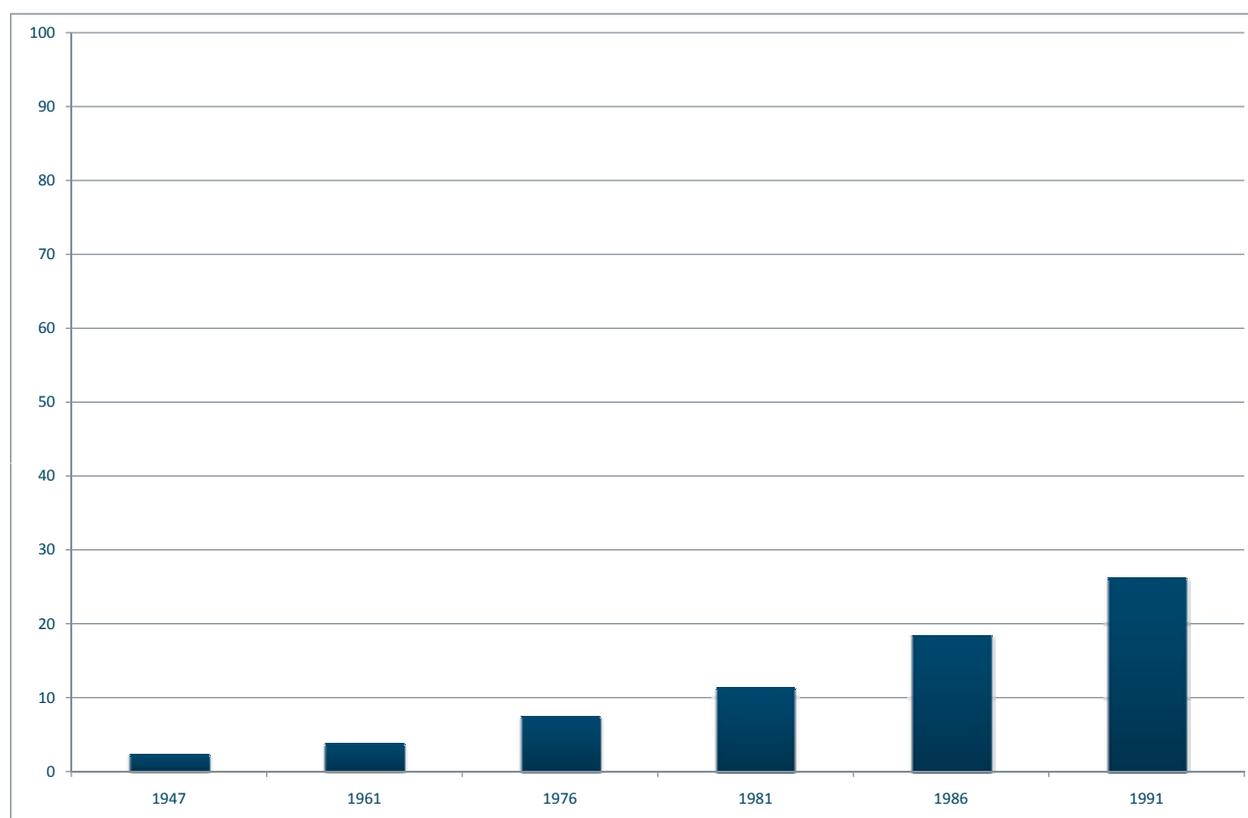
Legal Profession

Research indicates that between 1981 and 1991 the size of the legal profession doubled. During this time, the number of female legal practitioners more than quadrupled. A summary of this research is contained in Table 2 below.

Table 2: Number and Percentage of Females in the Legal Profession, 1947-1991⁹

Year	Number of Females	Percentage of Females	Total
1947	109	2.4	4576
1961	258	3.9	6636
1976	970	7.5	12909
1981	1993	11.4	17516
1986	4396	18.5	23824
1991	8971	26.3	34075

Graph 2: Percentage of Females in the Legal Profession



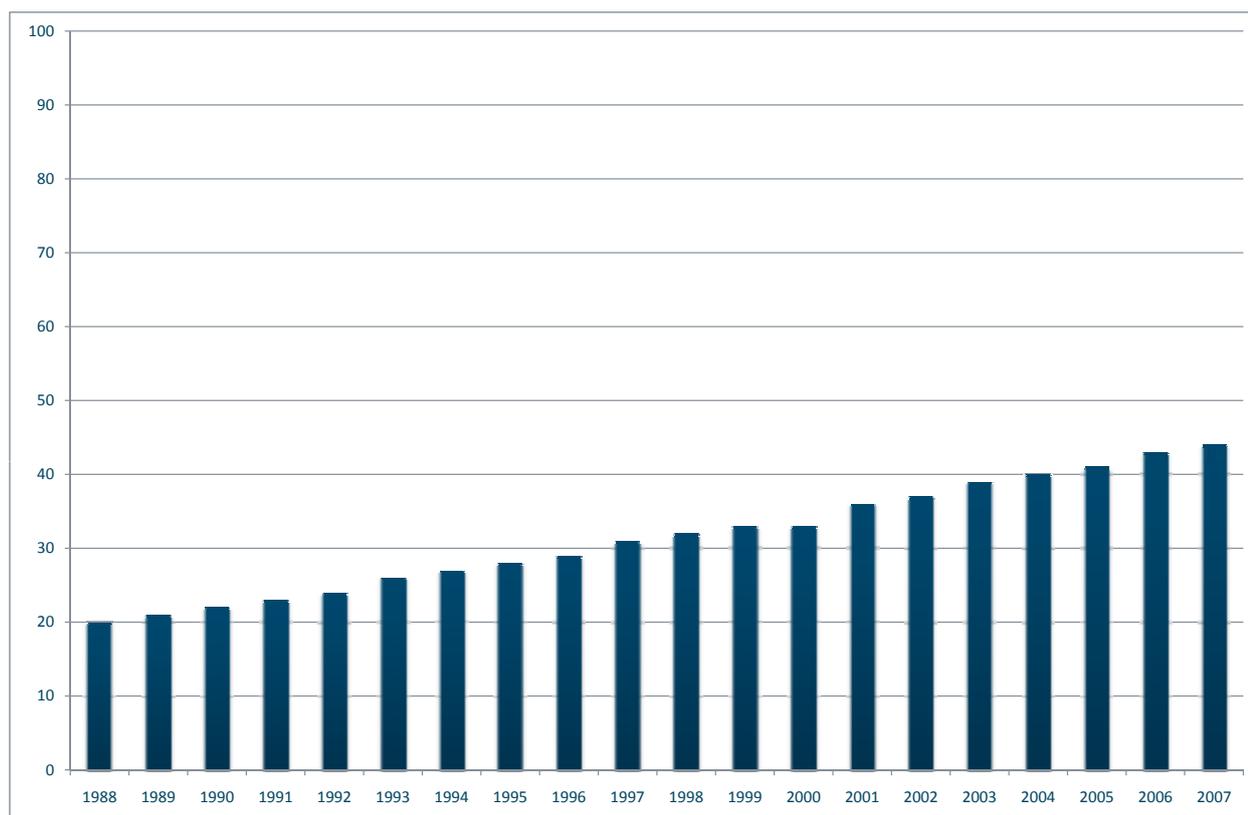
Solicitors

There no available statistics regarding the percentage of women practising as solicitors on a national level. However, Table 3 below provides information regarding the number of female solicitors admitted to practice in New South Wales.¹⁰

Table 3: Solicitors in New South Wales, 1988-2009^{11,12}

Year	Number of Females	Percentage of Females	Total Solicitors
1988	1,979	20	9,808
1989	2,196	21	10,393
1990	2,398	22	10,791
1991	2,634	23	11,239
1992	2,837	24	11,638
1993	3,098	26	11,957
1994	3,291	27	12,283
1995	3,554	28	12,797
1996	3,868	29	13,199
1997	4,099	31	13,409
1998	4,457	32	13,871
1999	4,866	33	14,643
2000	5,322	33	15,922
2001	5,803	36	16,220
2002	6,374	37	17,189
2003	6,980	39	18,092
2004	7,503	40	18,790
2005	8,035	41	19,481
2006	8,573	43	20,162
2007	9,116	44	20,833

Graph 3: Percentage of Female Solicitors in New South Wales



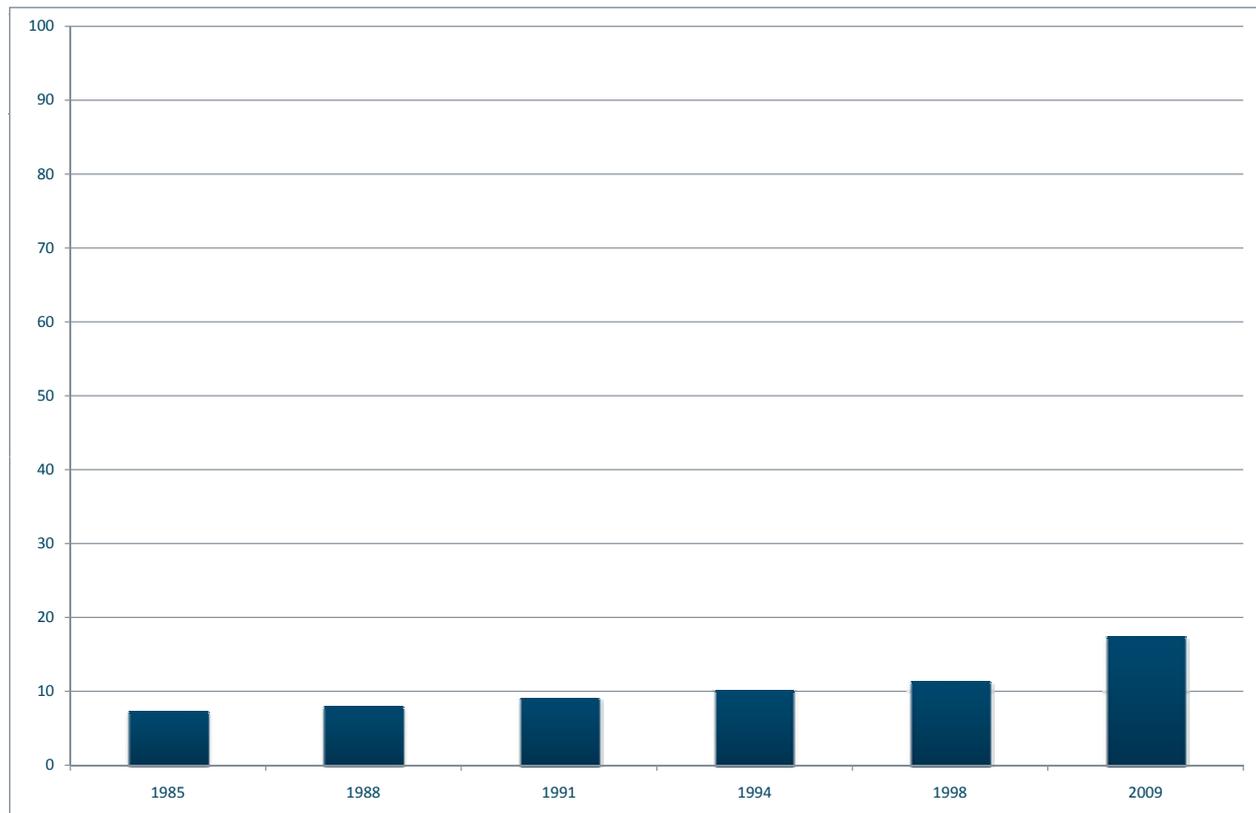
Bar

Prior to the completion of the 2009 Court Appearance Survey, research into Bar compositions across the various jurisdictions in Australia had not been conducted on a national level. Table 4 below provides details of the composition of the Bar in New South Wales. New South Wales has the highest number, although not proportion, of female barristers in Australia.

Table 4: Barristers in New South Wales, 1985-2009¹³

Year	Number of Females	Percentage of Females	Total Barristers
1985	78	7.3	1069
1988	102	8.0	1271
1991	142	9.2	1543
1994	174	10.2	1711
1998	211	11.4	1857
2009	370	17.5	2114

Graph 4: Percentage of Female Barristers in New South Wales



2009 Court Appearance Survey

The purpose of the 2009 Court Appearance Survey was to obtain robust, reliable and replicable data regarding appearances by legal practitioners in Australian superior courts.¹⁶ The Law Council expects that the survey findings will set a benchmark against which the nature of appearances in Australia will be considered in the future.

For the purposes of the survey, the term ‘appearance’ was defined by the Law Council as being “those occasions in which a legal practitioner raises legal argument or adduces evidence while defending or presenting a case.”

Methodology

Data collection

The data was collected by the respective courts’ Associates¹⁷ as it was believed that, because of their unique roles, they were best placed to gather the required information. A survey form and instructions were developed and tested by way of a pilot survey in March 2009 in the Supreme Court of Queensland and the Brisbane registry of the Federal and Family Courts.

Consideration was given to the length and timing of the period during which data would need to be collected to ensure the period was representative.

Practical considerations, such as the desire not to unduly burden court resources, and other matters, such as the timing of sittings of the Full Court of the Federal Court, were factored into the decision. Data collection for most courts was undertaken from 4 May 2009 to 29 May 2009. However, where necessary, the survey was also conducted during modified timeframes.

Sample

For the purposes of the 2009 Court Appearance Survey, legal practitioners were grouped into four categories:

- ◆ Senior Counsel/Queen’s Counsel (SC/QC);
- ◆ Junior Counsel;¹⁸
- ◆ Total Barristers;¹⁹ and
- ◆ Solicitor advocate.²⁰

The statistics regarding the Bar populations in each jurisdiction were obtained from the relevant Bar Associations and the Legal Practice Board of Western Australia. It should be noted that where comparisons were made between the actual rate at which practitioners appeared in the survey with the rate at which they could be expected to appear given their representation within the Bar population, these only related to the Bar population of the relevant jurisdiction. Equivalent comparisons for the solicitor advocate category could not be made.

Summary of Key Findings

A total of 5,276 appearances by legal practitioners in 2,232 matters were analysed. Of these, 4,057 (or 77 percent) of appearances were by male practitioners and 1,219 (or 23 percent) were by female practitioners.

During the analysis stage it became apparent that some Associates in the Supreme Court of Tasmania had recorded all non-SC/QC appearances as Junior Counsel, using the term generically and including solicitor advocate appearances in this category. Consequently, findings for Tasmania were presented separately from that of the other jurisdictions in the survey report.

The findings were based on 2,232 matters, of which:

- ◆ 58 percent were Supreme Court and Court of Appeal matters;
- ◆ 25 percent were Family Court matters;
- ◆ 14 percent were Federal Court matters, and
- ◆ 2 percent were High Court matters.



“What I say to women coming to the Bar is that you need to think very carefully about what sort of safety nets you have in place. And it is difficult because ultimately I decided that makeshift childcare was just not going to work out, and so it meant involving the expense of effectively having to employ someone full-time, and that’s been the only way that I’ve been able to manage.”

— Judge Fran Hogan

There were three key findings of the 2009 Court Appearance Survey:

- ◆ Male and female barristers appeared in the survey population in exactly the same gender proportion as they existed in the Bar population (81 percent male; 19 percent female);
- ◆ When appearing in matters resulting from briefings by private law firms, appearances by male barristers were substantially higher and those by female barristers were lower than would be expected based on the proportions that they exist in the Bar population (86 percent male; 14 percent female); and
- ◆ Average appearance time for male barristers was significantly longer than that for female barristers (3.8 hours male; 2.8 hours female).

Appearance rates

The results indicated that, nationally, barristers in the survey population appeared in statistically the same gender proportion as they exist in the Bar population (81 percent male and 19 percent female). This finding applied to all jurisdictions except Victoria, where survey appearance proportions were significantly different from the Bar composition. The overall finding (for both senior and junior counsel categories) for Victoria was that male barristers appeared in statistically higher proportion (87 percent) than they existed at the Bar (78 percent). On the other hand, in that jurisdiction female barristers appeared in statistically lower proportion (13 percent) when compared to the Bar composition (22 percent).

Nationally, male SCs/QCs appeared in 91 percent of the matters and their corresponding proportion at the Bar was 94 percent. Female SCs/QCs appeared in 9 percent of the matters whereas their actual proportion at the Bar was 6 percent. Junior Counsel appeared in the same proportions as they existed in the Bar population (78 percent male and 22 percent female).²¹

Appearances by briefing entity practices

Data regarding two categories of briefing entity was collected:

- ◆ Private law firm (which included incorporated legal practices and sole practitioners); and
- ◆ Other entity (which for example included government departments, in-house counsel and community legal services).

Nationally, male barristers appeared on behalf of private law firms in 86 percent of matters and female barristers in 14 percent of matters. When

appearances were on behalf of other entities, male barristers appeared in 70 percent of matters and female barristers appeared in 30 percent of matters. Further, male solicitor advocates appeared on behalf of private law firms in 67 percent of matters and female solicitor advocates in 33 percent of matters. Appearances on behalf of other entities were equal for both male and female solicitor advocates (50 percent for both genders).²²

In civil matters, 89 percent of appearances by male barristers and 80 percent of appearances by female barristers were on behalf of private law firms. In criminal matters, however, 39 percent of appearances by male barristers and 20 percent of appearances by female barristers were on behalf of private law firms.

Appearance time

Survey findings indicated that, nationally, the average appearance time for male barristers was 3.8 hours and 2.8 hours for female barristers. The difference in appearance times between male and female barristers was statistically significant. However, when this difference was examined on a jurisdictional basis, the appearance times were only statistically different in some jurisdictions:

- ◆ Victoria (average male appearance time being 61 percent longer than that of females);
- ◆ Australian Capital Territory (average male appearance time being 61 percent longer than that of females);
- ◆ Queensland (average male appearance time being 46 percent longer than that of females); and
- ◆ Western Australia (average male appearance time being 28 percent longer than that of females).

Appearance times for male and female barristers in New South Wales, Northern Territory and South Australia were not statistically different. It should also be noted that Northern Territory was the only jurisdiction where female barristers appeared for longer periods than male barristers, although this difference was not statistically significant.²³

On the other hand, nationally, male solicitor advocates appeared for 1.2 hours, whereas appearance time for female solicitor advocates was 1.1 hours.²⁴

Strategy For Advancing Appearances By Female Advocates In Australian Courts

The Law Council regards gender equality as an essential requirement in ensuring that the legal profession continues to legitimately and credibly serve the community. In order to do so effectively, equitable representation of women in the legal profession must be achieved not only at the early stages of their professional career, but also at the leadership level. Economically, higher retention rates of females in the legal profession are likely to lead to a higher 'return' on the investment in legal education and training and human capital.

In order to address the key findings of the 2009 Court Appearance Survey, the Law Council has developed a *Strategy for Advancing Appearances by Female Advocates in Australian Courts* (Strategy).

Purpose

This strategy aims to devise potential solutions to address the findings of the 2009 Court Appearance Survey.

Strategic Objectives

In meeting the aim of this Strategy, the strategic objectives are to:

- ◆ promote an increase in the proportion of women going to, remaining and advancing at, the bar;



“The Bar gave me the flexibility to work my own hours, so I could take a day off when I needed to, or I could leave work early to pick up my kids and take them to a football game.”

— Judge Rachele Lewitan

- ◆ promote an increase in the number and quality of briefs given to female barristers, particularly by private law firms; and
- ◆ promote discussion of, and educate the legal profession about, the issues contributing to shorter appearance times of female barristers in certain jurisdictions.

The Law Council believes that the strategic objectives of this Strategy can be met by raising awareness of the issues affecting female barristers through further empirical investigation, education of the legal profession and structural and institutional change. The EOL Committee will continue to consider both quantitative and qualitative research areas in addressing the advancement of female barristers within the legal profession.

Strategic Considerations

To successfully implement this Strategy, there are three areas which need to be addressed, these being the discrepancy between:

- ◆ proportion of women who are joining, remaining and advancing at the bar and the proportion of women joining the legal profession;
- ◆ engagement of female barristers in appearance work by private law firms and other briefing entities; and
- ◆ appearance times for female and male barristers.

Strategic Goal 1: Increasing the proportion of women going to, remaining, and advancing at the Bar

The findings of the 2009 Court Appearance Survey show that female barristers comprise 19 percent of the Australian Bar populations.

As noted above, no statistics are available regarding the participation of women in the legal profession on a national level. Statistical information from New South Wales suggests that in 2009, women comprised 18 percent of the barrister population and 46 percent of the solicitor population.

The findings of the 2009 Court Appearance Survey indicate that nationally females comprise only 6 percent of the QC and SC populations.

Strategic Considerations and Critical Issues

In addressing the issue of the discrepancy between the proportion of women who are joining, remaining and advancing at the Bar and the proportion of women

joining the legal profession, this Strategy identifies the following perceptions for consideration:

- ◆ advocacy work is not suitable for women intending to start a family;
- ◆ advocacy work is more suited to the masculine personality, and therefore male barristers;
- ◆ direct or indirect discrimination against women at the bar by the clients and those segments of the legal profession who brief barristers;
- ◆ female barristers are not suited to lucrative commercial work at the bar performed predominantly by male barristers;
- ◆ the bar is a lonely place for women;
- ◆ female barristers must do more than male barristers in order to prove themselves.

Regardless of whether the concerns identified above accurately reflect the realities of practice at the Bar, the existence of these perceptions has been well documented.²⁵ Although concerns such as indirect or salient forms of discrimination are very difficult, if not impossible, to address, it is important that they be identified due to their potential effect on the success and/or measurement of the outcomes of this Strategy.

Recommendations

In order to meet the objective of increasing the proportion of women going to, remaining and advancing at the Bar, two key initiatives are the:

- ◆ recruitment strategies to attract a larger proportion of women to the Bar; and
- ◆ retention strategies to ensure that female barristers remain at the Bar.

It is recommended that the Law Council's Recruitment and Retention of Lawyers Working Group, in conjunction with the EOL Committee, be requested to critically examine the existing recruitment and retention strategies relevant to female barristers. The research should consider factors that are stopping women advancing in the profession.

A number of initiatives which have been identified as relevant in the area of recruitment and retention of women lawyers, including female barristers, and which the Recruitment and Retention of Lawyers Working Group and the EOL Committee should consider are:

- ◆ networking opportunities;
- ◆ mentoring;

- ◆ availability and adequacy of continued professional development education for female barristers;
- ◆ availability, appropriateness and suitability of flexible work practices; and
- ◆ any other initiatives it considers appropriate.

In order to provide a practical guide to assist bar associations to develop strategies and initiatives aimed at recruiting, retaining and advancing female barristers, the Law Council has developed the Best Practices Action Plan (Action Plan). The suggestions contained in the Action Plan are further aimed at improving briefing practices at the Bar. The Action Plan is designed to be read in conjunction with the Strategy.

The Recruitment and Retention of Lawyers Working Group and the EOL Committee should also consider whether there are any barriers in advancement of female barristers due to the selection criteria currently employed by decision-makers in applications for appointment to Senior Counsel.

The Recruitment and Retention of Lawyers Working Group and the EOL Committee should note that in 2008 the Standing Committee of Attorneys General (SCAG) considered the report on the outcomes of the Harmonisation Conference and recommended the following strategies, among others, to increase the number of senior female barristers:

- ◆ "Giving female barristers more opportunities to take on complex briefs to enable them to gain the requisite experience to be appointed as Senior Counsel;
- ◆ Conducting research on the reasons for the attrition rate of female barristers after the age of 40 years and developing strategies to retain female barristers based on the results."

It is further recommended that the Court Appearance Survey be repeated in 2014 in order to measure the effectiveness of any recruitment and retention strategies implemented as a result of the recommendations of this Strategy.

Summary of main recommendations relevant to increasing the proportion of women going to, remaining, and advancing at the Bar

Recommendation 1: That the Law Council's Recruitment and Retention of Lawyers Working Group, in conjunction with the EOL Committee, be requested to critically examine the existing recruitment and retention strategies relevant to female barristers.

Recommendation 2: That the Court Appearance Survey be repeated in 2014 in order to measure the effectiveness of any recruitment and retention strategies implemented as a result of the recommendations of this Strategy.

High Level Indicators and Evaluation

The Recruitment and Retention of Lawyers Working Group should be requested to formally report on the outcome of the above reference to the Law Council Board of Directors by June 2011.

Strategic Goal 2: Engagement of female barristers in appearance work by private law firms and other briefing entities

Nationally, the 2009 Court Appearance Survey results showed that female barristers appeared on behalf of private law firms in only 14 percent of matters and on behalf of other entities in 30 percent of matters. As noted above, female barristers comprise 19 percent of the Bar population. The findings suggest that female barristers appear on behalf of private law firms in substantially lower proportions than they exist in the Bar population. Furthermore, the fact that female barristers appeared on behalf of other entities in higher proportions than they existed at the Bar could partly be explained by the fact that the Commonwealth and some State Governments have made a commitment to the advancement of female barristers through their adoption of the Law Council's Equitable Briefing Policy or their own equal opportunity policies.

Equitable briefing practices maximise choices for legal practitioners and their clients, promote the full use of the Independent Bar, and optimise opportunities for practice development of all counsel or solicitor advocates. The adoption of equitable briefing practices by law firms can play an important role in the progression of women in the law, the judiciary and the wider community.

The Law Council developed, and in 2004 adopted, the Equitable Briefing Policy. The Equitable Briefing Policy was designed to raise awareness of and propose strategies for addressing discriminatory briefing practices. Since its introduction, the Equitable Briefing Policy has been taken up by state governments and agencies, law practices and many other organisations and businesses (**briefing entities**).

The Equitable Briefing Policy was designed for the purpose of encouraging briefing entities to:

- ◆ identify female counsel in the relevant practice area; and

- ◆ genuinely consider engaging such counsel; and
- ◆ regularly monitor and review the engagement of female counsel; and
- ◆ periodically report on the nature and rate of engagement of female counsel.

In 2009, a webpage was created on the Law Council's website which provides the facility for briefing entities to formally adopt the Equitable Briefing Policy and submit annual reports online to the Law Council. The annual reports are expected to provide data about the perception of discrimination, the percentage of briefs directed to female barristers and the remuneration received by barristers. A list of all briefing entities which have adopted the Equitable Briefing Policy and who have chosen to have their briefing entity's name published is publicly accessible on this website.

The Law Council has also developed an Implementation Kit in order to assist all legal practitioners who wish to implement the Equitable Briefing Policy.

Although the 2009 Court Appearance Survey examined the extent of appearances before Australian superior courts by female barristers (as opposed to briefings, which are promoted by the Law Council's Equitable Briefing Policy) it appears that the Equitable Briefing Policy may have had some impact on the extent of engagement of female barristers. It is, however, assumed that an increase in briefings of female barristers has influenced an increase in their appearances on behalf of 'other entities' before Australian superior courts. Therefore, this Strategy regards the Equitable Briefing Policy as one of the key instruments to be used in promoting structural and institutional change within the legal profession and consequently addressing the discrepancy.

Strategic Considerations and Critical Issues

In addressing the issue of discrepancy between the engagement of female barristers in appearance work by private law firms and other briefing entities, this Strategy identifies the following perceptions for consideration:

- ◆ women should be involved in 'less demanding' work that does not require them to maintain the hours and commitment required when conducting major cases;
- ◆ clients choose and/or demand that male barristers be engaged in their case;
- ◆ direct or indirect discrimination against women at the Bar by the clients and those segments of the private legal profession who brief barristers;

- ◆ advocacy work is more suited to the masculine personality, and therefore male barristers;
- ◆ female barristers are not suited to lucrative commercial work at the Bar performed predominantly by male barristers.
- ◆ female barristers are more suited to less lucrative family and criminal work at the Bar.

Regardless of whether the concerns identified above accurately reflect the realities of practice at the Bar, the existence of these perceptions has been well documented.²⁶

Recommendations

A number of initiatives may be of relevance to the promotion of an increase in the number and quality of briefs given to female barristers:

- ◆ promotional initiatives for the formal adoption of the Equitable Briefing Policy by all briefing entities, particularly private law firms;
- ◆ engagement in networking and lobbying activities by female barristers; and
- ◆ proactively addressing perceptions and negative stereotypes by clients and briefing solicitors.

In addition, there may be a need for further qualitative research to be conducted into the benefits experienced by ‘other entities’ in briefing female barristers.

Promotional initiatives for the formal adoption of the Equitable Briefing Policy

Prior to the establishment of the facilities for the formal adoption of the Equitable Briefing Policy on the Law Council’s website, no centralised or streamlined process for reporting of briefing practices or formal record of briefing entities that supported the Equitable Briefing Policy existed. With the launch of the Law Council webpage, the legal profession will benefit from the publication of annual reports of briefing practices by entities that adopt the Equitable Briefing Policy.

This Strategy regards the annual reporting requirements by the adopting entities as imperative in providing research data into a range of factors affecting female barristers. The annual report will also provide a streamlined process for reporting on these issues, thus allowing comparisons to be made across the different legal sectors.

In 2008, SCAG considered the report on the outcomes of the Harmonisation Conference and recommended that, in order to overcome the issue of small number of senior female barristers, the Equitable Briefing Policy

be implemented consistently across the country and that its impact evaluated.

Although the Commonwealth Government has not adopted the Law Council’s Equitable Briefing Policy, under the Legal Services Directions 2005, “Commonwealth agencies and legal service providers are encouraged to brief a broad range of counsel and, in particular, women.”²⁷ The Commonwealth policy applies to the engagement of counsel by agencies, the Australian Government Solicitor, and private lawyers who are acting for the Commonwealth or its agencies. It states that “[a]ll 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.”²⁸ 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. The Commonwealth policy also encourages agencies to publish annually 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.

Some State and Territory Governments have adopted either the Law Council’s Equitable Briefing Policy or other equitable briefing policies devised in their respective jurisdictions. For example, in Victoria,



“In our quiet crusade against the persistent status-quo, in both its overt and more subversive forms, we must look to leaders and mentors across the generations. A career in the law for a woman is truly fulfilling and rewarding. But it cannot occur in a vacuum. The links in the chain, made by the helping hand of our role models and mentors, must continue to span the generations.”

— Chief Justice Marilyn Warren

from 2002, its Attorney-General has required those law firms that contract to deliver legal services to the Victorian Government to have adopted the Victorian Bar Equal Opportunity Briefing Policy (Victorian Bar Policy).²⁹

The panel arrangements implemented by the Victorian Government apply to departments, panel law firms, and the Victorian Government Solicitor's office. Under the requirements of the Victorian Bar Policy, the Victorian Government produces an annual Barristers Briefing Report based on the information provided by those using the panel arrangements who are required to report on the percentage of fees paid, matters briefed and each type of matter briefed to male and female barristers.³⁰ It is also important to note that some firms that do not engage in Government work and corporate in-house legal departments have adopted the Equitable Briefing Policy.

As noted above, the Equitable Briefing Policy is regarded as one of the key instruments to be used in promoting structural and institutional change within the legal profession and consequently addressing the discrepancy. It is therefore recommended that the Law Council's Equitable Briefing Policy Working Group be requested to develop a formal communications strategy for the purpose of promoting the Equitable Briefing Policy and the development of the facilities on the Law Council's website for its formal adoption by briefing entities.

In developing the communications strategy, the Equitable Briefing Policy Working Group should consider the extent to which different strategies must be devised for the private practice and 'other entities' sectors. Furthermore, it should consider whether a formal consultation process with the different sectors should be developed in order to educate the profession and promote the Equitable Briefing Policy.

Networking and lobbying activities by female barristers

Two associations developed for advancement of equality issues concerning female barristers specifically and women in the legal profession generally are the Victorian Women Barristers' Association (WBA) and New South Wales Women Barristers Forum (WBF). The two associations and AWL and its constituent bodies have played a crucial role in providing female barristers with networking and lobbying opportunities.

The WBA was formed in 1993 as part of the Victorian Bar Associations initiative in order to:

- ◆ Promote awareness, discussion and resolution of issues which particularly affect women;

- ◆ Identify, highlight and eradicate discrimination against women in law and in the legal system;
- ◆ Advance equality for women at the Bar and the legal profession generally; and
- ◆ Provide a professional and social network for women barristers.

One of the first initiatives of the WBA was to lobby for research into equality issues for female barristers, which resulted in the commissioning of the *Equality of Opportunity for Women at the Victorian Bar* report by the Victorian Bar Council. Following the findings of that report, the Victorian Bar created the Women Barristers' Directory. The WBA was also instrumental in ensuring the adoption of the Victorian Bar Policy by the Victorian Bar.

In 2007, Victoria Law Foundation and the WBA launched an exhibition, *Women Barristers Then and Now*, which highlighted the experiences and achievements of some of Victoria's most prominent female barristers over the past 100 years. The exhibition tracked the key developments in female barristers' history in Victoria, as well as providing an overview of the personal experiences, challenges, significant achievements and contributions of female barristers to the legal profession.

In 2001, the WBA held a workshop for government departments and agencies to discuss their briefing practices. These departments and agencies were targeted because of their importance in terms of the volume of work generated by individual agencies, were easier to reach, and were more open to policy directions aside from pure commercial imperatives.

Similarly, in 2004, the WBF was established in New South Wales in order to:

- ◆ promote awareness, discussion and resolution of issues which particularly affect women barristers;
- ◆ identify, highlight and eradicate discrimination against women in law and in the legal system;
- ◆ advance equality for women at the Bar and in the legal profession generally;
- ◆ provide a professional and social network for women barristers;
- ◆ support and encourage women at the Bar;
- ◆ promote the interests and skills of women barristers; and
- ◆ to support diversity and flexibility at the Bar.

WBF was instrumental in ensuring the adoption of the Law Council's Equitable Briefing Policy by

the New South Wales Bar Association. WBF had consulted solicitors and other users of barristers' services to ascertain the best vehicle for promoting the services of female barristers. These consultations revealed that access to relevant information about the practices of female barristers was the immediate requirement, which resulted in the development of the female barristers' directory on the New South Wales Bar Association website.

Associations such as WBA and WBF are an important resource for female barristers and are regarded as crucial stakeholders in the promotion and advancement of the aims and objectives of this Strategy.

In view of the fact that no national body representing female barristers specifically currently exists, it is recommended that the Law Council's EOL Committee be requested to consider professional support and lobbying issues relevant to female barristers as a standing agenda item.

It is further recommended that WBA, WBF and other relevant groups at the Bar continue to develop networking opportunities that may be appropriate and useful to female barristers.

Perceptions by the public and briefing solicitors

A view still exists among male clients, particularly those involved in commercial matters, that female barristers may not be able to make the same commitment to their case as male barristers could. Male barristers are also often perceived to fight harder and understand the commercial nature of the cases. This could lead to law firms being reluctant to brief female barristers, regardless of whether the client has requested that a male barrister be briefed or not.

However, briefing solicitors may also project the stereotypes of female barristers and the type of work they can perform. In a study conducted on behalf of the Victorian Bar Council one respondent said: "You want to be able to refer the client to a barrister who is strong enough to handle the client's problem and the difficulty, or the perceived difficulty with female barristers, is that they may not have the intestinal fortitude to handle it."³¹

In April 2000, Chief Justice Black (as he then was) in a keynote address to a seminar on equality of opportunity for women at the Victorian Bar, called on solicitors to demonstrate leadership in the profession by promoting non-discriminatory briefing practices, and in particular by rejecting client preferences that women not be briefed.³² It is therefore important that the legal profession continues to challenge these societal stereotypes of women.

Although measuring outcomes in this area is extremely difficult, it is important that this issue is identified as a concern of the legal profession as a whole. The Law Council's Equitable Briefing Policy, whilst acknowledging that the selection of counsel or solicitor advocates is ultimately the decision of the client, notes that referring legal practitioners exercise significant influence in making that selection.

It is recommended that the Bar Associations, in conjunction with their respective law societies and institutes, further promote discussion of equality issues concerning female barristers and consider ways in which this discussion can be most effectively communicated to the broader legal profession.

It is further recommended that senior counsel should be encouraged by their Bar Associations to actively turn their minds to the existence of suitably qualified female barristers when considering who to recommend as junior counsel. Similarly, it is recommended that the respective law societies and institutes encourage solicitors to do the same when considering who to brief as junior counsel.

Finally, it is recommended that the respective law societies and institutes encourage solicitors to make a greater effort to identify women barristers working in their fields and to consider their briefing practices and processes within the context of their equal employment opportunity policies.

Further research into the benefits experienced by other entities in briefing female barristers

The findings of the 2009 Court Appearance Survey indicated that female barristers appeared on behalf of other entities in 30 percent of matters, that is, in substantially higher proportions than they existed in the Bar population.

One of the implications of this finding is that other entities are briefing female barristers more than expected due to the positive benefits associated with the briefing experience. However, no qualitative research has been conducted into these experiences. Such research would not only be expected to provide valuable insights into the benefits associated with briefing female barristers but would also provide valuable information for promoting an increase in the number and quality of briefs given to female barristers by private law firms.

It is recommended that further qualitative research be conducted into the benefits experienced by other entities in briefing female barristers.

Summary of recommendations relevant to the engagement of female barristers in appearance work by private law firms and other briefing entities

Recommendation 3: That the Law Council’s Equitable Briefing Policy Working Group be requested to develop a formal communications strategy for the purpose of promoting the Equitable Briefing Policy and the development of the facilities on the Law Council’s website for its formal adoption by briefing entities.

Recommendation 4: That the Law Council’s EOL Committee be requested to specifically consider professional support and lobbying issues relevant to female barristers as a standing agenda item.

Recommendation 5: That the WBA, WBF and other relevant groups at the Bars, law societies and institutes continue to develop forms of networking that may be appropriate and useful to female barristers.

Recommendation 6: That the Bar Associations, in conjunction with their respective law societies and institutes, further promote discussion of equality issues concerning female barristers and consider ways in which this discussion can be most effectively communicated to the legal profession.

Recommendation 7: That senior counsel be encouraged by their Bar Associations to actively turn their minds to the existence of suitably qualified female barristers when considering who to recommend as junior counsel.

Recommendation 8: That the respective law societies and institutes encourage solicitors to actively turn their minds to the existence of suitably qualified female barristers when considering who to recommend as junior counsel.

Recommendation 9: That the respective law societies and institutes encourage solicitors to make a greater effort to identify female barristers working in their fields and to consider their briefing practices and processes within the context of their equal employment opportunity policies.

Recommendation 10: That further qualitative research be conducted into the benefits experienced by other entities in briefing female barristers.

Recommendation 11: That information be provided in a collaborative effort by the Bar Associations, law societies and institutes regarding the existence of suitably qualified female barristers.

High Level Indicators and Evaluation

The Equitable Briefing Policy Working Group should be requested to formally report on the outcome of the above reference to the Law Council Board of Directors by November 2010.

The inclusion of professional support and lobbying issues for female barristers standing item on the EOL Committee’s agenda is to take effect immediately following the publication of this Strategy.

The Bar Associations, in conjunction with their respective law societies and institutes, should endeavour to further promote discussion of equality issues concerning female barristers within a 12 month period from the publication of this Strategy. They should also endeavour to hold such discussions on a continuous basis.

The qualitative research into the benefits experienced by other entities in briefing female barristers should be commenced within a two year period from the publication of this Strategy.

Strategic Goal 3: Appearance times of female barristers

The findings of the 2009 Court Appearance Survey indicate that, nationally, the average appearance time for male barristers was 3.8 hours. Female barristers, on the other hand, appeared on an average for only 2.8 hours.



“There needs to be greater recognition of the contribution women make to the Bar. Female barristers are well-prepared, insightful, compassionate and analytical.”

— Judge Liz Gaynor

Although the difference in average appearance times between male and female barristers nationally was significantly different, jurisdictional findings indicated that a statistical difference in appearance times only existed in Victoria, Australian Capital Territory, Queensland, and Western Australia.

The methodology employed by the 2009 Court Appearance Survey did not allow any conclusions to be made in relation to the nature and the cause of the difference in the appearance times between female and male barristers. There are a range of factors which could have impacted on this difference, including the type and complexity of the matter.

Strategic Considerations and Critical Issues

The discrepancy between the appearance times between female and male barristers is of concern as:

- ◆ it perpetuates a perception that female barristers are involved in less complex matters;
- ◆ may be resulting in female barristers being remunerated at a lower level than their male counterparts.

Regardless of whether the concerns identified above accurately reflect the realities of practice at the Bar, the existence of these perceptions has been well documented.³³

Recommendations

As the findings of the 2009 Court Appearance Survey did not reveal a significant difference in average appearance times between male and female barristers in all jurisdictions, further national research examining the potential causes of this difference is not considered appropriate.

It is recommended that the Victorian, Australian Capital Territory, Queensland and Western Australian Bar Associations, in conjunction with their respective law societies and institutes, engage in discussion of the potential issues contributing to the significant difference in appearance times between male and female barristers in these jurisdictions.

It is also recommended that the Victorian, Australian Capital Territory, Queensland and Western Australian Bar Associations, in conjunction with their respective law societies and institutes, consider ways in which this discussion can be most effectively communicated and endeavour to educate the legal profession about the issues they consider may be contributing to the significant difference in appearance times between male and female barristers in their jurisdictions.

Finally, it is recommended that all Bar Associations, in conjunction with their respective law societies

and institutes, promote the Law Council's Equitable Briefing Policy.

Summary of main recommendations relevant to appearance times of female barristers

Recommendation 12: That the Victorian, Australian Capital Territory, Queensland and Western Australian Bar Associations, in conjunction with their respective law societies and institutes, engage in discussion of the potential issues contributing to the significant difference in appearance times between male and female barristers in these jurisdictions.

Recommendation 13: That the Victorian, Australian Capital Territory, Queensland and Western Australian Bar Associations, in conjunction with their respective law societies and institutes, consider the potential issues contributing to the significant difference in appearance times between male and female barristers in these jurisdictions can be most effectively communicated and endeavour to educate the legal profession about the issues they consider may be contributing to this difference.

Recommendation 14: That all Bar Associations, in conjunction with their respective law societies and institutes, promote the Law Council's Equitable Briefing Policy.

High Level Indicators and Evaluation

The Victorian, Australian Capital Territory, Queensland and Western Australian Bar Associations, in conjunction with their respective law societies and institutes, should endeavour to:

- ◆ engage in discussion of the potential issues contributing to the difference in appearance times between male and female barristers in these jurisdictions; and
- ◆ consider ways in which discussion of these issues can be most effectively communicated and educate the legal profession about these issues

within a 12 month period from the publication of this Strategy. They should also endeavour to hold such discussions on a continuous basis.

The Bar Associations, in conjunction with their respective law societies and institutes, should endeavour to promote the Law Council's Equitable Briefing Policy within a 12 month period from the publication of this Strategy.

Summary of Recommendations

It is recommended that:

1. The Law Council's Recruitment and Retention of Lawyers Working Group, in conjunction with the EOL Committee, be requested to critically examine the existing recruitment and retention strategies relevant to female barristers.
 2. The Court Appearance Survey be repeated in 2014 in order to measure the effectiveness of any recruitment and retention strategies implemented as a result of the recommendations of this Strategy.
 3. The Law Council's Equitable Briefing Policy Working Group be requested to develop a formal communications strategy for the purpose of promoting the Equitable Briefing Policy and the development of the facilities on the Law Council's website for its formal adoption by briefing entities.
 4. The Law Council's EOL Committee be requested to specifically consider professional support and lobbying issues relevant to female barristers as a standing agenda item.
 5. The WBA, WBF and other relevant groups at the Bars, law societies and institutes continue to develop networking opportunities that may be appropriate and useful to female barristers.
 6. The Bar Associations, in conjunction with their respective law societies and institutes, further promote discussion of equality issues concerning female barristers and consider ways in which this discussion can be most effectively communicated to the legal profession.
 7. Senior counsel be encouraged by their Bar Associations to actively turn their minds to the existence of suitably qualified female barristers when considering who to recommend as junior counsel.
 8. The respective law societies and institutes encourage solicitors to actively turn their minds to the existence of suitably qualified female barristers when considering who to recommend as junior counsel.
 9. The respective law societies and institutes encourage solicitors to make a greater effort to identify female barristers working in their fields and to consider their briefing practices and processes within the context of their equal employment opportunity policies.
 10. Further qualitative research be conducted into the benefits experienced by other entities in briefing female barristers.
 11. Information be provided in a collaborative effort by the Bar Associations, law societies and institutes regarding the existence of suitably qualified female barristers.
 12. The Victorian, Australian Capital Territory, Queensland and Western Australian Bar Associations, in conjunction with their respective law societies and institutes, engage in discussion of the potential issues contributing to the significant difference in appearance times between male and female barristers in these jurisdictions.
 13. The Victorian, Australian Capital Territory, Queensland and Western Australian Bar Associations, in conjunction with their respective law societies and institutes, consider the potential issues contributing to the significant difference in appearance times between male and female barristers in these jurisdictions can be most effectively communicated and endeavour to educate the legal profession about the issues they consider may be contributing to this difference.
 14. All Bar Associations, in conjunction with their respective law societies and institutes, promote the Law Council's Equitable Briefing Policy.
- In order to successfully advance the specific recommendations identified above, it is further recommended that:
15. The Bar Associations, law societies and institutes and other relevant bodies hold workshops to discuss the findings of the 2009 Court Appearance Survey and this Strategy and to devise further practical suggestions in response to the findings.
 16. The recommendations contained in this Strategy be adopted and implemented within the identified time periods by the relevant Bar Associations and law societies.
 17. Those responsible for implementing various recommendations contained in this Strategy report regularly to the Law Council Board of Directors on actions taken in that respect.
 18. The results of the implementation process be monitored and evaluated after two years by the Law Council of Australia, unless this Strategy includes other time periods as relevant to its recommendations.

19. The Bar Associations and law societies liaise with the Women Lawyers Associations in respective states and territories.
20. The bar associations, law societies and institutes provide an annual report to the EOL Committee in relation to the performance of the above recommendations.

High Level Indicators and Evaluation

The success of this Strategy will be measured against a number of high level indicators by employing a combination of measures depending on the element of the program requiring measurement and the level of detail required. Evaluation measures may include:

- ◆ Quality measures, such as qualitative reviews of production or completed projects, opportunities for improvement and assessments of overall quality;
- ◆ Output measures, such as measures to quantify the number of communications distributed, coverage obtained (based on circulation or number of exposures) and impressions created (number of people who actually saw the message);
- ◆ Impact measures, such as survey tools to determine changes in awareness or knowledge, attitudes or opinions or respondents' reports of past, anticipated or intended actions or behaviours. Results will be measured in the aggregate by analysing audience group behaviours.

Target Audiences

Target audiences include:

- ◆ Briefing entities, such as law firms, in-house government and corporate legal departments.
- ◆ Female barristers.
- ◆ Legal profession generally.
- ◆ Commonwealth and State Attorney-Generals.
- ◆ Law graduates.
- ◆ Law students.
- ◆ General public, through media or otherwise.

Stakeholders

Key stakeholders for the implementation of this strategy include:

- ◆ State and Territory Bar Associations.
- ◆ State and Territory Women Lawyers Associations, AWL, WBA, and WBF.

- ◆ Female barristers.
- ◆ Legal profession, particularly law firms.
- ◆ Judiciary.
- ◆ Law graduates, through the Australian Law Students Association (ALSA).
- ◆ Journalists.

Messages

A comprehensive list of messages will need to be developed for use when communicating with various targeted audiences. General messages may include:

- ◆ Raising awareness of the contribution that female barristers make to the Bar. "There needs to be greater recognition of the contribution women make to the Bar. Female barristers are well-prepared, insightful, compassionate and analytical." (Judge Liz Gaynor)
- ◆ Raising awareness of the rewards and benefits of advocacy work. "The Bar gave me the flexibility to work my own hours, so I could take a day off when I needed to, or I could leave work early to pick up my kids and take them to a football game." (Judge Rachelle Lewitan).
- ◆ Although being at the Bar can be particularly difficult for female barristers, some issues can be managed. "What I say to women coming to the Bar is that you need to think very carefully about what sort of safety nets you have in place. And it is difficult because ultimately I decided that makeshift childcare was just not going to work out, and so it meant involving the expense of effectively having to employ someone full-time, and that's been the only way that I've been able to manage." (Judge Fran Hogan)
- ◆ Mentoring of female barristers is one of the key factors in their experience of the Bar. "In our quiet crusade against the persistent status-quo, in both its overt and more subversive forms, we must look to leaders and mentors across the generations. A career in the law for a woman is truly fulfilling and rewarding. But it cannot occur in a vacuum. The links in the chain, made by the helping hand of our role models and mentors, must continue to span the generations." (Chief Justice Marilyn Warren)
- ◆ Private law firms should endeavour to brief female barristers more frequently.

Endnotes

- 1 Law Council of Australia, Equitable Briefing Policy, available at http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=7E357020-1E4F-17FA-D281-CBF0157A9B43&siteName=lca.
- 2 However, Victoria was not included in the study as research was then being conducted into gender appearances in that State by the Victorian Bar's Equality before the Law Committee and the Victorian Bar Council. Furthermore, the Family Court did not participate in the AWL study due to anecdotal reports from judges and legal practitioners which indicated that women had achieved a significant degree of representation as advocates in that court.
- 3 Law Council of Australia, *2009 Court Appearance Survey – Beyond the Statistical Gap*, October 2009, available at http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=4CA18C78-1E4F-17FA-D2A2-192700295794&siteName=lca.
- 4 Graduate Careers Australia, Gender Profile, available at <http://www.gradsonline.com.au/GraDSOnline/gender/gender.asp?YR=2007&DL=1&FS=13&SS>.
- 5 1984 – Ainslie Lamb and John Littrich, *Lawyers in Australia* (2007) 67.
- 6 1993 – Christopher Roper, *Career Intentions of Australian Law Students*, Report No 95/2, Department of Employment, Education and Training (1997).
- 7 1997 – Maria Karras and Christopher Roper, *Career Destinations of Australian Law Graduates*, Centre for Legal Education, 2000, Ch 3.
- 8 1998 – Centre for Legal Education, *Australasian Legal Education Yearbook 1998*, Sydney.
- 9 Sharyn Roach Anleu, *Women in the Legal Profession* (1992) Law Institute Journal 164.
- 10 It was decided to use New South Wales as an example jurisdiction due to the availability of most comprehensive statistical information relevant to the gender division of the legal profession for both solicitors and barristers. It is hypothesised that similar trends are expected in other jurisdictions, although only limited statistics are available.
- 11 Keys Young Consultants, *Research on Gender Bias and Women Working in the Legal Profession* (1995); Urbis Keys Young, *The solicitors of New South Wales 2015*, available at <http://www.lawsociety.com.au/idc/groups/public/documents/internetcontent/025942.pdf>; Similar findings are also evident in the Australian Capital Territory.
- 12 These statistics are based on the data provided by the Law Society of New South Wales available for years 1988 to 2003, inclusive. In 2003, the Law Society of New South Wales ceased being the regulator of solicitors and membership of the organisation became optional. Therefore, figures for years 2003-2009 are based on regression analysis predictions conducted by Urbis Key Young.
- 13 Keys Young Consultants, *Research on Gender Bias and Women Working in the Legal Profession* (1995); Law Council of Australia, *2009 Court Appearance Survey – Beyond the Statistical Gap*, October 2009, 9.
- 14 *2009 Court Appearance Survey*, 9.
- 15 The Law Council acknowledges that only a small number of barristers progress to the senior ranks of the Bar, irrespective of whether they are male or female. However, according to the findings of the 2009 Court Appearance Survey, 774 (or 14 percent) of all barristers are male QCs/SCs, whereas only 53 (or 1 percent) of those are female QCs/SCs.
- 16 These courts included the State/Territory Supreme Courts (trial and appellate divisions); the Federal Court of Australia; the High Court of Australia; the Family Court of Australia; and the Family Court of Western Australia.
- 17 The survey forms relevant to matters heard by the High Court of Australia were completed by a Law Council policy officer from published transcripts.
- 18 The SC/QC and Junior Counsel categories combine to constitute the "Barrister" population.
- 19 The total of SC/QC and junior counsel categories.
- 20 All other legal practitioners who appear in court.
- 21 As noted above, the recording of Tasmanian figures affected the appearance tabulations for the survey categories of Junior Counsel (and therefore total Barristers) and solicitor/advocate. As the total Barrister population was the one for which a population could be quantified for comparison purposes with the survey findings, it was decided to create two categories for these figures: SC/QC and 'other counsel' (which includes Junior Counsel and solicitor/advocates).
At 31 December 2008, all barristers at the Tasmanian Bar were male, and likewise 100 percent of the appearances were by male barristers. Male 'other counsel' accounted for 57 percent of Tasmanian appearances, compared with 73 percent across Australia.
- 22 In Tasmania, male SCs/QCs appeared on behalf of private law firms and other entities in all matters, however, this is explained by the fact that there were no female barristers practising in Tasmania at the time when the Bar composition figures were determined. Nationally, SCs/QCs appeared on behalf of private law firms in 93 percent of matters and female barristers in 7 percent of matters. Male barristers appeared on behalf of other entities in 83 percent of matters and female barristers in 17 percent of matters.
Findings in relation to 'other counsel' indicated that 78 percent of appearances on behalf of private law firms were by male barristers and 22 percent by female barristers. Male 'other counsel' appeared on behalf of other entities in 41 percent of matters and female 'other counsel' in 59 percent of matters. Nationally, male 'other counsel' appeared on behalf of private law firms in 78 percent of matters and female 'other counsel' in 22 percent of matters. Male 'other counsel' appeared on behalf of other entities in 61 percent of matters, whereas female 'other counsel' appeared in 39 percent of matters.
- 23 The lack of significant difference for Northern Territory could partly be explained by a small sample size for this jurisdiction.
- 24 In Tasmania, the average appearance time for SCs/QCs was 2.0 hours. All appearances were by male SCs/QCs. Nationally, the average appearance time for male SCs/QCs was 4.9 hours, whereas female SCs/QCs appeared on an average for 4.1 hours.
Average appearance time for 'other counsel' (that is, Junior Counsel and solicitor/advocates) was 3.3 hours for males and 2.9 hours for females. Nationally, these figures were 2.9 hours and 2.1 hours, respectively.

- 25 See for example, Rosemary Hunter, 'Discrimination against women barristers: Evidence from a study of court appearances and briefing practices' (2005) 12(1) *International Journal of the Legal Profession* 12; The Victorian Bar, *Equality of Opportunity for women at the Victorian Bar, A report commissioned and published by the Victorian Bar Council* (1998); Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (1996); E Skordaki, *Glass slippers and glass ceilings: Women in the legal profession* (1996) 3 *International Journal of the Legal Profession* 7.
- 26 See n 25 above.
- 27 Legal Services Directions 2005, Appendix D, 27, available at [http://www.ema.gov.au/www/agd/rwpattach.nsf/VAP/%28A96D9A49EA98CFE780B96F6EE5A027F4%29-OLSC+-+Legal+Services+Directions+2005+-+PDF.pdf/\\$file/OLSC+-+Legal+Services+Directions+2005+-+PDF.pdf](http://www.ema.gov.au/www/agd/rwpattach.nsf/VAP/%28A96D9A49EA98CFE780B96F6EE5A027F4%29-OLSC+-+Legal+Services+Directions+2005+-+PDF.pdf/$file/OLSC+-+Legal+Services+Directions+2005+-+PDF.pdf).
- 28 Ibid, 28.
- 29 Victorian Bar, Equal Opportunity Briefing Policy, available at <http://www.vicbar.com.au/c.8.asp>.
- 30 See for example, Department of Justice, Barristers Briefing Report 2007-2008, available at <http://www.justice.vic.gov.au/wps/wcm/connect/30dbdb00404a86929908fbf5f2791d4a/VictorianGovernmentBarristersBriefingReport2007-08.pdf?MOD=AJPERES>.
- 31 Rosemary Hunter, *Discrimination against women barristers: Evidence from a study of court appearances and briefing practices*.
- 32 Honourable Chief Justice Michael Black, Keynote Address, Seminar on Equality of Opportunity for Women at the Victorian Bar (Melbourne, 5 April 2000) 9-10.
- 33 See n 25 above.



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