# Addressing the mental wellbeing crisis in Australia's legal profession: The need for structural and cultural change

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### Abstract

The 2009 *Courting the Blues* report revealed significant mental wellbeing concerns within Australia's legal profession. Addressing these concerns is vital for individual lawyers and the broader legal profession, with consequences for public trust, professional standards, and occupational health and safety. However, efforts to address the mental wellbeing crisis often prioritise resilience-building of individual legal professionals over structural and cultural change to the profession. This prioritisation is evident within the legal admissions process, resilience education programs, and counselling initiatives. This essay argues that addressing poor mental wellbeing among lawyers requires the legal profession to divert its focus from individual resilience-building initiatives towards resolving systemic structural and cultural issues. In doing so, it argues that positive structural and cultural settings benefit individual wellbeing, reduce stigmatisation of mental illness, facilitate better access to support, and promote long-term, sustainable change. While more expensive, time-intensive, and resource-intensive than resilience-building strategies, addressing the structural and cultural causes of poor mental wellbeing is a crucial investment for Australia's legal profession.

### I Introduction

The prevalence of mental illness in Australia's legal profession has garnered increased recognition in recent years.<sup>1</sup> This recognition is partly attributable to the *Courting the Blues* report, which revealed high rates of psychological distress among legal practitioners.<sup>2</sup> Efforts to address mental wellbeing in Australia's legal profession primarily focus on enhancing the resilience of individual lawyers, despite recognising the problematic structural and cultural conditions of legal practice.<sup>3</sup> Resilience is a lawyer's ability to adapt and function in adversity.<sup>4</sup> In considering resilience education, mental health and legal admission, and counselling efforts, this essay argues that the legal profession should divert its wellbeing focus towards resolving structural and cultural issues. It explores the causes of poor lawyer wellbeing, before arguing that: (a) structures and cultures significantly influence individual wellbeing, (b) structural and cultural change reduces stigma and facilitates better access to interventions, and (c) resolving systemic issues supports more long-term, sustainable improvements to mental wellbeing.

<sup>&</sup>lt;sup>1</sup> Frances Gibson, 'Psychiatric Disability and the Practising Lawyer in Australia' (2012) 20(2) Journal of Law and Medicine 391, 391.

<sup>&</sup>lt;sup>2</sup> Norm Kelk et al, *Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers* (BMRI Monograph 2009-1, Brain & Mind Research Institute, University of Sydney, January 2009) 2.

<sup>&</sup>lt;sup>3</sup> Paula Baron, 'Althusser's Mirror: Lawyer Distress and the Process of Interpellation' (2015) 24(2) *Griffith Law Review* 157, 162–3, doi.org/10.1080/10383441.2015.1028125.

<sup>&</sup>lt;sup>4</sup> Penelope Watson, 'Using Peer Assisted Learning to Develop Resilient and Resourceful Learners' in Rachel Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016) 120, 122.

### Il Background: Causes of poor mental wellbeing

Mental wellbeing is a positive mental state where individuals successfully manage ordinary stresses, productively contribute to their workplace, and realise their full potential.<sup>5</sup> Thirty-five per cent of legal professionals surveyed by the International Bar Association (IBA) indicated that their work negatively affects their mental wellbeing.<sup>6</sup> Causes of poor lawyer wellbeing include problematic structural and cultural working practices, as well as personal attributes such as perfectionism and pessimism. Structural practices relate to legal institutions and institutional processes, whereas cultural practices relate to values and attitudes.<sup>7</sup>

Lawyer wellbeing is adversely affected by five salient structural conditions. Firstly, short-term charging practices<sup>8</sup> and unreasonable billing targets cause excessive pressure and workplace stress.<sup>9</sup> Secondly, poor or absent mentoring and management provide lawyers with insufficient professional support.<sup>10</sup> This is driven partly by the non-chargeable nature of these activities, which results in few incentives for effective management.<sup>11</sup> Thirdly, low decision latitude, particularly for young lawyers,<sup>12</sup> begets limited contact with clients and low self-worth.<sup>13</sup> Decision latitude refers to the perceived or actual degree of choice that lawyers have in their work.<sup>14</sup> Fourthly, the competitive, adversarial system frames law as a zero-sum game, causing lawyers to become demoralised by failure.<sup>15</sup> In an Australian survey, 66 per cent of legal professionals agreed that 'being competitive is part of law practice'.<sup>16</sup> Finally, the lack of mental wellbeing support—including support for vicarious trauma—leaves lawyers to struggle with the challenging nature of their work.<sup>17</sup> In the words of an Australian solicitor surveyed by the IBA:

the job is stressful and I deal with vulnerable people in difficult circumstances. In some ways, my work only shows me the things that are wrong in the world and I need to actively work to remember that this is not the true view of the state of things.<sup>18</sup>

There are three principal cultural factors contributing to poor lawyer wellbeing. Firstly, a lack of openness around mental wellbeing.<sup>19</sup> Secondly, abject work–life balance comprising inordinate work hours and a culture of 'workaholism'.<sup>20</sup> The Victorian Legal Services Board and Commissioner (VLSBC) reported that many early career legal professionals are forced to work long hours by 'psychotic', 'intolerable', or 'tyrant' managers, with one respondent working '14 hours, six days a week'.<sup>21</sup> Finally, acceptance of discrimination and harassment, including bullying, racism, sexism, and

<sup>14</sup> Ibid 56.
<sup>15</sup> Ibid 61.

<sup>&</sup>lt;sup>5</sup> World Health Organization, World Mental Health Report: Transforming Mental Health for All (Report, 2022) 8.

<sup>&</sup>lt;sup>6</sup> International Bar Association, Mental Wellbeing in the Legal Profession: A Global Study (Report, 2021) 11.

<sup>&</sup>lt;sup>7</sup> Lawrence M Friedman, 'Legal Culture and Social Development' (1969) 4(1) Law & Society Review 29, 34, doi.org/10.2307/3052760.

<sup>&</sup>lt;sup>8</sup> Sharon Medlow, Norm Kelk and Ian Hickie, 'Depression and the Law: Experiences of Australian Barristers and Solicitors' (2011) 33(4) Sydney Law Review 771, 795.

<sup>&</sup>lt;sup>9</sup> John Briton, 'Lawyers, Emotional Distress and Regulation' (Speech, Bar Association of Queensland 2009 Annual Conference, Gold Coast, 8 March 2009) 8.

<sup>&</sup>lt;sup>10</sup> Colin James, 'Lawyer Dissatisfaction, Emotional Intelligence and Clinical Legal Education' (2008) 18(1) *Legal Education Review* 123, 136, <u>doi.org/10.53300/001c.6208</u>.

<sup>&</sup>lt;sup>11</sup> Emma Jones et al, *Mental Health and Wellbeing in the Legal Profession* (Bristol University Press, 2020) 105, doi.org/10.1332/policypress/9781529210743.001.0001.

<sup>&</sup>lt;sup>12</sup> Richard Collier, 'Wellbeing in the Legal Profession: Reflections on Recent Developments (Or, What Do We Talk About, When We Talk About Wellbeing?)' (2016) 23(1) *International Journal of the Legal Profession* 41, 44, <u>doi.org/10.1080/09695958.2015.1113970</u>.

<sup>&</sup>lt;sup>13</sup> Martin EP Seligman, Paul R Verkuil and Terry H Kang, 'Why Lawyers Are Unhappy' (2005) 10(1) *Deakin Law Review* 49, 57, doi.org/10.21153/dlr2005vol10no1art268.

<sup>&</sup>lt;sup>16</sup> Janet Chan, Suzanne Poynton and Jasmine Bruce, 'Lawyering Stress and Work Culture: An Australian Study' (2014) 37(3) UNSW Law Journal 1062, 1080.

<sup>&</sup>lt;sup>17</sup> International Bar Association (n 6) 16.

<sup>18</sup> Ibid 35.

<sup>19</sup> Ibid 44-5

<sup>&</sup>lt;sup>20</sup> Collier (n 12) 44.

<sup>&</sup>lt;sup>21</sup> Victorian Legal Services Board and Commissioner, VLSB+C Lawyer Wellbeing Project (Report, 2019) 11.

sexual harassment.<sup>22</sup> Approximately one third of lawyers surveyed by the VLSBC had experienced or witnessed lawyers being bullied by judges or other lawyers.<sup>23</sup>

Advocates of enhancing the resilience of individual legal professionals may argue that the competitive, pessimistic, and perfectionistic attributes of individual lawyers are the primary causes of poor mental wellbeing.<sup>24</sup> This argument advances the idea that the legal profession attracts people who are inherently susceptible to poor wellbeing.<sup>25</sup> The following section outlines why this argument is untenable.

# III Structural and cultural impacts on individual wellbeing

Structural and cultural factors are more significant than individual attributes as causes of poor lawyer wellbeing. Consequently, efforts to address mental illness through structural and culture factors deserve greater focus than enhancing the resilience of individual lawyers. While individual attributes such as pessimism and perfectionism may contribute to poor wellbeing, structural and cultural factors influence and exacerbate these attributes.<sup>26</sup> The relational model of resilience characterises resilience not as an isolated attribute but as a dynamic product of the interactions between an individual and their environment.<sup>27</sup> Hence, a lawyer's cultural and structural setting influences their perception of wellbeing stressors.<sup>28</sup> The magnitude of this influence is apparent in the impact of law studies on student wellbeing. Although students entering law school generally exhibit below-average rates of psychological distress, these rates sharply increase upon commencing their studies.<sup>29</sup> This increased distress may be explained by systemic issues such as heavy workloads, competitive environments, doctrinal analysis that emphasises 'thinking like a lawyer', and low intrinsic motivation for studying law.<sup>30</sup> This sharp increase in psychological distress refutes claims that the legal profession attracts people who are inherently susceptible to poor wellbeing. Instead, structural and cultural learning and working environments shape these perceived incongruous attributes. Therefore, structural and cultural working practices are arguably more important causes of Australia's legal wellbeing crisis.

The influence of cultural and structural working practices on individual attributes is further supported by findings that the ethical culture of a workplace influences the wellbeing of law graduates.<sup>31</sup> Workplaces that prioritise personal ambition, power, and self-interest over ethical conduct foster poor wellbeing, whereas cultures of high integrity foster positive wellbeing.<sup>32</sup> This suggests that structural and cultural working practices, including ethical cultures, have a greater impact on lawyer wellbeing than personal attributes.

It follows that addressing the structural and cultural factors of poor wellbeing, which focus on environmental causes, is a more effective approach to addressing mental illness than enhancing the resilience of legal professionals, which focuses on individual causes. Examples of resilience programs include the University of Wollongong's attempts to introduce law students to meditation and self-awareness strategies,<sup>33</sup> and Resilience@Law, which provides compulsory resilience training to law

32 Ibid.

<sup>&</sup>lt;sup>22</sup> Baron (n 3) 158.

<sup>&</sup>lt;sup>23</sup> Victorian Legal Services Board and Commissioner (n 21) 12.

<sup>&</sup>lt;sup>24</sup> Collier (n 12) 44.

<sup>&</sup>lt;sup>25</sup> Baron (n 3) 162.

<sup>&</sup>lt;sup>26</sup> Collier (n 12) 5.

<sup>&</sup>lt;sup>27</sup> Colin James, 'Resilient Lawyers: Maximizing Well-Being in Legal Education and Practice' in Rachel Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016) 108, 108.

<sup>&</sup>lt;sup>28</sup> Chan, Poynton and Bruce (n 16) 1072.

<sup>&</sup>lt;sup>29</sup> Baron (n 3) 160.

<sup>30</sup> Ibid 161.

<sup>&</sup>lt;sup>31</sup> Stephen Tang, Vivien Holmes and Tony Foley, 'Ethical Climate, Job Satisfaction and Wellbeing: Observations from an Empirical Study of New Australian Lawyers' (2020) 33(4) *Georgetown Journal of Legal Ethics* 1035, 1064–5.

<sup>&</sup>lt;sup>33</sup> Medlow, Kelk and Hickie (n 8) 795.

graduates across Australia.<sup>34</sup> While these programs may provide some aid in Australia's legal wellbeing crisis, the emphasis on recognising and self-managing distress places disproportionate responsibility on individuals. Efforts to enhance wellbeing of individual lawyers fail to recognise that the legal environment, created by structural and cultural working practices, is the more significant determinant of lawyer wellbeing.

By contrast, initiatives like the Tristan Jepson Memorial Foundation's *Psychological Wellbeing Best Practice Guidelines* shift the focus from the individual towards changing workplace cultures.<sup>35</sup> For example, the *Guidelines*' PF (Psychological Factor) 12, 'Psychological Protection', addresses the cultural issue of bullying and intimidation, thereby recognising the role of the workplace environment in shaping resilience.<sup>36</sup> Therefore, focusing on individual resilience-building strategies ignores the critical role that structural and cultural factors play in exacerbating individual causes of poor wellbeing.

#### IV Stigma and access to interventions

Destignatising mental illness through structural and cultural change is preferable to enhancing individual resilience. Poynton et al attribute mental health stigma to a culture of productivity.<sup>37</sup> This culture restricts access to wellbeing by suggesting that lawyers who require mental health support are less productive and less worthy of career advancement.<sup>38</sup> Forty-one per cent of legal professionals surveyed by the IBA indicated that concerns around career impacts would deter them from discussing mental wellbeing issues with their employer.<sup>39</sup> Furthermore, lawyers surveyed by the VLSBC observed a 'succession of people with an interest in wellness [being] made redundant'.<sup>40</sup> Such views persist even where some wellbeing services are available. For example, a solicitor in a large law firm viewed acknowledgement of mental health concerns as 'fatal' to her career, despite the provision of depression seminars by her employer.<sup>41</sup> Hence, addressing mental illness stigma by normalising mental health support may assist in alleviating poor mental wellbeing by supporting earlier interventions. In contrast, prioritising individual resilience may perpetuate the 'Darwinian' view of the profession which considers lawyers suffering from poor mental wellbeing as ill-suited to legal practice.<sup>42</sup> While structural and cultural change can destigmatise mental illness, improving individual resilience may drive lawyers to internalise their wellbeing challenges, thereby exacerbating poor wellbeing in the profession.

Structural changes to the admissions process demonstrate how addressing systemic issues can change attitudes to mental wellbeing, more so than resilience-based approaches. In 2016, the Australian Law Students' Association requested that mental health disclosures be removed from legal admission requirements, fearing that these disclosures may further stigmatise mental illness and dissuade students from seeking support.<sup>43</sup> In response, the Law Admissions Consultative Committee amended its guidelines to clarify disclosure requirements.<sup>44</sup> Specifically, in section 8.2, the guidelines clarify that the Admissions Boards are only concerned with the applicant's *current* condition and encourage applicants to seek medical assistance.<sup>45</sup> Additionally, sections 8.3 and 8.4 clarify, with examples,

<sup>&</sup>lt;sup>34</sup> Baron (n 3) 163.

<sup>&</sup>lt;sup>35</sup> Tristan Jepson Memorial Foundation, *TJMF Psychological Wellbeing: Best Practice Guidelines for the Legal Profession* (Guidelines, 12 May 2014).

<sup>36</sup> Ibid 174.

<sup>&</sup>lt;sup>37</sup> Suzanne Poynton et al, 'Assessing the Effectiveness of Wellbeing Initiatives for Lawyers and Support Staff' (2018) 41(2) UNSW Law Journal 584, 605, doi.org/10.53637/AVJM9953.

<sup>38</sup> Ibid.

<sup>&</sup>lt;sup>39</sup> International Bar Association (n 6) 11.

<sup>&</sup>lt;sup>40</sup> Victorian Legal Services Board and Commissioner (n 21) 10.

<sup>&</sup>lt;sup>41</sup> Chan, Poynton and Bruce (n 16) 1090.

<sup>&</sup>lt;sup>42</sup> Michelle Sharpe, 'The Problem of Mental III-Health in the Profession and a Suggested Solution' in Reid Mortensen, Francesca Bartlett and Kieran Tranter (eds), *Alternative Perspectives on Lawyers and Legal Ethics: Reimagining the Profession* (Routledge, 2010) 269, 276.

<sup>&</sup>lt;sup>43</sup> Paula Baron and Lilian Corbin, 'Lawyers, Mental Illness, Admission and Misconduct' (2019) 22(1–2) *Legal Ethics* 28, 34, doi.org/10.1080/1460728x.2019.1692510.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

situations where applicants need not disclose mental health conditions.<sup>46</sup> Though these amendments do not entirely remove the mental health disclosure requirement, they balance public protection and stigma by creating a culture that values mental health support over productivity. This structural change assists both prospective and current lawyers to view mental illness as a manageable condition, while breaking down barriers to accessing support.

The legal admissions process also addresses mental illness through conditional admission, allowing applicants to practise subject to conditions like regular psychological examinations.<sup>47</sup> Conditional admission promotes cultural change by supporting lawyers with mental illness to access support in a way that does not restrict their capacity to join the profession.<sup>48</sup> This creates a culture where the legal profession is able to adapt to an individual's mental health circumstances, rather than the individual needing to conform to the depiction of an ideal, resilient legal professional. Provisions for conditional admissions and more explicit guidelines around mental health disclosures illustrate how addressing problematic structural and cultural factors can positively affect lawyers' access to mental health support while refuting the Darwinian view of legal practice.

### V Long-term, sustainable change

The legal profession should focus on the structural and cultural causes of poor lawyer wellbeing, as addressing these issues supports long-term, sustainable change. While improving the resilience of individual legal professionals assists lawyers in temporarily *enduring* wellbeing challenges, it fails to address the systemic issues necessary for long-term change.<sup>49</sup> Baron argues that lawyers are subject to the cultural values of the profession, causing them to view a 'good' lawyer as one who self-manages poor wellbeing.<sup>50</sup> Consequently, individuals enduring wellbeing challenges indirectly support a 'cycle of distress', diverting attention away from the underlying structural and cultural causes of poor mental wellbeing.<sup>51</sup> In contrast, focusing on structural and cultural working practices addresses issues further 'upstream' from the adverse outcomes, promoting more sustainable improvements to mental wellbeing.<sup>52</sup> This requires both hard and soft approaches, including reforming work cultures and health and safety regulations.<sup>53</sup> A 2013 study found that cultural and structural efforts to address mental illness, such as increased leave allowances and reduced workloads, were more effective than 'secondary interventions' centred on individual resilience-building.<sup>54</sup> By providing a solution, rather than a temporary fix to the lawyer wellbeing crisis, addressing structural and cultural working practices may not only address but also prevent poor mental wellbeing in the legal profession.

Examples of structural and cultural change supported and endorsed by researchers include normalising discussions around mental wellbeing,<sup>55</sup> treating mental wellbeing as a fundamental institutional goal,<sup>56</sup> allowing staff to engage in flexible working practices and access the breaks they are entitled to,<sup>57</sup> valuing people over profit,<sup>58</sup> supporting managers to develop their skills and capacities to monitor staff workload,<sup>59</sup> and veering away from a practice ethos that regards working long hours as a 'badge of

<sup>46</sup> Ibid 34-5.

<sup>47</sup> Ibid 34.

<sup>&</sup>lt;sup>48</sup> Andrea Stempien, 'Answering the Call of the Question: Reforming Mental Health Disclosure during Character and Fitness to Combat Mental Illness in the Legal Profession' (2016) 93(1) University of Detroit Mercy Law Review 185, 211.

<sup>49</sup> Collier (n 12) 54.

<sup>&</sup>lt;sup>50</sup> Baron (n 3) 175.

<sup>&</sup>lt;sup>51</sup> Ibid.

<sup>&</sup>lt;sup>52</sup> Poynton et al (n 37) 591.

<sup>&</sup>lt;sup>53</sup> International Bar Association (n 6) 14.

<sup>&</sup>lt;sup>54</sup> Poynton et al (n 37) 591.

<sup>&</sup>lt;sup>55</sup> International Bar Association (n 6) 44–5.

<sup>&</sup>lt;sup>56</sup> Medlow, Kelk and Hickie (n 8) 794.

<sup>&</sup>lt;sup>57</sup> Poynton et al (n 37) 614–5; Chan, Poynton and Bruce (n 16) 1101.

<sup>&</sup>lt;sup>58</sup> Chan, Poynton and Bruce (n 16) 1101.

<sup>&</sup>lt;sup>59</sup> Victorian Legal Services Board and Commissioner (n 21) 17.

honour'.<sup>60</sup> Broad education programs that do not merely provide facts but also address problematic beliefs, behaviours, and institutional policies and practices relating to mental wellbeing would also be beneficial.<sup>61</sup>

Comprehensive counselling programs, including in the Victorian Bar, offer a structural and cultural approach to addressing mental illness. The Victorian Bar provides counselling services outside the legal precinct yet near the barristers' chambers to balance accessibility and confidentiality.<sup>62</sup> In addition, the Bar has a 24/7 crisis counselling service and a resident psychologist who delivers wellbeing events and attends committee meetings.<sup>63</sup> Such a comprehensive counselling program combines proactive support with preventative education and traditional reactive counselling to create a culture where mental health support is part of the fabric of legal institutions. These programs are adaptable to local conditions, more so than resilience training. Medlow et al consider this to be critical, as diverse approaches must match the local conditions in which lawyers work, whether remote, urban, community-based, or in a large firm.<sup>64</sup> Therefore, although structural and cultural change take time, this multi-level approach recognises that a complex problem requires long-term investment into an integrated, systems solution.<sup>65</sup>

Advocates of individual resilience-building programs may argue that addressing structural and cultural issues is more expensive, time-intensive, and resource-intensive than resilience-building strategies.<sup>66</sup> However, the more sustainable alternative of addressing systemic cultural and structural issues is arguably a better 'investment' that will, in the long-term, be more socially and economically viable than temporary resilience measures that do not address the root of the issue.

### **VI** Conclusion

Addressing structural and cultural working practices that are problematic for mental wellbeing is of greater priority than enhancing the resilience of individual legal professionals. By referring to provisions in the legal admissions process, resilience education programs for students and graduates, and counselling and education programs, this essay has argued that addressing systemic causes of poor lawyer mental health recognises the influence of contextual factors on individual causes of poor wellbeing, reduces stigma and improves access to support, and encourages long-term, sustainable change in lawyer mental wellbeing. Addressing Australia's lawyer wellbeing crisis in this way is essential not only for lawyers themselves but also for professional standards, ethical decision-making,<sup>67</sup> occupational health and safety,<sup>68</sup> and the reputation of—and public trust in—the legal profession.

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<sup>&</sup>lt;sup>60</sup> Chan, Poynton and Bruce (n 16) 1101.

<sup>&</sup>lt;sup>61</sup> Medlow, Kelk and Hickie (n 8) 795.

<sup>&</sup>lt;sup>62</sup> Sharpe (n 42) 277.

<sup>63</sup> Ibid 278–9.

<sup>&</sup>lt;sup>64</sup> Medlow, Kelk and Hickie (n 8) 797.

<sup>65</sup> Poynton et al (n 37) 591.

<sup>66</sup> Ibid.

<sup>67</sup> Sharpe (n 42) 278.

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