

**REPORT**

Victorian Legal Services  
**BOARD + COMMISSIONER**

# VLSB+C Lawyer Wellbeing Project

Report on legal professionals' reflections on wellbeing in the legal profession and suggestions for future reforms.



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## Acronyms

<b>EAP</b>	<b>Employee Assistance Program.</b> An EAP is a work-based intervention program designed to enhance the emotional, mental and general psychological wellbeing of all employees. EAPs usually provide a set number of free counselling sessions for staff and their immediate family members.
<b>COLAP</b>	<b>Commission on Lawyer Assistance Programs (US).</b>
<b>CPD</b>	<b>Continuing Professional Development.</b> Australian lawyers must complete a certain number of CPD activities per year to be eligible to renew their practising certificate.
<b>LIV</b>	<b>Law Institute of Victoria (LIV).</b> The professional association for solicitors in Victoria.
<b>PC</b>	<b>Practising Certificate.</b> A PC is a lawyer's licence to practise. In Victoria, practising certificates are granted, and renewed on a yearly basis, by the Victorian Legal Services Board.
<b>VicBar</b>	<b>Victorian Bar.</b> The professional association for Victorian barristers.
<b>VLA</b>	<b>Victoria Legal Aid (VLA).</b> The statutory agency funded to deliver legal services to low-income Victorians.
<b>VLSB+C</b>	<b>Victorian Legal Services Board and Commissioner.</b> The primary regulator of the legal profession in Victoria.
<b>WATL</b>	<b>Wellbeing and the Law.</b> The Wellbeing and the Law Foundation is a joint initiative of the LIV and VicBar established in 2013 to support the health and wellbeing of the legal profession, people who work within the profession and law students.

## Executive Summary



This report presents the results from the VLSB+C's *Lawyer Wellbeing Project*, which aimed to work with the Victorian legal profession to shift the conversation about lawyer wellbeing away from a focus solely on personal resilience to instead highlight the systemic drivers of poor wellbeing. The project, which began in 2019, involved interviews with 37 people working across the profession including law students, early career lawyers, solicitors, barristers and retired and current judicial officers, as well as those working in organisations involved in the regulation and training of legal professionals. The themes in these interviews were systematically analysed by the author of this report.

This project was undertaken in response to the growing chorus of voices (inside and outside the profession) drawing attention to high rates of psychological distress, burnout, anxiety, depression and secondary traumatic stress (STS)/vicarious trauma affecting the legal profession in Australia.

This project made four major findings. The first was that participants described being acculturated early in their career into a professional culture that frequently made it very difficult for the average individual to achieve wellbeing. This culture began in law school, where most participants recalled a culture of overwork and stress. A recurring theme in respondents' reflections on their early career was that they had not been trained in the interpersonal and personal coping skills they would need to manage relationships with clients and exposure to vicarious trauma. Negative early career experiences were very common, with half of the respondents recounting experiences such as bullying and being forced to work very long hours, often for bosses described as bullies. For some, these negative early career experiences resulted in them seeking a career change. Some women who participated in the research also reported sexual harassment.

The second main finding was that respondents identified a range of cultural and institutional factors that made it hard to improve the wellbeing of legal professionals. These barriers included a widespread culture of accepting bullying or poor managerial training. Another commonly mentioned barrier to wellbeing was the current lack of supports to assist with vicarious trauma. Women and those from minority groups described even more intense barriers to wellbeing, involving being subject to sexual harassment, sexist or racist comments, or both. However, both male and female respondents identified one of the key overriding problems as sexism and the dominance of a particular kind of 'alpha male' culture.

The third main finding was that most respondents were positive about the direction of change in recent years and most, though not all, respondents conveyed optimism about a changing conversation regarding the wellbeing of legal professionals. Many mentioned that wellbeing had moved from being "unmentionable" to a normalised part of discussions. Respondents suggested that while the legal field has not yet embraced a systemic approach to the wellbeing of its professionals, there is increasing momentum towards this goal. Positive change is seen as occurring within VicBar and, although poor management practices were reported as prevalent,

many mentioned current supervisors who were modelling more positive approaches. Several interviewees referred to their organisations embracing more psychological approaches to support. However, other kinds of support, such as workload management, were not frequently mentioned by respondents.

Finally, around two thirds of respondents offered suggestions for improving wellbeing within the legal profession. These included embracing more comprehensive assistance programs like those in place overseas, increased collaboration with researchers, the increased promotion of counselling and debriefing programs, reforms to court practices, improved management training and the incorporation of a focus on wellbeing into CPD requirements.



## Introduction



The legal profession in Australia and in many other comparable jurisdictions is paying increasing attention to the wellbeing of its professionals. Both inside and outside the profession there has been a growing chorus of voices drawing attention to high rates of psychological distress, burnout, anxiety, depression and secondary traumatic stress (STS)/vicarious trauma. Historically within the profession, admission of a mental health problem has been viewed as admitting to personal weakness,<sup>1</sup> but this view is increasingly being rejected. High-ranking members of the profession, such as Justice Kirby,<sup>2</sup> have called for supports to be put in place rather than expecting individuals to weather stresses solely through personal resilience. There is also growing recognition that problems with depression, anxiety and burnout are not rare among legal professionals but instead are at very high levels and that these rates are driven by systemic factors within the profession itself.



### *Prevalence of mental health concerns within the legal profession*

The ABS National Health Survey estimates that around one in five Australians has experienced a mental or behavioural condition in the previous 12 months, with around one in ten experiencing depression or feelings of depression.<sup>3</sup> Among legal professionals these problems appear to be even more prevalent. Research suggests that their levels of non-specific psychological distress are high compared to population norms, as are their levels of depression.<sup>4</sup> Research finds that all professionals report higher levels of “depressive symptoms” compared to the norm in the entire Australian population, but lawyers are more likely than other professionals to report “moderate to severe symptoms of depression.”<sup>5</sup> Some studies have found rates of self-reported depression to be as high as around one in two among law students, solicitors and barristers in Australia.<sup>6</sup>

1 Michael D. Kirby, “Judicial stress - An unmentionable topic” *Australian Bar Review* 13 (1995): 101.

2 Kirby: 101.

3 Australian Bureau of Statistics, “4364.0. 55.001–National Health Survey: First results, 2014–15.” (2015).

4 Gianna Di Stefano, “Courting the Blues: Attitudes towards depression in Australian law students and legal practitioners,” *Bulletin (Law Society of South Australia)* 32, no. 4 (2010): 18; Medlow, Sharon, Norm Kelk, and Ian Hickie, “Depression and the Law: Experiences of Australian Barristers and Solicitors,” *Sydney Law Review* 33, no. 4 (December 2011): 771.

5 Beyond Blue 2007 *Annual professions survey: research summary*, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKEwiq7MSDp-TnAhU3lbcAHcpsDvYQFjACegQIARAB&url=https%3A%2F%2Fwww.judicialcollege.vic.edu.au%2Fsites%2Fdefault%2Ffiles%2F2019-07%2F2007%2520-%2520Beyond%2520Blue%2520-%2520Annual%2520Professions%2520Survey.pdf&usg=AOvVaw3gkBBCcqITsp2YMfgR3mbI:1,2>.

6 Norm Kelk et al., “Courting the Blues: Attitudes towards depression in Australian law students and lawyers,” Brain & Mind Research Institute, 2009; Sharon Medlow; Norm Kelk; Ian Hickie, “Depression and the Law: Experiences of Australian Barristers and Solicitors,” *Sydney Law Review* 33, no. 4 (December 2011): 771-800.

At the same time, research on attitudes towards depression within the profession finds that levels of understanding of the illness appear to be relatively poor,<sup>7</sup> resulting in workplace discrimination against individuals experiencing depression.<sup>8</sup> Rates of depression among Australian lawyers also appear to increase with age, suggesting that lawyers do not adapt to the stressors in their profession over time.<sup>9</sup> Lawyers with depression are more likely than other professionals to self-medicate with drugs or alcohol,<sup>10</sup> with the rate of problematic drinking estimated to be 32 per cent.<sup>11</sup> Lawyers are also likely to view treatment of mental illness by professionals somewhat suspiciously, with a substantial minority of survey respondents indicating that brief or long-term counselling might be “harmful” rather than “helpful”.<sup>12</sup>

Recent research on the “nature, prevalence, severity and sources of work-related stress among the judiciary”<sup>13</sup> also finds relatively high levels of psychological distress, symptoms of burnout and secondary traumatic stress (STS). Around half (52.9 per cent) of the judicial officers in Australia experience “non-specific psychological distress” in the moderate to very high range.<sup>14</sup> Most experience at least one symptom of STS,<sup>15</sup> with almost a third (30.4 per cent) in the moderate to severe range.<sup>16</sup> According to this research, one also finds among judges the same pattern of problematic alcohol consumption that is found within the broader legal profession.<sup>17</sup> However, the rates of general psychological distress in the “very high” range are lower among judicial officers than in other parts of the profession and the general Australian population.<sup>18</sup> Furthermore, the incidence of moderate to severe depression and anxiety is slightly lower than for the general population and around one third of the rate among lawyers.<sup>19</sup> This suggests that there is a problem of stress, though not widespread mental health problems, among judicial officers,<sup>20</sup> a finding that is consistent with the single study in the United States that has compared rates of

7 Di Stefano: 18; Medlow, Kelk and Hickie: 771.

8 Di Stefano: 18.

9 Medlow, 771.

10 Medlow, 771.

11 Chan, Janet, Suzanne Poynton, and Jasmine Bruce, “Lawyering stress and work culture: An Australian study,” *University of New South Wales Law Journal* 37 (2014): 1062.

12 Medlow, 771.

13 Schrever, Carly, “Australia’s first research measuring judicial stress: What does it mean for judicial officers and the courts?” *Judicial Officers Bulletin* 31, no. 5 (2019): 41.

14 Schrever, Carly, Carol Hulbert, and Tania Sourdin. “The Psychological Impact of Judicial Work: Australia’s First Empirical Research Measuring Judicial Stress and Wellbeing,” *Journal of Judicial Administration* 28 (2019): 141-168.

15 STS is defined as “the natural, consequent behaviours and emotions resulting from knowledge about a traumatizing event experienced by a significant other. It is the stress resulting from helping or wanting to help a traumatised or suffering person.” CR Figley, “Compassion Fatigue: Towards a New Understanding of the Costs of Caring” in BH Stamm (ed), *Secondary Traumatic Stress: Self-Care Issues for Clinicians, Researchers, and Educators* (Sidran, 2nd ed, 1999) 3, 10.

16 Schrever, Hulbert, and Sourdin, “The Psychological Impact of Judicial Work”: 164.

17 Schrever, Hulbert, and Sourdin: 164.

18 Schrever, Hulbert, and Sourdin: 163.

19 Schrever, Hulbert, and Sourdin: 164.

20 Schrever, Hulbert, and Sourdin: 164.

mental illness across different parts of its legal profession.<sup>21</sup> This difference, it has been suggested, may be due to judicial work being “quantitatively less demanding than legal practice,” or those appointed being “generally well-adapted to legal work and well suited to the judicial role” or judicial officers being, on average, of middle age, a time of relative mental stability.<sup>22</sup>

Overall, research has consistently found that rates of psychological distress are relatively high across the legal profession, with rates of depression appearing to be particularly high among law students, solicitors and barristers. Behind these figures is not only a story of often profound impacts on individuals and their families, but also one of significant financial costs for employers. Recent estimates suggest an average cost of \$3,200 per employee experiencing mental illness, and up to \$5,600 for employees afflicted with a severe mental illness.<sup>23</sup>

## + *Background to the project*

It is in this context of a growing push within the profession, and a steadily increasing flow of news media articles referring to lawyer wellbeing, that the VLSB+C undertook its *Lawyer Wellbeing Project*. The project’s aim is to work with the profession to shift the conversation about lawyer wellbeing away from a focus solely on personal resilience to highlight instead the systemic drivers of poor wellbeing. In 2019, over a period of six months, the VLSB+C team met with and interviewed a diverse group of 37 people from across the Victorian legal profession including law students, early career lawyers, solicitors, barristers and retired and current judicial officers, as well as those working in organisations involved in the regulation and training of legal professionals.

## + *Research methods*

The interviews were conducted by VLSB+C staff using eight open-ended questions. These questions addressed interviewees’ career paths to date, the challenges they have faced and mechanisms for coping with these, their stakeholders, how they and others will evaluate their success in the near future and any other reflections on the conversation. Not all of the questions were asked in all of the interviews, but all interviews covered the topics of respondents’ career paths and their reflections on wellbeing in the legal profession. Some of the interviews were with a single individual in the legal profession but most were group interviews with between two and four people. In most cases, interviews were completed by more than one interviewer from the VLSB+C. The interviews were not recorded but instead handwritten notes were taken and typed up shortly after the interview. For some interviews, both interviewers typed up their own set of notes resulting in two sets of notes for the interview.

<sup>21</sup> Lawrence S Krieger and Kennon M Sheldon, “What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success,” *George Washington Law Review* 83(2) (2015): 554.

<sup>22</sup> Schrever, Hulbert, and Sourdin: 163.

<sup>23</sup> KPMG, *Investing to Save: The Economic Benefits for Australia of Investment in Mental Health Reform*. Final report prepared for Mental Health Australia. Accessed online 05/03/19: <https://mhaustralia.org/publication/investing-save-kpmg-and-mental-health-australia-report-may-2018>, 2018.

To facilitate the production of this report, these notes were edited to remove any identifying details and permission was sought from interviewees prior to the notes being provided to the report's author. Out of 37 interviewees, 29 gave consent for the notes of their interview to be provided to the report writer. For nine of the interviews there were two sets of interview notes and for six there was one set of notes. To facilitate analysis, where there were two sets of notes these were combined into a single set. The analysis of these notes was informed by the Framework method, which is a widely used approach to qualitative data analysis for applied research.<sup>24</sup> The report author read the interview notes and identified themes and sub-themes. These themes were then assigned names, henceforth referred to as 'codes.' The main and sub-codes were organised into a coding framework that was reviewed by the VLSB+C and then refined based on its feedback. These codes were then applied to all of the interview notes and all of the data tagged at each code was then summarised. For example, all the instances in the notes where respondents mentioned positive changes or initiatives were coded as "positive changes or initiatives" and all the material with this code was then summarised. In a couple of cases, analysis of the notes revealed that interviewees' meaning was unclear and here the VLSB+C went back to the interviewees and obtained clarification on what precisely was meant in the original comments.



### *Respondents' personal relationship to the topic of wellbeing in the legal profession*

The characteristics of respondents in a research project shapes the nature of the research findings and thus it is important to note that almost all of the respondents in this project had a personal interest in the topic of wellbeing in the legal profession. The responses they provide thus may be read as representing the views of a group that is already engaged on this topic rather than as necessarily representing widespread views within the profession. A senior barrister, for example, spoke of having a "commitment to wellbeing" (ID 08, interviewee B). Another respondent, who worked in a government organisation, was focused on "leading organisational redesign/ restructure - building alignment, helping people with fear of change" and ensuring her senior team was "healthy, not stressed out" (ID 07).

Some had very personal relationships to the topic of wellbeing. For some, having experienced a family member with a mental health problem drove their interest in wellbeing. For others, their personal experience of mental health issues, including anxiety or depression, together with an 'activist' orientation or an interest in social justice, had compelled them to develop an interest in this area. For others, their interest developed from what they observed within the profession, including "from seeing so many unhappy lawyers and unhappy clients" (ID 15) or being involved in a Royal Commission they described as being "18 months of hell. [we were] pilloried every day and burned out" (ID 08).

<sup>24</sup> Srivastava, A. & Thomson, S. B., "Framework Analysis: A Qualitative Methodology for Applied Policy Research. Research Note," *Journal of Administration & Governance*, Vol. 4. No. 2 (2009).

Most respondents had either personally experienced, or witnessed others being subject to, systemic drivers of poor wellbeing, including overwork, bullying, sexism, racism and a valorisation of suppression of emotions over personal vulnerability and emotional intelligence. Many of the respondents had, over time, personally distanced themselves from this culture but they identified a range of barriers to more systemic change.

### + *Report aims*

The aim of this report is to:

- Present an analysis of the themes that emerged from the interviews in a form that can be disseminated to Victorian legal professionals, and more broadly;
- Inform future conversations with stakeholders about lawyer wellbeing; and
- Provide a foundation for possible future projects.

### + *Report outline*

Many of the respondents were actively engaged in actions to support greater wellbeing among legal professionals, and many conveyed optimism at the overall direction of change. However, respondents also conveyed that there is still much work to be done to achieve meaningful improvements in the wellbeing of legal professionals. Respondents' descriptions of the culture, practices and wellbeing of professionals in the legal field present a concerning picture that largely aligns with the findings of previous research.

This report is divided into sections on four main findings. The first and second sections address the systemic drivers of poor wellbeing in the profession and the barriers to addressing them. The third and fourth sections address some of the positive changes that have occurred in how wellbeing is addressed within the legal profession and ideas for reform. These latter sections of the report are included in recognition that some positive, but less well documented, changes are already occurring. The hope is that this report will help structure conversations that can propel forward current positive initiatives and bring into being new ideas for reform.



## Experiences of being acculturated into the legal profession



Consistent with previous research, participants in this study described a professional culture that frequently makes it very difficult for the average individual to achieve wellbeing. Respondents frequently revealed an experience of acculturation into the legal profession which involved learning that they should not prioritise their personal wellbeing and that any failure to cope with pressures was a result of their personal weaknesses. The pressures that they faced can be described as being horizontal (from peers), vertical (from firms, bosses and clients) and internal (perfectionism and self-criticism). These different sources can also be viewed as inextricably linked together and linked to the legal culture. For example, respondents reported that the trait of perfectionism was fostered in their early career by their superiors. Another example is that respondents reported that much of the extreme stress they experienced in interacting with clients resulted from receiving inadequate training in managing clients and a lack of debriefing opportunities. This section focuses on professionals' acculturation into the legal profession, while the following section elaborates on some of these themes and highlights how elements of the legal culture pose a barrier to a greater focus on wellbeing.



### *A culture of overwork and stress in law school*

Participants' recollections of their training suggest that a culture of overwork and stress was established in law school. Respondents who were current students described the degree as "very stressful." Two current law students who described the degree as having a "big workload", stated that they had felt "burnt out by the end of first year" and offered the view that, within the degree, "expectations are overwhelming" (ID 05). Students felt that law degrees aim to prepare them for a career in which overworking is the norm, setting unreasonable workloads and encouraging hyper-competitiveness rather than training them to establish more balanced practices.



### *Lack of training in interpersonal skills and coping strategies*

A recurring theme in respondents' reflections on their early career was that they had not been trained in the interpersonal and personal coping skills they would need to manage relationships with clients and exposure to vicarious trauma, a finding that is consistent with other research.<sup>25</sup> This suggests that their law degree training prioritised furnishing them with an understanding of the law, to the exclusion of other important professional skills including positive coping and relationship management skills.

<sup>25</sup> See James, C, "Lawyers' wellbeing and professional legal education," *The Law Teacher* 42(1) (2008): 85-97.

Indeed, a recurring theme was that legal training, and the culture of law more broadly, actively promote ways of acting and being that undermine individuals' wellbeing and that of their colleagues and clients. One current lawyer and academic reflected:

*[The] training and belief in how lawyers should operate suppresses [and] does damage to who they are intrinsically and leads for example, to barristers treating clients as jobs for the day (without any empathy) [with them for instance focusing on communicating technical information rather than seeking to understand the clients' emotions regarding the case]. [Sometimes] clients [are] left shell-shocked by [the] lack of emotional intelligence and decency that barristers display (ID 15).<sup>26</sup>*

This culture was reinforced during their early career where, as one respondent reflected there were “no conversations about wellbeing” but instead they were left to “sink or swim” and operated in a culture of “build your own resilience” (ID 08) rather than being offered supports. The idea that any focus on wellbeing could be career-limiting was reinforced, for other respondents, when they observed a “succession of people with an interest in wellness [being] made redundant” (ID 10).

## Culture of bullying and long work hours for early career lawyers

Negative early career experiences were very common. In around half of the interviews, the respondents recounted such experiences. Some stated a belief that students graduating in law almost expect to be treated badly in their early careers and that the competitiveness for early career positions means that young lawyers are willing to accept poor conditions in return for experience. One reflected:

*You go in knowing you are going to be treated badly. [The] reality is that given the competitive culture you accept conditions that you shouldn't (ID 13).*

For one person, their tolerance of very poor conditions occurred in the context of an economic recession where their “fear of job loss [was] high” (ID 08) whereas for another it was because they had to stay for a minimum of one year to complete their supervised legal practice (ID 04). This idea that they had to accept poor conditions was sometimes reinforced by their superiors. One reflected that despite the poor conditions they were “[t]old they were lucky to be working there” (ID 08). Others reflected that, while they had not been personally subjected to bullying behaviour during their early career, they had observed junior staff being mismanaged by senior staff who were: “abusive, selfish, erratic, bad-tempered, and [who] can't give proper direction, or take proper instructions” (ID 14).

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<sup>26</sup> Text in square brackets ([ ]) has been added to improve readability. Note that these reflections are the views of a particular individual and not the position of the VLSB+C.

A very common negative early career experience was being forced to work very long hours by bosses described as “psychotic”, “intolerable” or as a “tyrant”, with one person recalling their “fear of not being able to go home to family” (ID 08) and another recalling working “14 hours, six days a week” (ID 04).

### + *Seeking a career change following negative early career experiences as lawyers*

For some of the study participants, these negative experiences were the catalyst for a career change. One participant, for example, who had been subject to extreme overwork during her articles and experienced a mismatch between her work-life and personal values, decided to return to study resulting in a new career (ID 04 interviewee A). However, other respondents continued into senior roles within the law (including by becoming barristers), despite extremely negative experiences early in their career.

### + *Hyper critical culture*

A few respondents reflected that they personally had a tendency towards perfectionism and being hyper self-critical but identified that this tendency was reinforced in early career training. This reinforcement took the form of “punitive consequences if [a task is] not done the right way [i.e. a sense that success/failure is determined by doing things the way your managing partner wants them done]” (ID 10, interviewee B) and the experience of receiving “no positive feedback, only critical [comments and] picking up mistakes. Perfectionism [insisted upon]” (ID 10, interviewee C).

### + *Sexism and sexual harassment*

Some women reported sexual harassment, with one stating that, at the mid-tier suburban law firm where she completed her articles, “Sexual harassment and racism were rife in the workplace. For example, male staff trying to touch the legs of junior female staff, the HR manager telling her she was ‘too smiley’, and a male senior staff member telling her he really liked Asian women” (ID 03).



## Barriers toward achieving wellbeing



Respondents identified a range of cultural and institutional factors that made it hard to improve the wellbeing of legal professionals. Around half of the respondents identified the culture in law as a barrier. The seemingly widespread acceptance of bullying, a lack of training in people management, the prevalence of legal professionals relying on poor coping mechanisms when experiencing stress, the cultural valuing of prestige and income generation over wellbeing, exposure to vicarious trauma and a cultural resistance to institutionalised practices of debriefing were named as key issues.



### *A culture of accepting bullying and poor managerial training*

Around a third of the respondents had experienced or witnessed junior staff being bullied by senior staff within legal firms, or judges or lawyers within the courts bullying other lawyers. References included a low-level bullying culture within a family law firm (ID 03), personal experience of being bullied by a CEO (ID 04), a lawyer's partner being bullied by judges (ID 08), bullying by a principal at a suburban law firm (ID 14) and defence lawyers bullying others at court (ID 20). A range of factors drove a culture in which bullying is accepted. Respondents stated that success is associated with generating revenue for their firm, and winning cases. A lack of interpersonal empathy, warmth or good management skills are not viewed as problematic unless they affect the person's ability to generate income and win cases. Respondents also described a culture in which it is unacceptable to express fear or distress and thus professionals were simply meant to tolerate abuse. Early career lawyers were particularly vulnerable because, as one described, "You feel like you have to work at a top tier law firm" (ID 17) but as described earlier, this meant that they were vulnerable to feeling that they had to accept bullying from senior colleagues which at times generated almost intolerable situations.

In many other cases, managers were not necessarily bullies but nevertheless were viewed as lacking managerial skills. As one respondent reflected:

*Lawyers may be good principals but terrible managers. Not everyone is suited to being a manager and it takes time to learn how (ID 04).*



### *Lack of supports to assist with vicarious trauma*

Another key barrier to improved wellbeing, which was mentioned by a little over half of the respondents, is their frequent exposure to vicarious trauma together with the cultural resistance to institutionalised practices of debriefing. Numerous respondents mentioned problems accessing debriefing, including when working with clients who are "terrifying/exhausting/draining" (ID 03), doing pro-bono work with very disadvantaged clients (ID 14) or dealing with child sex abuse cases and material

(ID 20), as well as a mention by one respondent of their lawyer partner's exposure to traumatic content at court (ID 08). Exposure to trauma frequently occurred early in lawyers' careers with one recalling that on their first day with a law firm they were "handed a file for an incest case and basically told to get down to the court i.e. thrown in the deep end. [There was] no care taken in terms of possible vicarious trauma" (ID 17). This approach to exposure to trauma appeared to be widespread, with one respondent reflecting that, at their workplace, lawyers have "This feeling that they just have to deal [with] and absorb vicarious trauma and threats from clients" (ID 19) and another respondent stating that "Nobody ever talked openly about the work or the trauma/pressure" (ID 20). The view was simply that "If you can't take the heat, get out of the kitchen" (ID 20).

### *Sexual harassment, sexism and racism*

Women and those from minority groups often experienced even more intense barriers as they commonly reported being subject to sexual harassment, sexist or racist comments, or both.

Some women had experienced poor accommodation of needs related to pregnancy or child-care responsibilities. Women who had become mothers had their professional commitment and competence challenged. One woman with children and a successful legal career recalled that, early in her career when she was pregnant with her first child, she had experienced discrimination, though she noted that this was some time ago and it had occurred overseas. Similarly, when she had children many years ago, another senior professional was "told she was 'not as sharp as you used to be' after she had children" (ID 08). Respondents gave no recent examples of experiencing such discrimination while working in Victoria. This may be because of the characteristics of the small sample rather than because such overt discrimination has ceased to occur.

Women were also disadvantaged by underlying forces relating to career progression in law. One reflected that the "Whole system relies too much on individual patronage and not formal required [processes]...Male partners [are] happier to give men opportunities because it is easier [and they are] not prepared to help women navigate a path that wasn't theirs" (ID 14). Here she reflected that men are more likely to gravitate towards other men but also that it is more difficult to mentor a woman because she would potentially face challenges that male mentees would not. She reflected that:

*To get women to partner level, you needed a five year plan and to be prepared to take a personal hit (i.e. supporting women involves personal sacrifice on the part of partners). This is because you needed to manage maybe two lots of leave, be custodians of their practice while they are on leave, [and] make sure they have ways to demonstrate skills, to progress (ID 14).*

## + Alpha male culture and valorisation of wealth and power

Both male and female respondents identified one of the key overriding problems as sexism and the dominance of a particular kind of masculine culture. Respondents reflected:

*[The] fundamental underlying problem is sexism (ID 14).*

*The systemic causes of poor wellbeing in the law... "It's the male factor"... The best solution would be women and men working together. Making the profession more women-focused is crucial... Until we have fewer alpha males, and more women, nothing will change (ID 02).*

This alpha male culture was also evident in respondents' reports regarding the use of inappropriate coping mechanisms (drugs and alcohol) to manage stress and anxiety. These reports align with patterns which have been identified by prior research into wellbeing in the legal profession.<sup>27</sup>

The valorisation of wealth and power also appear to be linked to this culture. As one respondent reflected, there is a culture where:

*Lots of people make lots of money from other people's misery, and they're absolutely willing to do so. Pots of money. [I] made this money [myself]; it's what enabled [me] to leave! It's capitalism. Trying to get rid of this system is like trying to end capitalism (ID 14).*

For some, the dangers of the allure of wealth and power became evident early in their career. One woman, who is no longer a practising lawyer, but at the time of the interview remained within the legal field, reflected that she had rejected the allure of wealth because "What she was cultivating personally versus what she was being asked to do and be at work was 'painful' and 'intolerable'" (ID 04, interviewee A).

<sup>27</sup> Chan, Poynton, and Bruce, 2014; Medlow, Kelk, and Hickie, 2011.



## Recent steps toward achieving wellbeing



Despite the above, most respondents were also positive about the direction of change in recent years. Many mentioned that wellbeing had moved from being “unmentionable” – as the then Justice Michael Kirby described it in 1995 – to a normalised topic for discussion.<sup>28</sup> The mindset that it is a privilege to be a legal professional and one should not complain, while still common, appears to be becoming less dominant.



### *Discussion of wellbeing has become normalised*

Perhaps unsurprisingly, perceptions of change were most pronounced among those working in the community sector. Given this sector’s focus on justice and equity it is not surprising that respondents in this sector were the most likely to talk about workplace cultures with a strong focus on positive management skills and a strong and institutionalised focus on wellbeing. For example, one respondent noted that in contrast to the private sector, “Wellbeing is part of the conversation with staff in the community legal sector” (ID 03). There were similar responses from those working in organisations that are involved in regulation, or education and training, within the legal field, with a respondent in this area, for example, suggesting that “Over five years, the issue of wellbeing has gone from taboo to normalised” (ID 04). At the same time, others noted that the historic lack of resources within the community legal sector and the expectation of altruism among staff place specific pressures on them. As one reflected:

*[The] community legal sector is an under-resourced, extremely busy sector. Thinking needs to be changed. If it is under resourced, you can only do so much. Staff are people too and you can’t just open the door of your practice and let every client in. Nobody can change the world (ID 03).*

Critical incidents were viewed as having propelled some of this momentum towards a greater focus on wellbeing. One respondent mentioned an incident at a court leading to the court organising a formal debriefing for staff and subsequently a wellbeing pilot which was viewed as having changed the conversation at the court. However, reflecting the need for such initiatives to be championed continuously, the respondent noted that this conversation had lost momentum over time and was only recently being rebooted (ID 20).

<sup>28</sup> Kirby: 101.

## + *New initiatives within the Victorian Bar*

Positive change was also seen as occurring within VicBar, although some viewed this change as being isolated rather than widespread. One respondent reflected that, in relation to the “Planning Bar – [wellbeing] is well supported, [there is a] high proportion of women” (ID 08) and they viewed this as making it a “positive outlier” (ID 08). Other respondents were more optimistic about widespread change occurring at the Bar. One argued that there are now “Champions on the bench who have investment in the conversation. Tough guy voice is now ostracized” (ID 04) and multiple others reflected that *The Victorian Bar Quality of Working Life Survey* (2018) had supported new, positive conversations regarding wellbeing. One respondent (a barrister) reported that a seminar on ‘perfectionism’ came out of the work associated with this survey and that “Lots of other ideas [were also] coming from the results” (ID 08, interviewee D), including the idea of their organisation, together with the LIV, running seminars on the topic of unhealthy dynamics in interpersonal relations in law (ID 08). Another respondent stated their belief that VicBar had achieved more in this area compared to other states “because it had a specific person that people could go to when they needed assistance” (ID 02).

Although in recent years there have been a number of high-profile incidents in Victoria related to the poor mental health of legal professionals, including two suicide deaths of acting and retired Magistrates, many respondents viewed the State of Victoria as being a leader in the area of legal professionals and wellbeing. One respondent suggested:

*Victoria celebrates the fact that we are leading the way in this area. A lot has happened [in the last five years] (ID 04, interviewee A).*

## + *Increase in collaboration on wellbeing initiatives between organisations*

Respondents suggested that while the legal field has not yet embraced a systemic approach to the wellbeing of its professionals there is increasing momentum towards this goal. Reflecting this sentiment, one respondent, who had worked as a senior judicial officer, acknowledged that although work on wellbeing is occurring within ‘islands’, “More and more is being done within the ‘islands’” and there is increasing “momentum on each ‘island’”, including an EAP for the Magistrates’ Court and VicBar investing in mental health (ID 02). There was also reference to possible and current collaborations with the Wellness for Law Network,<sup>29</sup> which is viewed as an important positive part of the current system because it is about links between academic researchers and the legal profession and because the network’s conference brings people together (ID 02).

<sup>29</sup> <http://wellnessforlaw.com/about/>.

## + *Improvements in managerial practices*

Although many of the respondents referred to the prevalence of poor management practices within the legal field, many others mentioned current supervisors who are modelling more positive approaches. One former lawyer, who at the time of the interview was working in a non-legal role, reflected that unlike his former legal boss, his current boss is very supportive of staff and suggests that staff follow his lead (ID 10, interviewee B).

Several respondents were managers and expressed a strong commitment to good managerial practice. One manager of a legal team reflected she was “doing all [I] can to enable [my] team with different practices” (ID 12). A senior Barrister spoke of “pastoral care” being part of his role (ID 08, A). Another manager spoke of encouraging staff to use available counselling services (ID 03), while a further manager spoke of making sure their team was “healthy and not stressed out” (ID 07).

## + *Organisational level initiatives*

There were references in a number of interviews to the respondents’ organisations embracing more psychological approaches to achieving wellbeing, including offering psychological support through an EAP. However, other kinds of support, such as workload management, were not frequently mentioned by respondents. Staff from one organisation that had a majority female workforce reported that their organisation has an institutionalised focus on wellbeing, with a wellbeing committee attached to the Board, as well as a staff wellbeing committee on which a board member sits. This institutional structure ensured the organisation addressed issues of governance as well as more “tangibles” (ID 11). Issues being addressed include:

- the use of technology;
- workplace flexibility and workload;
- training for staff in how to interact better with clients;
- training in managing one’s own wellbeing (self-talk, workload management, etc.);
- support for managers to better manage and monitor staff workload; and
- restructuring the EAP (getting a new provider, rebranding and communicating it better to staff), resulting in increased uptake (ID 11).

## *Individuals identified as moving forward the wellbeing agenda*

Respondents referenced a wide range of people who are, and have been, working on wellbeing and whose work was viewed positively. These included:

- Justice Michael Kirby AC CMG, who has been one of the early champions;
- Justice Shane Marshall AM, a former judge of the Federal Court of Australia, who has spoken out about his experience with depression;
- Michael Rozenes AO QC, former Chief Judge of the County Court of Victoria who was an initial champion concerned about losing judges due to overwork; and
- Dr Rob Gordon, a psychologist who focuses on trauma and who has presented to judges from the County Court of Victoria.

Respondents also identified other individuals with a specific interest in the wellbeing of legal professionals. Individuals identified were working in a range of roles, including at the Magistrates' Court, community centres and organisations designed to assist disadvantaged groups with legal issues and centres affiliated with the legal profession (including in training or research roles).

## *Views on momentum for change*

Most, though not all, respondents conveyed optimism that the conversation regarding the wellbeing of legal professionals is changing. The most commonly identified change by respondents was that it is viewed as increasingly unacceptable within the profession to expect people to withstand long work hours and exposure to vicarious trauma without support. Negligent or bullying management practices were also increasingly being viewed critically. However, those respondents who were most personally involved in pushing for change expressed a greater level of frustration with the pace and direction of change compared to those who were interested, but not personally involved, in specific change. A former senior judicial officer who had been involved in a panel argued that he “Has pushed without success to raise the standards” and that while “he’s pushed Judges to do more about wellbeing, since the [suicide] deaths” he “feels without success” (ID 02). Although he was asked to participate in initiatives and organisations dedicated to improving the wellbeing of legal professionals and law students, he felt “Extraordinarily frustrated” because of “‘islands’ within the legal profession and no funding” (ID 02).



## Suggestions for improving wellbeing



Around two thirds of the respondents offered suggestions for improving wellbeing within the legal profession.

A small number of respondents who were personally involved in pushing for reforms suggested that Australia needs to embrace the kinds of comprehensive assistance programs that are in place overseas. One key example given is the American Bar Association's *Commission on Lawyer Assistance Programs (COLAP)*<sup>30</sup>. This initiative supports local and state-level lawyer assistance programs to provide hands-on support with alcohol and substance abuse and mental health problems. A former senior judicial officer who had personally pushed for reform in Australia reflected that this program allows more resources to be targeted at supports for wellbeing and also allows this assistance, which includes employing psychologists, to be more targeted at the specific needs of legal professionals (ID 02).

The development of programs such as the Wellbeing and the Law foundation (WATL),<sup>31</sup> which currently involves collaborations with researchers and brings people together at its conference, was also mentioned. Currently, this program's influence is limited because it does not (according to one respondent closely involved) have the involvement of universities, large law firms, or the courts. It was also suggested that WATL could be developed to be more like the American Bar Association's COLAP (mentioned above).

The need for the major 'players' in the Victorian justice system, including the Victorian Department of Justice and Community Safety, to be involved in strategies designed to improve the wellbeing of legal professionals, was mentioned by a number of respondents. As one respondent reflected, the practices of the 'big' players flowed onto the 'small players', including lawyers and their clients (ID 11). Corrections Victoria and Victoria Police are two of the big players whose practices have knock-on effects on smaller entities and on individuals, especially if these practices are not cohesive and joined up with those of other entities. The interviewee suggested that there needs to be greater collaboration around service models, and a focus on client-centred design. "We all have a joint function to service the client [...] There needs to be an integrated, holistic service model with everyone making sure that the system works cohesively" (ID 11). WorkSafe, the courts, Courts Services Victoria, the VLSB+C and VLA were also all mentioned as having an important role to play. It was also noted that there is a new Collaborative Planning Committee under the *Legal Aid Act 1978* (Vic) and that it is appropriate for the Committee to focus on these issues too.

<sup>30</sup> [https://www.americanbar.org/groups/lawyer\\_assistance/](https://www.americanbar.org/groups/lawyer_assistance/).

<sup>31</sup> <https://www.liv.asn.au/Professional-Practice/Supporting-You/Your-Psychological-Wellbeing/Wellbeing-and-the-Law-Foundation>.

Respondents argued for the promotion of counselling (or EAPs) and debriefing. These recommendations are not surprising given respondents' negative assessment of the common practice of not offering debriefing following exposure to vicarious trauma, and the culture of repressing personal emotions. Respondents suggested that there is a need to make these services more available. They also stated a belief that there is a need to challenge the culture which views engaging in counselling as "shameful" and associates participation with "appearing vulnerable" (ID 03). Respondents also argued that the provision of debriefing also requires a change in the culture in which lawyers "don't necessarily understand the value of debriefing" (ID 03).

Specific suggestions were also made for reforms at the courts. These included ensuring that the physical environment is set up better to ensure the safety of legal professionals. It was also suggested that the Magistrates' Court introduce an induction program and consider personal needs when allocating workload, work schedule and location.

As mentioned earlier, a recurring theme was that people managers in legal workplaces are not properly trained in staff management. Respondents recommended that training for managerial roles be institutionalised. Managers should also be trained to explicitly monitor the wellbeing of their staff rather than relying on an "open-door" policy. Suggestions were made to ensure that staff have "'slots of protected time' to make sure time is managed well and stress is less likely to occur" (ID 03). It was suggested by a number of respondents that there is a lack of funding for education and training and that the Practice Management Course, which is often required before being eligible to practise as a principal of a law practice, could perhaps be adapted to incorporate training on wellbeing and good management practice. Consistent with this recommendation, one respondent argued that "health and safety should be considered on the same level of legal practice obligations as servicing the client, it should not be a secondary issue" (ID 11).

Practising certificate (PC) renewals and the requirement for CPD were also raised by a small number of respondents. They suggested that these could be used as institutional mechanisms to much more forcefully inform people about their obligations regarding appropriate interpersonal conduct and to penalise those who were behaving inappropriately. As one principal of a law firm reflected:

*[The] regulator should provide examples of conduct when people renew Practising Certificates [PCs] and alert people to conduct that they shouldn't be engaging in. The messaging from [the] regulator hasn't been forceful enough. You shouldn't have a PC if you're sexually harassing people (or bullying). Messaging at PC renewal time could be much stronger. Repeated messaging [which addresses different dimensions of inappropriate behaviour, firstly] illegal/immoral conduct component [and secondly an] overwork component (ID 14).*

While respondents tended to suggest institutional-level responses rather than individual responses, some recommended the importance of individuals cultivating a life outside of their work and also seeking to stand up for themselves more and not letting themselves be constrained by perceptions of what a successful career in the law looks like.



## Conclusions



This report, which presents a systematic analysis of the reflections of participants in the VLSB+C's *Lawyer Wellbeing Project*, aims not only to provide a record of themes that emerged in these interviews but also to support future projects and reforms.

The first half of this report documents the substantial work that remains before it will be possible for most legal professionals to achieve wellbeing. Respondents described a concerning picture of dominant practices and cultures within the law that present an impediment to the average individual in law achieving wellbeing. These findings are very consistent with the findings of prior research into wellbeing in the legal profession (outlined at the beginning of this report).

The second half of this report aims to support future reform efforts by documenting the positive changes that are occurring and suggestions for further change that were advanced by participants. Future projects may aim to seek feedback on how some of the existing positive initiatives can be expanded and how some reform suggestions may be trialled or implemented. Currently, the drivers of poor wellbeing are complex and some appear to be deeply rooted in legal culture. Change will, for this reason, be complex and sometimes slow. However, the overall direction of current change appears to be positive and there is a strong desire and momentum for further improvement within at least some parts of the legal profession. Together these findings suggest that now is an appropriate time to start testing and trialling new initiatives to support the wellbeing of legal professionals.



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