

# Briefing Senior Counsel in Government Matters

## Fact sheet and Checklist

### Department of Premier and Cabinet Circular c2018-06 Briefing Senior Counsel

[Department of Premier and Cabinet Circular c2018-06 Briefing Senior Counsel](#) sets out the procedure to be followed when government agencies wish to retain Senior Counsel to do government work.

The Circular notes that the Attorney General is responsible for ensuring the Government receives effective legal advice and representation.

The Attorney General is responsible for confirming that Senior Counsel is required for a particular matter, approving the proposed Senior Counsel and approving the rate of remuneration.

**Circular 2018-06** applies to **ALL** circumstances where Senior Counsel is proposed to be briefed from the private bar on behalf of the Government.

### NSW Government Equitable Briefing Policy for Women Barrister

The [NSW Government Equitable Briefing Policy for Women Barristers](#) applies to all NSW Government sector agencies that brief barristers.

The policy operates to entrench equitable briefing practices across Government. It supports measures to improve retention of women barristers in the legal profession, and supports a nationally consistent approach to equitable briefing practices.

The policy implements briefing targets and requires each agency to take all reasonable efforts to:

- Brief or select women senior barristers accounting for at least 20 per cent of all briefs or 20 per cent of the value of all brief fees paid to senior barristers; and
- Brief or select women junior barristers accounting for at least 30 per cent of all briefs or 30 per cent of the value of all brief fees paid to junior barristers.

### How to apply for approval to retain Senior Counsel

Applications must be made in writing setting out the reason for the request to brief Senior Counsel and emailed to:

[Enquiries-DCJLegal@facns.gov.au](mailto:Enquiries-DCJLegal@facns.gov.au)

If a request is urgent it needs to be clearly marked and reasons for the urgency noted in the written request.

### What needs to be included in an application?

#### Nominated Senior Counsel

The Premier's Circular notes the requirement that at least three (3) Senior Counsel who can undertake the work should be nominated.

It is a further requirement that **at least one female Senior Counsel** is proposed.

The Attorney General supports and promotes the [Equitable Briefing Policy](#) and monitors compliance by government agencies with this policy. Agencies are expected to make reasonable endeavours to

identify possible female Senior Counsel who could be engaged when nominating Senior Counsel.

Where the agency nominates a preferred Senior Counsel be appointed over others nominated, reason for the preference should be recorded. For example, prior work undertaken in the relevant area or Senior Counsel's availability.

The request should also confirm that the nominees are available to accept the brief and that they have agreed to accept the Attorney General's rate. Where a higher rate is sought clear justification for the higher fee must be provided as well as steps taken to negotiate rates.

## Explanation for Briefing a SC

The written request needs to provide sufficient detail about the legal proceedings which require the briefing of Senior Counsel. For example, the complexity of the issues to be ventilated, novel legal issues and principles raised by the matter, significance of the proceedings to the State/agency etc.

## Senior Counsel Curriculum Vitae (CV) should be attached

The application must attach a copy of each nominee's CV.

## Court and Approval Dates

Each request should detail critical dates, for example, upcoming court dates.

Where a request is **urgent**, and requires immediate approval or within 1-2 days, reason for the urgency must be provided. In cases of urgency advance telephone contact should be made with the Administration team on 8346 1388.

**Please refer to checklist below to ensure your application satisfies all requirements.**

## Attorney General's Rates

The Attorney General's rates are rates that have been set by the Attorney General which are payable to legal representatives (solicitors, junior and Senior Counsel) engaged by and on behalf of Government departments and agencies and public officials.

The Attorney General's rates include all overheads, secretarial, legal and administrative assistance but not out of pocket disbursements. The rates are GST exclusive.

The current Attorney General's rates are available at the following link:

<https://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/attorney-generals-rates-for-legal-representation.aspx>

For further information regarding the Attorney General's Rates please see the [Attorney General's rates for Legal Representation Fact sheet and FAQs](#).

## Reporting Requirements

Under the new Equitable Briefing Policy there is a requirement for agencies to report on the Attorney General's prior approval date for briefings to Senior Counsel. Therefore it is important for agencies to keep track of all engagements and the date of approval.

### For more information

<http://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/briefing-of-senior-counsel.aspx>

**The following checklist has been prepared to assist those submitting requests to brief Senior Counsel in compliance with Premier's Circular 2018-06.**

## Briefing Senior Counsel Checklist

### 1. Applicant Details

- Agency contact name
- Position/Job Title

Department/Agency/Division

Email address

Contact phone number

## 2. Identify the services required

Advice

Transaction

Litigation/Representation

Appeal

## 3. Type of Briefing

Direct [agency is briefing the SC directly]

Indirect [agency is briefing the SC through a law firm] – specify through which law firm the engagement is being made

## 4. Timeframe

Indicate Delivery Timeframe / Matter of Urgency

## 5. Information about the request

Senior Counsel is required due to novelty of legal issues, significance of matter to the agency/State etc.

## 6. Have 3 Senior Counsel been nominated?

nominate **three** SC

is **one** a female SC

is a nominee the preferred SC, if so why?

## 7. Attach Senior Counsel CVs

CV's for all the nominees attached

## 8. AG's Rate and Availability

Confirm the nominees are available to accept the brief, and

Confirm that the nominees will accept the AG's rates

## 9. Court and Approval Dates

Provide upcoming court dates

Provide important dates that the counsel need to be briefed by

Clearly indicate where urgency relates to the request and provide any reason for the urgency

## 10. Send Application

Email completed application and relevant information/attachments to:

[Enquiries-DCJLegal@fac.s.nsw.gov.au](mailto:Enquiries-DCJLegal@fac.s.nsw.gov.au)