

LAWYERING STRESS AND WORK CULTURE: AN AUSTRALIAN STUDY

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I INTRODUCTION

Recent research has suggested that stress, mental health, and drug and alcohol issues are a serious concern for the legal profession in Australia. Two surveys have highlighted the prevalence of mental health and wellbeing issues among Australian lawyers. The 2006 annual survey of Australian professionals found that members of the legal profession were more likely than other similar professionals to report moderate to severe symptoms of depression and use alcohol and other drugs to manage feelings of sadness and depression.¹ Similarly, a 2009 survey of over 2000 Australian law students, solicitors and barristers suggested that nearly 60 per cent of the respondents reported moderate to very high levels of psychological distress.² The authors concluded that legal educators, professional groups and law firms should raise awareness of mental health issues and offer support for the management of depression and psychological distress among students and practitioners.³

Questions have been raised about the extent to which the nature of legal practice and the work culture of the industry have contributed to the level of stress and depression.⁴ For example, the use of a billable hours fee structure in

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1 Beaton Consulting, 'Annual Professions Survey' (Research Summary, beyondblue, April 2007) 2–3 ('*Beaton Consulting Survey*').

2 Norm Kelk et al, 'Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers' (Report, Brain and Mind Research Institute, University of Sydney, January 2009) 12 <<http://www.cald.asn.au/docs/Law%20Report%20Website%20version%204%20May%2009.pdf>> ('*Courting the Blues Survey*').

3 Ibid 43–9.

4 See, eg, John Briton, 'Lawyers, Emotional Distress and Regulation' (Speech delivered at the Bar Association of Queensland 2009 Annual Conference, Gold Coast, 8 March 2009).

commercial law firms is often blamed for contributing to long working hours.⁵ A number of initiatives have been taken in recent years by law schools, law societies and law firms to raise awareness of mental health issues and support law students and legal practitioners in their management of stress and depression.⁶ However, to date there has not been any systematic research into the relationship between work stress and the structure and culture of legal practice.

This article presents findings from a national survey of nearly 1000 Australian legal practitioners conducted in 2012–13 to examine the working conditions, work experience, and health and wellbeing of solicitors and barristers who practise in a variety of settings. This is the first Australian study to investigate the extent to which stress, anxiety and depression among lawyers are associated with the conditions and culture of legal practice. The results show a remarkably high level of self-reported stress and negative emotional states amongst this sample of practitioners, which is pervasive across different legal settings and demographic groups. Excessive job demands, minimal control over workload and spillover of work commitments into personal life are just some of the work-related factors which are significantly correlated with poorer mental health outcomes. Concerns about the structure and culture of legal practice in Australia are also highlighted.

The article is organised as follows. Part II provides details of the questionnaire used, the recruitment methodology and response rates of the survey. Part III outlines the theories behind work stress and describes the main variables used in the analysis. Part IV reports on the key health and wellbeing outcome measures for the sample, while Part V gives an overview of the sources of support available to lawyers and the coping strategies they have adopted. Part VI summarises the results and discusses implications of these findings for the legal profession.

5 Christopher Kendall, 'Report on Psychological Distress and Depression in the Legal Profession' (Report, Council of the Law Society of Western Australia, March 2011) 12.

6 See Gary Davis and Susanne Owen, 'Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment' (Report, Australian Learning and Teaching Council and Council of Australian Law Deans, 2009). See also the Resilience@Law initiative, a collaboration between five major national law firms and the College of Law, which has developed an educational model to raise awareness and provide strategies and resources for dealing with mental health concerns: College of Law, *Resilience@Law* <<http://www.collaw.edu.au/about-us/education-philosophy/resiliencelaw/>>. Some of these initiatives may have made a difference. See, eg, Beaton Research and Consulting, who have reported an improvement in awareness and training in dealing with mental illness among lawyers: Beaton Research and Consulting, '2011 Annual Business and Professions Study' (Research Summary, Beyond Blue, May 2011).

II THE NATIONAL SURVEY

A The Questionnaire

The questionnaire which most respondents completed online consisted of 54 questions asking practising lawyers to provide information about their demographic and professional background, career plan, current job and working conditions, and their health and wellbeing status. A brief description of each section of the questionnaire is provided below.

1 *Demographic Characteristics, Professional Background and Career Plans*

The questionnaire asks respondents about their personal characteristics such as age, gender, country of birth, Aboriginality and cultural background, household characteristics, and whether they have children. It also asks about their professional background, including their educational qualifications, their current position and workplace, their income, and work attendance or absence. This section of the survey also focuses on respondents' career aspirations, which include several questions about their motivations to become a lawyer and their career plans. It also includes a series of statements that measure their *practice ethos* (ie, whether they see lawyers' work as combative, competitive, or requiring long work hours) and satisfaction with their decision to become a lawyer.

2 *Current Job and Working Conditions*

This section includes questions about respondents' current job, including a number of questions drawn from the literature on job satisfaction and work culture:

- **Job satisfaction** – Items developed by Dinovitzer et al are included to measure 17 aspects of job satisfaction on a scale of 1 to 7, with 1 being extremely satisfied and 7 being extremely dissatisfied.⁷
- **Effort and reward imbalance** – Questions, developed by Siegrist, are included to cover three scales on 'effort', 'reward' and 'overcommitment'.⁸ There are 10 items from which scores on the effort and reward scales are calculated and 6 items from the Overcommitment scale. The Overcommitment scale measures how people cope with the demands of work.
- **Work–life balance** – Netemeyer, Boles and McMurrian have developed two five-item scales to measure the conflict between family–work

7 Ronit Dinovitzer et al, 'After the JD: First Results of a National Study of Legal Careers' (Report, NALP Foundation for Law Career Research and Education and the American Bar Foundation, 2004).

8 Johannes Siegrist, 'Adverse Health Effects of High-Effort/Low-Reward Conditions' (1996) 1 *Journal of Occupational Health Psychology* 27.

and work–family.⁹ The original scale contained two separate constructs: family–work conflict (impact of family on work) and work–family conflict (impact of work on family). Our questionnaire only includes the Work–Family Conflict items. Respondents are asked to indicate on a five-point scale the extent to which they agree with statements such as ‘[t]he demands of my work interfere with my home and family life’.

- **Organisational culture** – The questionnaire includes three questions on respondents’ perception of how their organisation responds to work–life imbalance. These questions are drawn from the Australian Work and Life Index (‘AWALI’), a national survey that measures how work affects life.¹⁰ The three organisational culture questions included in this survey measure the extent to which people feel that their organisation supports a good work–life balance. Skinner and Pocock have found that ‘[o]rganisational culture clearly emerges as the strongest predictor of poor work–life interaction’.¹¹
- **Self-rated stress level and job stressors** – Respondents are also asked to rate their overall work stress level and nominate the three most stressful things they encounter in their job.

3 *Health and Wellbeing*

This section of the questionnaire asks respondents to report on their health and wellbeing, including symptoms of stress, anxiety and depression, and their use of alcohol and other drugs. The responses allowed the following measures to be derived:

- **Depression Anxiety Stress Scales (‘DASS’)** – These measures are specifically designed to differentiate between emotional states such as depression, anxiety and stress or tension.¹² The DASS are well-validated measures and Australian normative data are available in order to compare raw scores with population percentiles. The short version of this scale includes 21 questions on a four-point severity scale and asks respondents to indicate whether these items applied to them at all *over the past week*. It is important to note that these questions are not designed to diagnose clinical psychological disorders. However, DASS scores can

9 Richard G Netemeyer, James S Boles and Robert McMurrian, ‘Development and Validation of Work–Family Conflict and Family–Work Conflict Scales’ (1996) 81 *Journal of Applied Psychology* 400.

10 Natalie Skinner and Barbara Pocock, ‘Work, Life & Workplace Culture: The Australian Work and Life Index 2008’ (Report, Hawke Research Institute for Sustainable Societies, University of South Australia, July 2008).

11 Ibid 61.

12 P F Lovibond and S H Lovibond, ‘The Structure of Negative Emotional States: Comparison of the Depression Anxiety Stress Scales (DASS) with the Beck Depression and Anxiety Inventories’ (1995) 33 *Behaviour Research and Therapy* 335.

be classified into five ranges to reflect the severity level of mental health symptoms: normal, mild, moderate, severe and extremely severe.

- **Use of alcohol and other drugs** – Respondents are also asked about their use of alcohol and other drugs in the previous 12 months. The alcohol questions are drawn from the World Health Organization's ('WHO') Alcohol Use Disorders Identification Test ('AUDIT').¹³ Questions on the use of other drugs are based on those used by the Australian Institute of Health and Welfare ('AIHW') in their National Drug Strategy Household Survey.¹⁴
- **Rating of health and wellbeing initiatives** – Respondents are asked to rate the effectiveness of a range of programs and initiatives for managing stress (such as mentoring, time management training, breaks from working with clients, extra time to complete work, redistribution of work, time off work, stress management training, sport/exercise classes, Employee Assistance Programs, counselling, medical/health check-ups).
- **Dealing with work stress** – Respondents are asked to nominate: (a) the kind of activities they like to participate in when they experience work-related problems (including sport or physical exercise, read books or watch television, socialise with friends and family, go to the theatre/movies); (b) whom they turn to for support and advice about work-related problems; and (c) how many weeks of holiday or recreation leave they had taken in the past 12 months. Respondents are asked how likely they would be to seek help from a general practitioner ('GP') or other health professional if emotional or mental health symptoms were impacting on their personal or work life. They are also asked to identify the factor or concern that would most likely stop them from seeking professional help.
- **Attitudes towards mental illness** – Respondents are asked how comfortable they would be working closely with someone they knew had suffered from a serious mental illness.
- **Further comments** – An open-ended question is included at the end of the questionnaire and respondents are encouraged to provide additional comments about the working conditions, careers and work experiences of lawyers.

13 Thomas F Babor et al, *AUDIT: The Alcohol Use Disorders Identification Test Guidelines for Use in Primary Care* (World Health Organisation, 2nd ed, 2001).

14 See Australian Institute of Health and Welfare, 'National Drug Strategy Household Survey' (Drug Statistics Series Report No 25, July 2011).

B Recruitment Methodology

Approval to conduct the research was obtained from the UNSW Human Research Ethics Committee on 10 May 2011. However, consultation with legal professional associations and experts led to a series of modifications to the research methodology. The Law Council of Australia formally supported the research project and encouraged ‘constituent bodies to provide assistance to the research project’.¹⁵ Nevertheless, concerns were expressed about ‘survey fatigue’ of members of the legal profession and the selection methodology. The project leader was asked to ‘resolve concerns of this kind with individual law societies and bar associations’ when contacting them to participate in the research.

One of the primary concerns regarding the selection methodology was the intended use of random sampling. Strong objection to random sampling as a recruitment method was expressed by at least one professional association for fear that selected practitioners might misinterpret that they were targeted in the survey because of their participation in mental health or wellbeing services organised by the association. Taking into account this objection and the fact that random sampling would be impossible without the cooperation of professional associations in providing a complete and up-to-date list of practitioners, the recruitment method was revised and subsequently *all* legal practitioners in participating jurisdictions were invited to take part in the survey.

All law societies and bar associations except three agreed to support the research by sending email invitations to individual members or publicising information about the survey in their electronic newsletters.

The survey was launched on or after 24 August 2012,¹⁶ and closed on 3 December 2012. Because of the lower than expected response rate and in response to requests from some legal practitioners to reopen the survey during a quieter time of year, the survey was reopened on 9 January 2013 until 3 March 2013. Legal practitioners were given the option of completing an anonymous online survey,¹⁷ downloading a PDF copy of the survey and returning the completed survey to the researcher by post or by email, or registering for a telephone interview instead of, or in addition to, the survey.

To raise awareness of the survey, a number of additional communication strategies were employed during the survey period: invitations were sent to the National Association of Community Legal Centres and nine major law firms asking them to circulate the invitation to their members; the survey was publicised via UNSW Law’s Facebook page and Twitter messages; an invitation was posted on the Tristan Jepson Memorial Foundation (TJMF) website; copies

15 Letter from the Law Council of Australia to Janet Chan, 18 June 2012 (copy on file with author).

16 Different jurisdictions sent out the invitations or newsletters on different dates.

17 To take precautions against multiple submissions by the same respondent, the software KeySurvey was set so that respondents using the same device (computer, tablet, etc) were not allowed to access the survey again once their survey had been submitted.

of flyers about the survey were distributed to participants at the TJMF annual lecture; and the project leader was interviewed for a story for *Lawyers Weekly*.¹⁸

C Response Rates

A total of 1008 responses were received at the close of the survey and 30 telephone interviews were conducted.¹⁹ A number of questionnaire responses were excluded on the grounds that the respondents were not currently practising as a lawyer.²⁰ In addition, one response was excluded as the respondent later decided to withdraw from the study. This left a valid sample size of 965.

Table 1 provides a breakdown of the number of respondents by state/territory and whether the respondent worked as a barrister or a solicitor. In order to estimate the response rates of the survey, access to accurate figures on the population of barristers and solicitors in each jurisdiction is required. The population figures for this table are derived from a variety of sources;²¹ response rates are not calculated where we are not confident of the accuracy of the population figures.

Response rates varied from less than 1 per cent to 11 per cent, with barristers responding at higher rates than solicitors in all jurisdictions where population figures could be determined. Among solicitors, Tasmania and the Northern Territory ('NT') had the highest response rates, while South Australia and

18 'NSW Professor Launches Unique Lawyer Well-Being Survey', *Lawyers Weekly* (online), 2 November 2012, <<http://www.lawyersweekly.com.au/news/nsw-professor-launches-unique-lawyer-well-being-su>>.

19 Results from these semi-structured interviews are not included in this article.

20 Respondents who were not practising lawyers at the time of the survey were not able to fill in the rest of the questionnaire.

21 Sources of population estimates (note that web-based figures can change depending on date of access):

- NSW barristers: New South Wales Bar Association, *Annual Report 2011–2012* (2012) <<http://www.nswbar.asn.au/docs/webdocs/ar121.pdf>>;
- NSW solicitors: Urbis, '2012 Profile of the Solicitors of NSW' (Report, Law Society of New South Wales, January 2013) <<http://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/687930.pdf>>;
- NT barristers and solicitors: Law Society Northern Territory, *Annual Report 2011/2012* (2012) <http://lawsocietynt.asn.au/images/stories/documents/2013_Forms/2011-2012_Annual_Report_LR_web.pdf>;
- Qld solicitors: Queensland Law Society, *Annual Report 2011–2012* (18 October 2012) <http://www.qls.com.au/About_QLS/Queensland_Law_Society/Resources_publications/Corporate_documents/Annual_Reports/Annual_Report_2011-12>;
- SA barristers and solicitors: Law Society of South Australia, *Current Practitioners* <<http://www.lawsocietysa.asn.au/pdf/CurrentPractitioners.pdf>>. Note that this data was accessed in April 2013; the website no longer exists;
- Tasmania barristers and solicitors: Law Society of Tasmania, *Annual Report 2011–2012* (19 October 2012) <<http://lst.org.au/wp-content/uploads/2013/06/ANNUAL-REPORT-2011-2012.pdf>>;
- Victoria barristers and solicitors: Legal Services Board, *Practitioner Statistics* (31 May 2014) <<http://www.lsb.vic.gov.au/lawyer-search/practitioner-statistics/>>;
- WA barristers and solicitors: Law Practice Board of Western Australia, *Certificated Practitioners* <<http://renewals.lpbwa.com/GeneralRoll.aspx?L=A>>.

Western Australia had the lowest. Among barristers, the smaller jurisdictions (NT and Tasmania) again had the highest response rates while Victoria had the lowest. The lowest response rates were mainly from jurisdictions that decided not to promote the research project to their members.

Table 1 Survey Samples and Estimated Response Rates by State/Territory and Barrister/Solicitor

STATE/ TERRITORY	SOLICITORS			BARRISTERS			TOTAL	
	Population	Survey sample	Response rate	Population	Survey sample	Response rate	Population	Response rate
ACT	NA*	36	–	NA	5	–	NA	–
NSW	25 493	291	1%	2,198	55	3%	27 691	1%
NT	442	10	2%	45	5	11%	487	3%
QLD	9323	169	2%	NA	3	–	NA	–
SA	3418	19	1%	223	11	5%	3636	1%
TAS	493	14	3%	46	5	11%	565	3%
VIC	15 862	169	1%	1,927	33	2%	17 789	1%
WA	5452	42	1%	207	5	2%	5659	1%
TOTAL**		749			122			

* Reliable figures not available from published sources. See footnote 21 for sources of population estimates.

** Total sample size = 871 as six respondents practised overseas or across Australia and there were 88 missing responses.

These response rates were disappointingly low and, because the sample was self-selected rather than randomly selected, the findings of the survey should be interpreted with caution: they apply only to this survey sample and cannot be generalised to the population of Australian lawyers.²² When interpreting the results of this survey, readers should bear in mind this caveat and take into account the profile of respondents detailed in the next section. However, they should also consider the large volume of comments provided by respondents on the legal profession, their workplaces and their personal circumstances, as these comments are very valuable for understanding the nature of the stress experienced, the factors that contribute to it, its impact on the respondent, and the relationship between self-reported stress levels and the structure and culture of

22 This is not a problem unique to this study. Similar concerns were raised in relation to the University of Sydney research on attitudes towards depression among Australian law students and legal practitioners: *Courting the Blues Survey*, above n 2, 4.

legal practice. Many of these issues are highlighted in the statistical analysis that follows and specific issues are also illustrated further in the respondent comments that appear later in this article.

D Profile of Survey Respondents

1 Age, Gender and Cultural Background

Around two-thirds (66 per cent)²³ of the survey respondents were female and one-third (35 per cent) were male. When the sample was divided into solicitors and barristers, the proportion of female solicitors was 70 per cent and that of female barristers was 43 per cent. From what we know of the population of barristers and solicitors,²⁴ this suggests that female lawyers were significantly over-represented in the survey sample. This tendency for female respondents to be over-represented is consistent with other surveys conducted in this field.²⁵ Respondents' ages ranged from 21 to 81, with one-third (34 per cent) of survey respondents under 30 years of age, 29 per cent between 30–39, 18 per cent between 40–49, 13 per cent between 50–59, and 6 per cent 60 years or older. Most (84 per cent) of the respondents indicated they were born in Australia and nearly all (96 per cent) are Australian citizens. Around one-fifth (19 per cent) said they identified with a specific cultural background. The most common responses were Chinese, Greek and Italian. Only a very small proportion identified themselves as Aboriginal and/or Torres Strait Islander (1 per cent).

2 Family and Household Characteristics

More than half of respondents (59 per cent) did not have any children. Most respondents indicated they currently lived with a partner. Respondents who lived alone accounted for 13 per cent of responses. Just under a third (32 per cent) of respondents reported that one or more of their family members are lawyers.

3 Education, Employment and Workplace

Most respondents (86 per cent) held a Bachelor of Laws ('LLB') degree while nearly one in five (19 per cent) had a Diploma in Law.²⁶ In terms of employment, most respondents (87 per cent) reported that they worked full time, with only a small percentage (13 per cent) working part time. The majority (86

23 Throughout this article the 'per cent' figure refers to the percentage based on the total number of valid (non-missing) responses for each variable. Note that percentages sometimes do not add up to 100 because they have been rounded to the nearest integer.

24 For example, in 2012, 47 per cent of NSW solicitors were female and 53 per cent were male, while only 20 per cent of NSW barristers were female: Urbis, above n 20; New South Wales Bar Association, above n 20. Similarly, in 2013, 48 per cent of Victorian solicitors were female and 52 per cent were male, while only 26 per cent of Victorian barristers were female: Legal Services Board, above n 20.

25 See, eg, *Courting the Blues Survey*, above n 2.

26 Note that respondents could select more than one qualification; the percentages therefore add up to more than 100.

per cent) of respondents were employed as solicitors rather than barristers (14 per cent). More than half (60 per cent) worked at a private law firm while others worked in chambers (14 per cent), government legal departments (10 per cent), community legal centres (10 per cent), corporate legal departments (7 per cent), or other workplaces (1 per cent). None of the respondents identified themselves as judicial officers. The size of the organisation where respondents worked varied. While nearly half (45 per cent) worked for large organisations employing 100 employees or more, over a quarter (28 per cent) worked in small workplaces with less than 10 employees. Most respondents (83 per cent) worked in a metropolitan area with the remainder working in regional (14 per cent) and rural areas (3 per cent). While around 18 per cent of solicitors worked in a regional or rural area, this was true for only 9 per cent of barristers. The distribution of gross annual income of respondents ranged from less than \$30 000 to over \$500 000, with just more than half (52 per cent) earning under \$90 000 per annum.²⁷ Nearly half (46 per cent) of respondents were in the early stage of their career, having practised law for 5 years or less. Three in ten were in the middle stage of their career, having practised between 6 and 15 years. Those in the late stage of their career (who had practised for 16 years or more) made up 23 per cent of the sample.

III UNDERSTANDING WORK STRESS

The scientific and medical literature on work stress conceptualises stress as a process that begins with exposure to *stressors* which can be physical or psychosocial.²⁸ Such exposure can lead to *perceived distress* which can lead to *adverse short-term response* or *enduring health outcomes*. These responses and outcomes may be psychological, behavioural or physiological. The process is not linear and is affected by a range of social, psychological, biophysical, behavioural and genetic factors.

Current research suggests that work stress is a complex phenomenon that is not simply about the working conditions that create tension or anxiety, nor is it entirely about a person's body response to stressful working conditions.²⁹ Instead, it results from the interaction between an individual and the work environment, usually an imbalance between low control and high demands,³⁰ high effort and low reward,³¹ or some perception of organisational

27 Note, however, that 93 respondents (11 per cent) did not disclose their income.

28 See Anthony D LaMontagne et al, 'Job Stress as a Preventable Upstream Determinant of Common Mental Disorders: A Review for Practitioners and Policy-Makers' (2010) 9 *Advances in Mental Health* 17.

29 Ibid.

30 Robert Karasek and Tores Theorell, *Healthy Work: Stress, Productivity, and the Reconstruction of Working Life* (Basic Books, 1990).

injustice.³² It is therefore important to distinguish between ‘objective’ working conditions and perceived working conditions, as perceptions of stressors and personal capacity to cope with these stressors can vary according to individual characteristics, work characteristics, and the environment within which these factors interact.³³

However, perceptions of stressors and personal ability to cope are not simply psychological processes within individuals, such perceptions are also shaped by organisational cultures,³⁴ and a workplace’s ‘psychosocial safety climate’.³⁵ An examination of work culture (shared assumptions, values and practices in an occupational or work group) is therefore an extremely important part of understanding work stress among legal practitioners.³⁶

A Contexts and Conditions of Legal Practice in Australia

The Australian legal profession has been described as one of the most ‘structurally diverse, geographically dispersed, and unintegrated’ in the Western world, with ‘an unusually wide variety of patterns of practice’.³⁷ In the last two decades there has been a large increase in the number of lawyers,³⁸ as well as a strong growth in the international trade of legal services by national and multinational law firms in Australia.³⁹ The legal profession is highly stratified and culturally diverse, with differences according to type of practice (barristers

31 Siegrist, ‘Adverse Health Effects of High-Effort/Low-Reward Conditions’, above n 8.

32 Mika Kivimäki et al, ‘Organisational Justice and Health of Employees: Prospective Cohort Study’ (2003) 60 *Occupational and Environmental Medicine* 27.

33 Todd Lucas, Nathan Weidner and James Janisse, ‘Where Does Work Stress Come From? A Generalizability Analysis of Stress in Police Officers’ (2012) 27 *Psychology & Health* 1426.

34 Michael Peterson and John F Wilson, ‘The Culture-Work-Health Model and Work Stress’ (2002) 26 *American Journal of Health Behavior* 16.

35 Mohd Awang Idris et al, ‘Psychosocial Safety Climate: Conceptual Distinctiveness and Effect on Job Demands and Worker Psychological Health’ (2012) 50 *Safety Science* 19.

36 For a fuller discussion of the relationships between legal cultures and work stress, see Janet Chan, ‘Conceptualising Legal Culture and Lawyering Stress’ (2014) *International Journal of the Legal Profession* (forthcoming).

37 David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990) 1.

38 Thornton reports that the number of legal professionals grew by 80 per cent between 1991 and 2006: Margaret Thornton, ‘The New Knowledge Economy and the Transformation of the Law Discipline’ (2012) 19 *International Journal of the Legal Profession* 265, 267, citing Alan Daly, ‘Is There an Excess Supply of Law Graduates in Australia?’ (Paper presented at Australian Conference of Economists, 40th Australian Conference of Economists, Canberra, 11–14 July 2014).

39 Ashly Pinnington and John T Gray, ‘The Global Restructuring of Legal Services Work? A Study of the Internationalisation of Australian Law Firms’ (2007) 14 *International Journal of the Legal Profession* 147. See also Thornton on the emergence of incorporated legal practices and multi-disciplinary practices: Thornton, above n 38, 271.

or solicitors in small, medium or large organisations),⁴⁰ areas of specialisation, clientele, geographical location (urban, suburban or rural), experience, prestige, income and political influence. Commercial lawyers – both barristers and solicitors who work in large city law firms – are the professional leaders in status and income.⁴¹

In spite of this diversity and fragmentation, the culture of the legal profession is, by its tradition of respecting precedents and established doctrines, often regarded as predominantly conservative with a predisposition towards preserving the status quo.⁴² Legal culture is inevitably associated with the social status of the legal profession. Despite initiatives of law schools to improve access to legal education among disadvantaged groups, Australian lawyers are ‘predominantly drawn from elite social backgrounds in terms of socioeconomic class, private schooling, family connections and other key indicators’.⁴³

Since the admission of women to legal practice in the early 1900s, there has been a steady rise in the proportion of female lawyers in Australia from about 6 per cent in 1971 to around 30 per cent in 2002.⁴⁴ The proportion of female law graduates in Australia now exceeds 50 per cent but women remain under-represented as partners in law firms.⁴⁵ It has been suggested that a legal culture with a commitment to working long hours and the preparedness to use aggressive tactics, coupled with cultural stereotypes of women being the primary carers of family and not suitable for demanding legal work, has meant that the increased participation of women may not have made much difference to legal culture.⁴⁶ Thornton and Bagust’s study of Australian lawyers working in elite corporate law firms found that supportive strategies such as flexible work could disadvantage women’s career prospects as the discourse of work–life balance

40 In 2007–08, over 80 per cent of Australian lawyers worked in solicitor firms or other legal support businesses, just less than 10 per cent were barristers with their own business, and the rest worked in community legal services or in government: Australian Bureau of Statistics ‘Legal Services, Australia, 2007–08’ (Report No 8667, Australian Bureau of Statistics, 24 June 2009).

41 Margaret Thornton and Joanne Bagust, ‘The Gender Trap: Flexible Work in Corporate Legal Practice’ (2007) 45 *Osgoode Hall Law Journal* 773.

42 Weisbrot, above n 37, 7–8.

43 Ibid 48. See also Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service, 1987); Sumitra Vignaendra, ‘Australian Law Graduates’ Career Destinations’ (Report No 98/9, Department of Employment, Education, Training and Youth Affairs, May 1998). For more recent data in WA, see Jill Howieson and Tomas Fitzgerald, ‘A Cultural Challenge for the Western Australian Legal Profession: A Lack of Diversity at the WA Bar?’ (2012) 36(1) *University of Western Australia Law Review* 227.

44 Ainslie Lamb and John Littrich, *Lawyers in Australia* (Federation Press, 2007) 67.

45 Iain Campbell, Jenny Malone and Sara Charlesworth, ‘“The Elephant in the Room”: Working-Time Patterns of Solicitors in Private Practice in Melbourne’ (Working Paper No 43, Centre for Employment and Labour Relations Law, University of Melbourne, May 2008).

46 Eleni Skordaki, ‘Glass Slippers and Glass Ceilings: Women in the Legal Profession’ (1996) 3 *International Journal of the Legal Profession* 7

disguises a corporate culture which rewards the full commitment of an 'unencumbered worker'; women who work part-time are relegated to 'knowledge management' which is regarded as a 'career graveyard'.⁴⁷ In general, structural and cultural barriers remain in the legal world and these have constrained the career paths of female lawyers.⁴⁸

Lamb and Littrich have argued that the Australian legal culture has 'undergone a paradigm shift from an interpersonal base, to embracing and integrating with the corporate culture of the commercial world'.⁴⁹ The corporatisation of law firms has led to a fierce competition for partnership and a substantial increase in income for top lawyers, while professional excellence is taking a backseat to business concerns.⁵⁰ Commercial firms' concern with profit has escalated billable hours and in turn the number of hours worked so that working long hours, being adaptable to the time zones of international clients, and meeting the quota of billable hours have become expected practice in large law firms.⁵¹ Competition appears to be a constant feature of legal culture, starting from entry into top law firms, to the race for 'prestige, recognition and key clients', and 'performance in terms of revenue, outcomes in court and retention of key clients'.⁵²

In summary, Australian lawyers, like their counterparts in other developed countries, generally work under conditions of high demand that require great effort. Long hours, heavy workload, fast pace, and spillover of work to personal life are all common features of legal practice, especially among lawyers who work in commercial firms.

B Variables in the Analysis

The following analysis will examine the extent to which the working conditions of lawyers have led to work stress, and whether individual lawyers are able to mitigate work demands either through personal resources (eg, social support) or workplace cultures that allow some degree of control over work, reward efforts financially or symbolically, or value the balance of work and

47 Thornton and Bagust, above n 41, 785, 787–8.

48 Law Society of New South Wales, 'After Ada: A New Precedent for Women in the Law' (Report, 29 October 2002); Victorian Women Lawyers' Association, Submission to the Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, Men, Work and Family*, June 2005; Rosemary Hunter and Helen McKelvie, 'Balancing Work and Family Responsibilities at the Bar' (1992) 12 *Australian Journal of Labour Law* 167.

49 Lamb and Littrich, above n 44, 61.

50 Thornton and Bagust, above n 41.

51 Lamb and Littrich, above n 44. See also Iain Campbell and Sara Charlesworth, 'Salaried Lawyers and Billable Hours: A New Perspective from the Sociology of Work' (2012) 19 *International Journal of the Legal Profession* 89; Christine Parker and David Ruschena, 'The Pressures of Billable Hours: Lessons from a Survey of Billing Practices Inside Law Firms' (2012) 9 *University of St Thomas Law Journal* 618.

52 Maryam Omari and Paull Megan, "'Shut Up and Bill': Workplace Bullying Challenges for the Legal Profession' (2013) 20 *International Journal of the Legal Profession* 141, 143.

personal or family responsibilities. The analysis will focus on the relationships between the key health and wellbeing measures – depression, anxiety and stress symptoms, self-rated stress level, and the use of alcohol and other drugs – and a range of variables related to the work context, perceptions of job demands and personal characteristics of the respondents:

- Work and workplace – PRACTICE TYPE (barrister/solicitor), WORKPLACE TYPE, LOCATION, and FIRM SIZE (for solicitors).⁵³
- Perceived job demands – JOB SATISFACTION, EFFORT–REWARD RATIO, OVERCOMMITMENT, WORK–FAMILY CONFLICT, ORGANISATIONAL CULTURE, and PRACTICE ETHOS.
- Personal characteristics – GENDER, AGE, STAGE OF CAREER, and NUMBER OF CHILDREN.

The work and workplace variables and personal characteristics have already been described in the section on the profile of survey respondents.⁵⁴ The following discussion will elaborate on the variables listed under perceived job demands: JOB SATISFACTION, EFFORT–REWARD RATIO, OVERCOMMITMENT, WORK–FAMILY CONFLICT, ORGANISATIONAL CULTURE and PRACTICE ETHOS.

1 *Job Satisfaction*

We asked respondents to rate their satisfaction with their current job along 17 dimensions on a scale of 1 to 7, where 1 equals extremely satisfied and 7 equals extremely dissatisfied. These questions were adopted from a large US study examining the levels of job satisfaction among law graduates.⁵⁵ Results show that respondents were most satisfied (extremely or moderately satisfied) with their relationships with colleagues (60 per cent) and level of responsibility (59 per cent). Other areas of satisfaction were found to be the intellectual challenge (59 per cent), substantive area of work (54 per cent) and opportunities to build skills (53 per cent). Respondents were least satisfied with the performance evaluation process (22 per cent) and the control over amount of work (29 per cent). Other areas of low satisfaction were remuneration (29 per cent) and opportunities for advancement (30 per cent). To simplify the analysis, we created four new factors by grouping several job satisfaction dimensions:⁵⁶

53 To distinguish between the generic concepts and their measurements, variables used in the analysis are indicated by capital letters.

54 See above PartII(D).

55 See Dinovitzer et al, above n 7; Ronit Dinovitzer and Bryant G Garth, 'Lawyer Satisfaction in the Process of Structuring Legal Careers' (2007) 41 *Law and Society Review* 1.

56 These were derived from a factor analysis conducted by Dinovitzer et al: Private email correspondence from Ronit Dinovitzer to Janet Chan, 29 October 2013. The variable 'amount of travel' was excluded as it did not 'load well' with the factors. The score for each factor in our analysis was simply the sum of the scores of the relevant variables, ie, no factor loadings were used.

- **JOB SUBSTANCE** – total of the following scores (maximum=28):
 - Substantive area of your work;
 - Tasks you perform;
 - Intellectual challenge; and
 - Opportunities to build skills.
- **JOB SETTING** – total of the following scores (maximum=49):
 - Level of responsibility;
 - Recognition for your work;
 - Control over amount of work;
 - Control over how you work;
 - Relationships with colleagues;
 - Job security; and
 - Performance evaluation process.
- **JOB SOCIAL VALUE** – total of the following scores (maximum=21):
 - Diversity;
 - Opportunities for pro bono; and
 - Value of work to society.
- **JOB POWER TRACK** – total of the following scores (maximum=14):
 - Remuneration; and
 - Opportunities for advancement.

2 *Effort–Reward Imbalance*

The effort–reward imbalance (‘ERI’) model is based on a theory of social reciprocity, so that ‘failed reciprocity in terms of high efforts spent and low rewards received in turn is likely to elicit recurrent negative emotions and sustained stress responses in exposed people’, while ‘positive emotions evoked by appropriate social rewards promote wellbeing, health and survival’.⁵⁷ Siegrist has developed a questionnaire which attempts to measure ERI in the workplace.⁵⁸ It asks respondents to indicate on a four-point scale (one being strongly disagree and four being strongly agree) the extent to which they agree with a series of statements about their work demands and rewards. In our sample, more than three-quarters of respondents (77 per cent) agreed that they experienced many interruptions and disturbances while performing their job. More than two thirds (69 per cent) similarly agreed that they had constant time pressure due to a heavy

57 Johannes Siegrist, ‘Effort-Reward Imbalance at Work – Theory, Measurement and Evidence’ (Report, Department of Medical Sociology, University Düsseldorf, 5 November 2012) 2.

58 Ibid.

workload. The majority (71 per cent) agreed that their job had become more demanding over the past few years; a similar proportion (74 per cent) agreed that they received the respect they deserved from their superior or relevant person. Most respondents (71 per cent) disagreed that their job security was poor; however, just under half of respondents (45 per cent) agreed that their job promotion prospects were poor. About a third (34 per cent) agreed that they had experienced or expected to experience an undesirable change in their work situation. Taking into account all their efforts and achievements, nearly two-thirds (66 per cent) agreed that they received the respect and prestige they deserved, more than half (58 per cent) agreed that their job promotion prospects were adequate, and about half (51 per cent) agreed that their salary was adequate.

An EFFORT–REWARD RATIO was calculated for each respondent.⁵⁹ A value greater than 1.0 indicates an imbalance between effort and reward at work. Further, evidence suggests that as imbalance scores increase so too does the risk of poorer health outcomes. For example, Bobak and colleagues found that a two standard deviation difference in ERI scores almost doubles the odds of binge and problem drinking.⁶⁰ The EFFORT–REWARD RATIO for our sample ranged from a low value of 0.25 (a high level of reward relative to effort) to a high value of 4.0 (an extremely high level of effort relative to reward). The median EFFORT–REWARD RATIO for all (non-missing) responses was 1.07, indicating that for approximately half of the respondents, effort was greater than reward.

The EFFORT–REWARD RATIO did not differ significantly between genders, solicitors and barristers, office locations and workplace types. Only three workplace and personal variables show statistically significant differences in EFFORT–REWARD RATIO: FIRM SIZE, AGE and STAGE OF CAREER. Respondents working in smaller firms with less than 100 employees had significantly higher EFFORT–REWARD RATIO (median 1.11) than those in larger firms (1.04). The relationship between AGE and EFFORT–REWARD RATIO shows an inverted U shape: the median EFFORT–REWARD RATIO peaked at the 40–49 age group (median 1.20), with values decreasing for both the younger and the older age groups. Finally, respondents in mid and late career had significantly higher EFFORT–REWARD RATIO (median 1.11 for both groups) than those in early career (1.04).

59 The EFFORT–REWARD RATIO was calculated by dividing the average effort score (over three items) by the average reward score (over seven items) for each respondent, reverse-coding where appropriate and multiplying by a correction factor (ie, a factor accounting for the number of items used in each scale).

60 M Bobak et al, 'The Association between Psychosocial Characteristics at Work and Problem Drinking: A Cross-sectional Study of Men in Three Eastern European Urban Populations' (2005) 62 *Occupational and Environmental Medicine* 546.

3 *Overcommitment*

Another component of the ERI Model – OVERCOMMITMENT – reflects the coping style people use to deal with effort–reward imbalance. Workers with high OVERCOMMITMENT scores tend to have inappropriate perceptions of work demands and their own capacity to cope with these demands, which can lead to poorer health outcomes.⁶¹ One-third of respondents (33 per cent) agreed that they were easily overwhelmed by time pressures at work. More than half (62 per cent) agreed that as soon as they woke up in the morning they started thinking about work. Less than half (42 per cent) agreed that when they arrived home they could easily relax or ‘switch off’ work, and just over half (55 per cent) agreed that work was still on their mind when they went to bed, and they would have trouble sleeping at night if they had postponed doing something that they should be doing (55 per cent). Respondents were evenly divided between whether or not people close to the respondents said that they had sacrificed too much for their job.

4 *Work–Family Conflict*

Respondents were asked to indicate on a five-point scale the extent to which they agreed or disagreed with a series of statements that measure work–family conflict.⁶² More than half of respondents (59 per cent) agreed that plans or activities they wanted to do at home were not completed because of the demands their job put on them.⁶³ A similar proportion of respondents (54 per cent) agreed that the demands of their work interfered with their home and family life or that they were required to make changes to their plans for family activities because of work-related duties. Less than half of respondents (45 per cent) agreed that their job produced strain that made it difficult to fulfil family duties. A similar proportion of respondents (43 per cent) agreed that the amount of time their job took up made it difficult to fulfil family responsibilities. A WORK–FAMILY CONFLICT score was calculated for each respondent by averaging the scores of the five items (maximum score is 5). The average score for the sample was 3.26 and the median was 3.40. There were no significant differences in WORK–FAMILY CONFLICT scores between male and female respondents, different age groups, stages of career and whether the respondents had children.

5 *Organisational Culture*

Another measure used in the survey was the ORGANISATIONAL CULTURE scale from the AWALI survey. It is a three-item scale that measures the extent to which a workplace is people or family friendly. The three items ask about an employee’s perceptions of: (a) the extent to which their supervisor

61 Siegrist, ‘Adverse Health Effects of High-Effort/Low-Reward Conditions’, above n 8.

62 Netemeyer, Boles and McMurrian, above n 9.

63 This percentage incorporates ‘agree’ and ‘strongly agree’ responses.

accommodates personal and family needs; (b) the extent to which the organisation makes an effort to help when work and personal/family lives come into conflict; and (c) whether employees are expected to put their jobs before their personal/family lives.

An ORGANISATIONAL CULTURE score was calculated for each respondent based on an average score of the three statements above with the third statement being reverse-coded.⁶⁴ The maximum value of the score is four; a higher score indicates a more people/family-friendly organisational culture. The majority of our sample agreed that their supervisor accommodates their personal and family needs (66 per cent) and that their organisation makes an effort to address employees' work life conflict (62 per cent). On the other hand, the same proportion of respondents agreed and disagreed that they are expected to put their jobs before their family lives (41 per cent). Overall, the average score in our sample was 2.99 and the median was 3.00.⁶⁵ Solicitors working in private law firms (median 3.00), corporate legal workplaces (median 3.17) and metropolitan areas (median 3.00) reported *less* supportive organisational cultures than their counterparts. Solicitors aged 50–59 rated their workplace as the most supportive (median 3.67), especially in comparison with younger lawyers (median 3.00 for under 40 years of age, and 3.33 for the 40–49 age group). Solicitors with children reported a more supportive organisational culture (median 3.33) than those without children (median 3.00).

6 Practice Ethos

Based on what critics and some practitioners have said about aspects of the professional culture of lawyers that contribute to work stress,⁶⁶ a new scale called PRACTICE ETHOS has been constructed for this study. There were originally 17 items but 9 were removed to ensure the scale was reasonably reliable (Cronbach's $\alpha = 0.74$).⁶⁷ A total PRACTICE ETHOS score was constructed by averaging the scores of the eight items (maximum score is 5). A higher score represents a higher level of agreement with an ethos of legal practice

64 All barristers and sole practitioners were excluded from the organisational culture scale. All 'Neither'/'Don't know' responses were removed, except where there were two valid responses and one 'Don't know'. In this instance, the score for the 'Don't know' item was replaced by the average of the other two items, as suggested by one of the AWALI authors: Personal email correspondence from Natalie Skinner to Janet Chan, 9 September 2013.

65 Note that the percentage reporting a supportive organisational culture in our sample is much less than that reported for the general population by Skinner and Pocock: Skinner and Pocock, above n 10. In their national survey they found that 92 per cent agreed that their supervisor accommodated their personal and family needs and 88 per cent agreed that their organisation makes an active effort to address work-life conflict. The average score was also less in our sample 2.99, compared with 3.3.

66 See, eg, Briton, above n 4.

67 Cronbach's α is a measure of the internal consistency of a scale. That is, how closely related a set of questionnaire items are, as a group. An α value of between 0.7 and 0.8 indicates a satisfactory level of internal consistency.

characterised by long hours, combativeness, toughness and competitiveness. A high proportion of respondents agreed with the first two statements: 'Stress is part of the challenge of practising law' (78 per cent agreed) and '[t]o excel as a lawyer one must be willing to work long hours' (71 per cent agreed). More than half of the respondents agreed with the next two statements: 'Being competitive is part of law practice' (66 per cent agreed) and '[b]eing tough is important in law practice' (59 per cent agreed). The majority of respondents *disagreed* with the next four statements: 'Part-time lawyers should not expect to become partners in law firms' (55 per cent disagreed); '[w]inning is everything in law practice' (71 per cent disagreed); '[a] good lawyer is on call 24/7' (73 per cent disagreed); and '[t]o be successful a lawyer should be combative and uncompromising' (85 per cent disagreed).

IV KEY HEALTH AND WELLBEING OUTCOMES

A Depression, Anxiety and Stress

Mental health and wellbeing was measured primarily using the DASS,⁶⁸ a well-validated instrument for measuring negative emotional states. In the DASS, respondents are asked 21 questions about their emotional state *over the past week*. From these questions, scores on three scales, depression, anxiety and stress, are calculated. Cut-offs derived from normative data can then be used to classify respondents' scores into one of five ranges reflecting the severity level of their mental health symptoms. The three scales are described as follows:

the Depression scale is characterised principally by a loss of self-esteem and incentive, and is associated with a low perceived probability of attaining life goals of significance for the individual as a person ... The DASS Anxiety scale emphasises the links between the relatively enduring state of anxiety and the acute response of fear ... the DASS Anxiety scale additionally addresses situational anxiety. The content of the Stress scale suggests that it is measuring a state of persistent arousal and tension with a low threshold for becoming upset or frustrated.⁶⁹

Table 2 shows the distribution of respondents' scores across the normal, mild, moderate, severe to extremely severe range.⁷⁰ The majority of respondents reported normal levels of depression (59 per cent), anxiety (66 per cent) and stress (63 per cent). A sizeable proportion of respondents experienced moderate to extremely severe symptoms of depression (32 per cent), anxiety (28 per cent) and stress (26 per cent). The high proportions of respondents in the severe to extremely severe range (18 per cent for depression, 15 per cent for anxiety and

68 Lovibond and Lovibond, 'The Structure of Negative Emotional States', above n 12.

69 Ibid 342.

70 Norms are provided by P F Lovibond and S H Lovibond, *Manual for the Depression Anxiety Stress Scales (DASS)* (Psychology Foundation Monograph, 1993).

16 per cent for stress) are concerning but may simply be a reflection of the self-selected nature of the survey sample.

Table 2 DASS Scores (n=804, missing=161)

	Normative percentile	DEPRESSION	ANXIETY	STRESS
Severity rating		Per cent	Per cent	Per cent
Normal	0–78	59	66	63
Mild	78–87	9	7	11
Moderate	87–95	14	13	10
Severe	95–98	7	5	11
Extremely Severe	98–100	11	10	5

1 Comparison with Previous Research

(a) Beaton Consulting Survey (2006)

It is instructive to compare the results presented above from our survey with the most extensively cited survey results on lawyering and stress. The 2006 *Beaton Consulting Survey* was based on 7551 responses from professionals including lawyers.⁷¹ The *Beaton Consulting Survey* used the same DASS scales and found that lawyers were more likely than other professionals to report moderate to severe symptoms of depression.⁷² The respondents to our survey were twice as likely to report moderate to severe symptoms of depression compared with the Beaton survey sample.

71 *Beaton Consulting Survey*, above n 1. The Report is very vague about its research methodology:

‘The Beaton Consulting Annual Professions Survey was conducted in November 2006. There were 17 183 responses to the Beyond Blue section of the survey, of which 7551 were professionals. This report focuses specifically on the survey results from these professionals. Not surprisingly given the sample group, there was a higher proportion of male respondents (70%) than female respondents (30%). Three quarters of the sample were distributed fairly evenly across age groups from 25–54 years with a further 16 per cent aged between 55–64 years. Only 6 per cent of respondents were aged below 24 years and 3 per cent were over 65. Most people (68%) reported earning between \$50 000–\$149 000 per annum, with around 20 per cent earning over \$150 000 and only 3 per cent earning less than \$30,000. Respondents were asked to complete a series of questions from a standardized mental health survey’: at 1.

72 The *Beaton Consulting Survey*, above n 1, provides a graph that suggests that approximately 15 per cent of lawyers showed moderate or severe depressive symptoms, compared with patent attorneys (~13 per cent), accountants (~10 per cent), IT service professionals (~10 per cent), insurance underwriters (~10 per cent), architects (~9 per cent), engineers (~8 per cent), actuarial professionals (~8 per cent), consultants (~7 per cent) and insurance brokers (~7 per cent).

(b) *Courting the Blues Survey (2009)*

Another frequently cited study is a 2009 survey of Australian law students, solicitors and barristers with a sample of 2421 respondents.⁷³ The scales used for this study include the Kessler Psychological Distress Scale ('K-10') and physical and psychological wellbeing scale ('SPHERE') which 'give an estimate of the risk that a person with a particular score is suffering from a mental illness, including depression and anxiety. However, they do not confirm any particular diagnosis, nor do they clearly establish the existence of any mental illness'.⁷⁴

The results show that nearly 60 per cent of the respondents reported moderately to very high levels of psychological distress (compared to about 37 per cent in the general population over 17 years old; high to very high is 28 per cent compared with 13 per cent of the general population). The SPHERE scores similarly show that 77 per cent of the respondents reported moderate to very high risk of mental illness. The student sample reported the highest percentages of distress and risk (68 per cent, cf 52 per cent of solicitors, 44 per cent of barristers in K-10; 86 per cent, cf 80 per cent of solicitors and 65 per cent of barristers in SPHERE). Unfortunately these results are not comparable with our data as different instruments were used.

(c) *Stress and Wellbeing in Australia Survey (2013)*

Results from a recent general population survey provide some useful comparisons. The 2013 *Stress and Wellbeing in Australia Survey* uses the same DASS scales to measure depression and anxiety and includes responses from 1548 Australians aged 18 years and over.⁷⁵ The online survey responses were

73 Again, not a lot of detail can be found about the methodology except that:

The study was a cross sectional survey of 741 law students, 924 solicitors and 756 barristers (n = 2,421) studying and working in Australia. The students were recruited from thirteen universities and encouraged to take part in the survey by a senior member of their department. The solicitors were recruited with the help of The Law Society of NSW and the Law Institute of Victoria, both societies contacting their members via email. The barristers were recruited through the New South Wales Bar Association by both email and post ... One of the few variables for which it is possible to get some population estimate is the sex of the participants ... These data suggest that a higher number of females responded to the survey than males ... the female respondents reported a higher rate of risk of depression than did the male members. This suggests that the samples may be overrepresented by participants who had higher levels of depression than the populations from which they were drawn and it also contributes to expanding why the barrister sample (which had relatively few females) reported lower rates of risk for depression than did the solicitor sample: *Courting the Blues Survey*, above n 2, 4.

74 Ibid 6.

75 Lynne Casey, 'Stress and Wellbeing in Australia 2013: The State of the Nation Two Years on, and Special Feature on Working Australians' (Report, Australian Psychological Society, October 2013) 12 ('*Stress and Wellbeing in Australia Survey*').

collected from a 'representative' sample of the Australian population based on gender, age and location.⁷⁶ The results show that:

- More than a quarter (27 per cent) of *Stress and Wellbeing in Australia Survey* respondents from the general Australian population reported moderate to extremely severe depression, compared with 32 per cent of our survey respondents; and
- Just under a quarter (23 per cent) of *Stress and Wellbeing in Australia Survey* respondents reported moderate to extremely severe anxiety, compared with 28 per cent of our survey respondents.

Unfortunately we cannot compare our survey results with the stress data from the *Stress and Wellbeing in Australia Survey* as a different instrument (K-10) was used. However, at least in regard to depression and anxiety symptomatology, it appears the estimates obtained from our study are slightly (five percentage points) higher than the population average.

(d) *Bergin and Jimmieson Survey of Australian Lawyers (2014)*

Based on 384 participants, this survey of Australian lawyers made use of the same DASS scale and found that about 37 per cent of the respondents reported moderate to extremely severe symptoms of depression, 31 per cent reported moderate to extremely severe anxiety symptoms, and 49 per cent reported moderate to extremely severe stress symptoms.⁷⁷ The depression and anxiety figures are slightly higher than those in our study, but the stress figure is much higher. Similar to the present survey and the *Courting the Blues Survey*, the response rates are low and the results not generalisable to the population of Australian lawyers.

2 *Relationship between DASS and Work/Workplace Variables*

To explore the relationship between DASS scores and the work and workplace variables (PRACTICE TYPE [barrister/solicitor], WORKPLACE

76 The survey methodology was described as follows:

The Australian Psychological Society (APS) in conjunction with an online research company conducted the survey of a sample of Australians. The survey participants were comprised of approximately equal numbers of men and women and were representative of the Australian adult population (18 and above) for age, gender, geographical location and work status (matched on Australian Bureau of Statistics [ABS]) ... A total of 1548 people completed the online survey, which was conducted over a two and a half week period from 18 July to 5 August 2013: *ibid* 8.

However, a footnote acknowledged that:

Due to the survey only being available online, it is acknowledged that while participants were matched against APS [sic] statistics on relevant demographic variables, the sample is restricted to online data gathering processes only.

77 Adele J Bergin and Nerina L Jimmieson, 'Australian Lawyer Well-Being: Workplace Demands, Resources and the Impact of Time-Billing Targets' (2014) 21 *Psychiatry, Psychology and Law* 427 (*'Bergin and Jimmieson Survey of Australian Lawyers'*).

TYPE, LOCATION, and FIRM SIZE), a series of statistical tests were conducted.⁷⁸ The results show that *there were no statistically significant differences* in mean DASS scores between barristers and solicitors, or between different workplace types, locations and firm sizes. This is an important result which will be discussed further in Part VI.

3 Relationship between DASS and Perceived Job Demands

To examine the relationship between DASS scores and perceived job demands variables (ie, JOB SUBSTANCE, JOB SETTING, JOB SOCIAL VALUE, JOB POWER TRACK, EFFORT–REWARD RATIO, OVERCOMMITMENT, WORK–FAMILY CONFLICT, ORGANISATIONAL CULTURE and PRACTICE ETHOS), rank-order correlation coefficients (Spearman's ρ (rho)) were calculated.

Table 1 Correlation between DASS and Perceived Job Demands (Spearman's ρ)

	DEPRESSION	ANXIETY	STRESS
JOB SUBSTANCE (n=779)	.365**	.154**	.207**
JOB SETTING (n=771)	.447**	.307**	.383**
JOB SOCIAL VALUE (n=767)	.320**	.141**	.218**
JOB POWER TRACK (n=780)	.279**	.154**	.197**
EFFORT–REWARD RATIO (n=786)	.435**	.368**	.497**
OVERCOMMITMENT (n=786)	.492**	.53**	.673**
WORK–FAMILY CONFLICT (n=786)	.424**	.428**	.529**
ORGANISATIONAL CULTURE (n=604)	-.256**	-.230**	-.278**
PRACTICE ETHOS (n=804)	.226**	.188**	.224**

Note: Higher scores in job substance, job setting, job social value and job power track indicate a higher level of dissatisfaction.

** Significant at 0.01 level, two-tailed test.

Table 3 shows that all the correlation coefficients are statistically significant, indicating that higher depression, anxiety and stress scores were significantly associated with greater *dissatisfaction* with JOB SUBSTANCE, JOB SETTING, JOB SOCIAL VALUE and JOB POWER TRACK, with higher EFFORT–REWARD RATIO, OVERCOMMITMENT SCORE, and WORK–FAMILY CONFLICT score, with *less supportive* ORGANISATIONAL CULTURE, and with a higher degree of agreement with a PRACTICE ETHOS characterised by

78 T-tests and ANOVAs were used for this purpose.

competitiveness, combativeness and long work hours. The correlation coefficients are especially high for a number of variables: OVERCOMMITMENT and STRESS (0.673), OVERCOMMITMENT and ANXIETY (0.536), and WORK–FAMILY CONFLICT and STRESS (0.529).

4 Relationship between DASS and Personal Characteristics

To examine the relationships between DASS scores and personal characteristics such as GENDER, AGE, STAGE OF CAREER and NUMBER OF CHILDREN, we conducted a series of statistical tests.⁷⁹ Only two statistically significant results were found:⁸⁰ mean DEPRESSION scores were lower for respondents with children (9.43) compared with those without children (11.32), and mean STRESS scores were similarly lower for those with children (12.54) than those without children (13.97). The lack of significant differences in mean DASS scores between males and females, age groups, and stages of career is another important finding which will be discussed further in the conclusion.

B Self-Rated Stress Level

In addition to the DASS measures we also asked respondents to rate their own stress levels. While the DASS questions asked respondents about their emotional state during the past week, this self-reported assessment was a measure of the respondent's perception of their 'overall' level of stress. Results show that a very high percentage (82 per cent) of respondents rated their overall stress level as moderate to extreme. Very few respondents (1 per cent) reported experiencing no work stress, while 17 per cent of respondents rated their overall stress level as 'slight'. Nearly four in ten (38 per cent) indicated their overall stress level as 'moderate' and just over one-third (35 per cent) rated their stress level as 'considerable'. Just under one in ten reported an 'extreme' level of stress.

1 Relationship between Self-Rated Stress Level and Work/Workplace Variables

Results show that SELF-RATED STRESS levels were significantly different for only two of the work/workplace variables. Barristers rated their own stress level to be higher (median 4) than solicitors did (median 3). This trend is echoed in the WORKPLACE TYPE variable, where respondents who worked in chambers (barristers) rated their own stress level higher (median 4) than those in other workplaces (median 3).

79 T-tests and ANOVAs were used for this purpose.

80 All statistical tests reported in this paper used a p-value of 0.05 to determine significance.

2 Relationship between Self-Rated Stress Level and Perceived Job Demands

The association between SELF-RATED STRESS levels and perceived job demands such as JOB SUBSTANCE, JOB SETTING, JOB SOCIAL VALUE, JOB POWER TRACK, EFFORT–REWARD RATIO, WORK–FAMILY CONFLICT, ORGANISATIONAL CULTURE and PRACTICE ETHOS was also examined (using Spearman's ρ). Table 4 shows that all the correlation coefficients are statistically significant, indicating that higher SELF-RATED STRESS levels were significantly associated with greater *dissatisfaction* with JOB SUBSTANCE, JOB SETTING, JOB SOCIAL VALUE and JOB POWER TRACK; with higher EFFORT–REWARD RATIO, OVERCOMMITMENT, and WORK–FAMILY CONFLICT; with *less supportive* ORGANISATIONAL CULTURE; and with a higher level of agreement with a PRACTICE ETHOS characterised by competitiveness, combativeness and long work hours. The very high values of the correlation coefficients with EFFORT–REWARD RATIO, OVERCOMMITMENT and WORK–FAMILY CONFLICT follow a similar trend to those found in relation to the DASS scores.

Table 4 Correlation between Self-Rated Stress Levels and Perceived Job Demands (Spearman's ρ)

	SELF-RATED STRESS
JOB SUBSTANCE (n=789)	.136**
JOB SETTING (n=782)	.371**
JOB SOCIAL VALUE (n=778)	.160**
JOB POWER TRACK (n=791)	.122**
EFFORT–REWARD RATIO (n=797)	.542**
OVERCOMMITMENT (n=797)	.638**
WORK–FAMILY CONFLICT (n=797)	.599**
ORGANISATIONAL CULTURE (n=610)	-.350**
PRACTICE ETHOS (n=797)	.206**

**Significant at 0.01 level, two-tailed test.

3 Relationship between Self-Rated Stress Level and Personal Characteristics

Our analysis shows that self-rated stress levels were significantly different for two personal characteristics. AGE was one of them: it appears that the 40–49 age group rated their own stress levels the highest (median 4), compared with the younger and older groups (median 3 for each group). STAGE OF CAREER was another: early career respondents had the lowest self-rated stress levels compared with mid- and late-career respondents.

C Use of Alcohol

The use of alcohol is another health and wellbeing outcome examined in the survey. To provide a more comprehensive measure of alcohol use, the survey includes a series of 10 questions drawn from the Alcohol Use Disorders Identification Test (AUDIT), which was developed by the WHO as a simple way to identify problem drinking.⁸¹ The questions ask respondents to report on the frequency, quantity, dependence and harmful consequences of drinking. An AUDIT score is obtained by summing responses to individual questions. Scores calculated from survey respondents ranged from a 0 to 30, the latter indicating a very risky level of drinking.

Table 5 provides an overview of the AUDIT scores of the survey respondents broken down into four categories: non-drinker, low risk, medium risk and high risk drinkers. It shows that nearly one-third (32 per cent) of the respondents were at a medium or high risk level of alcohol use. The difference between males and females was statistically significant (with 43 per cent of males compared with 26 per cent of females being in the medium and high risk groups).

Table 2 AUDIT Scores by Gender (n=772)

		Male		Female		Persons	
		Frequency	Percent	Frequency	Percent	Frequency	Percent
Non-drinker		21	8	50	10	71	9
Low risk	0–7	134	50	323	64	457	59
Medium risk	8–15	83	31	110	22	193	25
High risk	16+	32	12	19	4	51	7

Male/female difference statistically significant, $\chi^2=30.10$, $df=3$, $p<0.01$.

1 Relationship between AUDIT Score and DASS/Self-Rated Stress

Our analysis shows that AUDIT scores were significantly correlated with DASS scores and self-rated stress level, although these are relatively weak correlations (Spearman's ρ from 0.080 to 0.165). These results suggest that higher use of alcohol was associated with more serious depression, anxiety and stress symptoms and a higher self-reported stress level.

2 Relationship between AUDIT Score and Work/Workplace Variables

Our analysis shows that those working in larger firms had significantly higher AUDIT scores (median 6) than those in smaller firms (median 4). In terms of WORKPLACE TYPE, those working in chambers had the highest AUDIT

81 See Babor et al, above n 13.

scores (median 6), compared with those in private law firms (median 5), community, corporate and government legal (all with median 4) and 'other' workplaces (median 3).

3 Relationship between AUDIT Score and Perceived Job Demands

Our analysis shows that AUDIT scores were not significantly correlated with JOB SETTING, JOB POWER TRACK, EFFORT–REWARD RATIO, WORK–FAMILY CONFLICT or ORGANISATIONAL CULTURE and only weakly correlated with JOB SOCIAL VALUE and PRACTICE ETHOS. JOB SUBSTANCE and OVERCOMMITMENT had the highest correlation with AUDIT, but both associations are weak.

4 Relationship between AUDIT Score and Personal Characteristics

Our analysis shows that AUDIT scores were significantly higher for males, respondents aged under 30, early career lawyers and those without children, although those aged 50 or above and those at late career also had higher risks than those aged 30–49 and those at mid career.

D Use of Other Drugs

The survey also asked respondents how often they used drugs other than alcohol. The vast majority of respondents (89 per cent) said they had not used drugs in the past year. A small percentage (7 per cent) reported using drugs once a month or less. About 3 per cent of respondents reported using drugs several times a month or more frequently. No significant differences in drug use were found in relation to any of the work, workplace, or personal variables. Our analysis of the types of drugs used found that marijuana/cannabis was the most frequently nominated drug (37 per cent), and painkillers the next most frequently used drug (16 per cent). Ecstasy, tranquillisers, anti-depressants and a combination of drugs were mentioned by a very small number of respondents.

V SOURCES OF SUPPORT AND COPING STRATEGIES

A Seeking Help

We asked respondents whom they turn to for support and advice when they encounter personal or work-related problems. The most common responses were: a spouse or partner (25 per cent), followed by friends outside work (21 per cent) and work colleagues (20 per cent). Other sources of support include other relatives (13 per cent) or professionals (7 per cent), while 'working through the problem on my own' was mentioned quite frequently (13 per cent). The majority of respondents (76 per cent) said they were 'very likely' or 'likely' to seek help from their GP (or another health professional) if they were to suffer from emotional or mental health symptoms sufficiently severe to have an impact on their personal or work life.

This likelihood of seeking professional help varied by gender, with a significantly higher proportion of female respondents (80 per cent) being more likely to seek help than male respondents (70 per cent). Barristers (84 per cent) were also significantly more likely to seek help from a professional than solicitors (74 per cent). This willingness to seek professional help was also accompanied by a more empathetic attitude towards mental illness. Respondents were asked in the survey how comfortable they would be working with someone who they knew had previously suffered from a serious mental illness. The vast majority (79 per cent) indicated they would be very comfortable or comfortable, with a minority (21 per cent) saying that they would be 'a little uncomfortable' or 'very uncomfortable'.

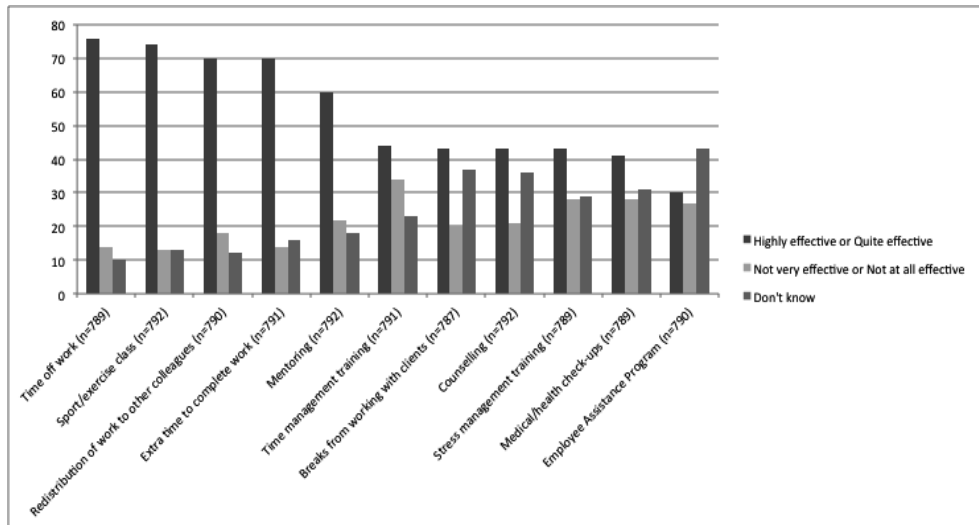
B Activities

Survey respondents were also asked to nominate activities they would engage in when they encountered personal or work-related problems. Our analysis shows that, with virtually no gender differences, the most common responses were to read books or watch television (28 per cent), socialise with friends and family (24 per cent), participate in sport or physical exercise (24 per cent) or entertainment (17 per cent).

C Health and Wellbeing Initiatives

Respondents were asked about their experience with health and wellbeing initiatives available to legal practitioners. Where respondents had used these initiatives, they were asked to rate the effectiveness for dealing with stress. Figure 1 shows that time off work was rated as most effective. Three-quarters of respondents (76 per cent) nominated having time off work as a highly or quite effective way of dealing with work-related stress. Other initiatives rated as effective were sport and exercise classes (74 per cent), redistribution of work to other colleagues (70 per cent), extra time to complete work (70 per cent), and mentoring programs (60 per cent). Initiatives regarded as effective by less than half of the respondents were: time management training (44 per cent), breaks from working with clients (43 per cent), counselling (43 per cent), stress management training (43 per cent), health check-ups (41 per cent), and Employee Assistance Programs (30 per cent). Note, however, that a high proportion of respondents indicated that they had no idea ('[d]on't know') whether the following initiatives were effective or not: Employee Assistance Program (43 per cent), breaks from working with clients (37 per cent), counselling (36 per cent), health check-ups (31 per cent), and stress management training (29 per cent).

Figure 1 Rating of Effectiveness of Health and Wellbeing Initiatives (Percentages of respondents)



Survey Question 47: 'The following examples relate to workplace programs or management initiatives that are used for reducing workplace stress. How would you rate the effectiveness of each of these initiatives for dealing with stress? Highly effective, Quite effective, Not very effective, Not at all effective, Don't know.'

There was considerable dissatisfaction or cynicism among respondents about whether the wellbeing of legal practitioners was taken seriously by employers. For example, a 32-year-old mid career female solicitor working in a large law firm saw wellbeing initiatives as not addressing the fundamental systemic issues:

It's interesting that the problems of lawyer burnout, lawyers leaving the profession and mental health issues (including alcohol and drug dependence) are not going away, even though everyone is aware of them. There are a lot of people 'talking the talk' now about these issues, but I think the problems are systemic and will not be fixed by vague employee assistance programs and 'wellness' initiatives.⁸²

A 44-year-old female solicitor also working in a large law firm believed that, in spite of the availability of seminars to address depression, any acknowledgment of mental health issues would be 'fatal' to her career chances:

Although the firm I work for has addressed depression through seminars etc with a view to helping overcome the high rate in legal firms, I believe that it would strongly prejudice my promotion chances if I admitted that I took anti-depressants. I think this is particularly the case for women as we are already perceived by our male colleagues as having less tolerance to stress and so it is fatal to your career chances to reveal any such 'weakness'.⁸³

⁸² Respondent 482.

⁸³ Respondent 697.

These comments highlight a degree of scepticism among respondents regarding the introduction of health and wellbeing initiatives and question whether such initiatives are capable of tackling systemic issues of stress, depression and anxiety.

D Changing Jobs

Even though the survey questions did not canvas more drastic ways of coping, such as resigning or changing jobs, many stories of contemplated or actual change emerged from the comments that respondents wrote at the end of the survey. These stories signal both the difficulties faced by many individual legal practitioners, and some of the endemic issues about the structure and culture of the profession. Note that the vast majority of the stories were told by female respondents. It is unclear whether this reflects a greater tendency among female lawyers to change jobs or a greater willingness of female respondents to report these changes. While there is a large body of literature on the position and experience of women in the profession which is highly relevant to the issues raised by our respondents,⁸⁴ as Collier points out: 'It is imperative that the legal profession looks beyond, and challenges, the still-dominant perception that questions of work-life balance in law raises issues primarily about women's and not men's personal lives'.⁸⁵

We include the responses below to open up further exploration of the issues affecting women and men's work and personal lives.

1 Considering Change

A number of respondents told us that they were sufficiently dissatisfied with their current job that they were considering leaving. A 29-year-old male early career solicitor working in a private firm is one example:

My work expects that I am at work early (7.30–8am) and that I leave late (7.30–8pm). I have difficulty getting time to exercise during the day, even where I do not take a lunch break, and am expected to come in on the weekend to work, with no real compensation. I feel I do not have enough time to live a life outside of work, and am very dissatisfied with this. As a result I am looking to leave the private sector and find a job with stricter requirements as to hours employees can work (ie, government) that rewards you where you are required to work extra hours (for example, flexi time). I am more than happy to take a large pay cut to achieve this. My current role is driving me away from law, as I do not enjoy my life and do not look forward to going to work, indeed, even the weekend is not something to look forward to as I will be expected to come in at least one, if not both days.⁸⁶

84 Hilary Sommerlad, 'The Myth of Feminisation: Women and Cultural Change in the Legal Profession' (1994) 1 *International Journal of the Legal Profession* 31.

85 Richard Collier, 'Rethinking Men and Masculinities in the Contemporary Legal Profession: The Example of Fatherhood, Transnational Business Masculinities, and Work-Life Balance in Large Law Firms' (2013) 13 *Nevada Law Journal* 410, 437.

86 Respondent 761.

Similarly, a 38-year-old female mid career solicitor working in a private firm who reported moderate stress, severe depression and severe anxiety in the DASS was also considering leaving law altogether:

Staying back late seems to be worn as a badge of honour in some people. I have been recently told that despite making budget I need to do more face time. As a 38-year-old single female I find it very difficult to make time to create any life, meet someone or have children. I have a dog at home but that is not seen as a valid reason for me to leave at any reasonable hour. I have tried to go to the gym about twice a week but even that can be a challenge and is looked down upon. I recently moved to a mid tier firm to attempt to have less stress and more a of a work life balance but have found attitudes very similar. I enjoy law and am good at it but do not like private practice law firms. Time sheets do not reward efficiency or successful outcomes and at the end of the day are what matter most to law firms. I am thinking about leaving law altogether for these reasons.⁸⁷

One respondent, a 35-year-old mid career female solicitor in a private law firm, said she had resigned from her job because she disliked its competitive nature and the firm turning ‘a blind eye to bullying and aggression’:

I am glad I chose law as a career – I can’t think of any other job that pays as well that I would like to do all day. The thing that I have found most difficult is the highly competitive nature of work in a private law firm – I prefer teamwork and collegiality (unfortunately that is not what I have found at my current firm, so I have resigned after only a short time here). Firms are set up to only recognise billable hours as a performance indicator, and they can turn a blind eye to bullying and aggression. In particular, the type of bullying often practised by female partners is not seen as being ‘as bad’ as other types of bullying, even though it is often more damaging to the mental health of employees.⁸⁸

Respondents identified many factors that contributed to their dissatisfaction with their workplaces that were motivations for change. Many of the reasons they identified – working long hours, lack of time for family and personal life, lack of reward and recognition, highly competitive environment, billable hours, bullying – have been documented in other reports on the profession.⁸⁹ For respondents who actually changed jobs, most found working conditions that better suited their needs. We have included some of their stories below.

2 *From Law Firm to Sole Practice*

Some respondents reported improvements in their working conditions when they left their job at a law firm to set up a sole practice. For example, a 40-year-old female solicitor left her position in a top tier firm to work as a sole practitioner. She reported that she had ‘never been happier’, as the move gave her more control over the type of work she did and how she worked:

I have never been happier since commencing work for myself. I choose the clients I want to work with, only good quality work, set reasonable timeframes, don’t say

⁸⁷ Respondent 355.

⁸⁸ Respondent 615.

⁸⁹ See Kendall, above n 5.

yes to everything that comes in the door and can decide how much I want to earn and how much I would prefer to have more time with my children rather than more billable hours. Not everyone wants to earn a \$million. I left top tier law firms and would NEVER go back – those places are like palliative care facilities, too quiet, too serious and some people who genuinely seem like they might be more dead than alive. Why won't law firms realise that there are plenty of excellent lawyers who just don't want to work hard all day every day and who don't actually need to attend meetings at 9pm?⁹⁰

Another 50-year-old female lawyer set up her own sole practice so she could balance work and family commitments:

Law is built on an out-dated male view of work. Law practice expects too much of people. Large and small firms perpetuate the myth that you must work long hours to have a successful career. Working through the night is seen as a rite of passage for young lawyers. The culture in many firms is blokey and promotion is uneven and not really based on merit but white blokes promoting other white blokes. Networking always occurred informally for men (off to the rugby, cricket) but needs developing for all women lawyers as soon as they start work. The gender pay gaps exist in law due to the above. Women are underrepresented in law because of the above. It is very hard to get 6 to 7 hours chargeable up per day, perform at level showing 'partnership potential' let alone try to get pregnant and raise kids. That is why women like me set up sole practices – we earn much less than we could but we still can be lawyers and have a family. I would not encourage my daughter to do law.⁹¹

Despite the opportunities in sole practice to balance work and family commitments, the culture of the profession can continue to be very restrictive, particularly for women. This highlights what Sommerlad has defined as the limited roles for women in the profession, such as 'surrogate men', 'men in skirts' or 'unreliable mothers'.⁹²

3 From Law Firm to the Bar

Other respondents suggested that working at the Bar better suited their needs. A 34-year-old female respondent found that she was able to cope with the stress associated with the Bar because she had greater control over her work than when she was working in law firms. There was, nevertheless, a downside to working as a barrister, including having to deal with uncertainty, the demands from the judiciary and substandard work from instructing solicitors:

Each type of lawyer is different. I have worked in a large [city A] firm, a smaller (but high performing) [city B] firm and am at the bar in [city B]. The stress in each situation has been different but commonly, stress due to matters outside your control occurs regularly in the profession. My ability to manage stress is slightly better at the bar as I have more control to a degree however at the end of the day we are subject to uncertainty, demands from the judiciary who simply don't consider whether a person has the capacity to deal with their demands on a particular matter and from instructing solicitors who often fail to brief you in a

90 Respondent 208.

91 Respondent 344.

92 Sommerlad, 'The Myth of Feminisation', above n 84, 48.

proper manner. I must say, I am very concerned about the impact that having children will have on my career and my ability to do both jobs properly. This is not assisted by the fact that the [State] Bar is at present, heavily dominated by senior male counsel who are not particularly understanding of the challenges that women face. Those that are supportive, however, are fantastic. That said, the profession offers many challenges and opportunities to assist those in society who can't afford to pay for representation and it can be incredibly gratifying.⁹³

4 From Law Firm to Corporate Legal

Respondents working in corporate legal jobs described their workplaces as more supportive than the law firms where they had previously worked. A 34-year-old female solicitor left a small firm because she experienced workplace bullying and racism and felt unsupported. She had since found a position in the corporate legal sector. In her survey comment she described moving out of private practice as 'the best decision I made in my life':

It would have been good if the survey took into consideration PAST EMPLOYERS, as many solicitors may NOW be in a great job with not so much stress, but have come from toxic workplaces and had considerable issues in the past. I am lucky enough to now have a job in corporate legal for a great company, but my last job was in a small firm where I felt unsupported, and was a victim of bullying ... In my last firm I was often working on weekends, at night till 7pm or 8pm, yet had to ASK every week to get paid, otherwise it would not be processed. I earned \$45K per annum, and was refused a pay rise. My experience working in small firms took its toll on me physically, where my GP recommended I take anti-depressant medication. I started taking them but due to the severe reaction and side effects I stopped, and left the job by mutual agreement with the employer. Working in small firms affected my health both mentally and physically, and I often used to think, 'how can anyone do this job and have kids???' Moving out of private practice was the best decision I made in my life.⁹⁴

Similarly, a 55-year-old female solicitor felt 'fortunate' that she left private practice early and had been working in a corporate legal setting where she felt valued:

The law is generally intolerant of family realities (especially if a woman is not considered 'partner material') and many women cannot continue practising because there are few options for them. When they do find work, they must often content themselves with a position that does not take full advantage of their skills. I am fortunate that I left private practice early and forged a corporate legal career where my skills have been appreciated and I have felt valued for my part in the overall enterprise. In my opinion, the current law firm model poses risks to health on many levels which have been written about and dissected many times, but which ultimately still remains as the only model on offer.⁹⁵

A 32-year-old female solicitor who changed from working in a private national firm to a corporate in-house legal position contrasted the cultures in the two workplaces:

93 Respondent 298.

94 Respondent 117.

95 Respondent 999.

I found private practice in a national firm to have completely unreasonable expectations on lawyers' time. I found myself constantly stressed, with no end to the stressful period in sight. I have found that in-house, while busy, is not as stressful and my superiors are appreciative of my long hours and hard work, as opposed to private practice, where long hours and hard work were the bare minimum required and any request to redistribute work or allow for some down time was seen as 'a bad attitude' and a sign that you were 'not cut out to be a lawyer'. I am not sure anything will change until there is generational change among partners at the larger firms. Particularly difficult for female lawyers is the fact that the vast majority of partners are still men who have had wives to look after the home/family side of life while they spend long hours at work each day. They do not seem to appreciate that this is no longer the way of the world and expectations need to change to allow for flexible arrangements.⁹⁶

For this respondent, one of the favourable aspects of working in an in-house legal role was that hard work was rewarded and recognised. This is in contrast to the work ethic described in private firms which was highly competitive, where long hours were seen as the norm rather than effort that should be rewarded. The challenge for female lawyers in particular, as Sommerlad reminds us, is that 'the intensification of the competitive work ethic has accentuated women's deviant (or potentially deviant) professional status'.⁹⁷

5 *From Private to Government/Community Legal Practice*

Other respondents compared the advantages of working in government or community legal practice. A 54-year-old female solicitor commented on the benefits of changing from private and public practice to the community sector. The positive aspects of her current workplaces included teamwork, no need to bill for her time, and standard working hours:

My life changed when I started working in the community sector [after] 6 years in private practice [and] 10 years in public practice. The difference was: team work, holistic approach to problem solving, not needing to 'time cost' and able to do whatever the job required without having to charge the client, working with a diverse group of people (not just cranky old men), being told to 'go home' at 5pm, completing a timesheet for work hours and having someone monitoring – and correcting – my work habit.⁹⁸

A 44-year-old female solicitor left a 'very stressful litigation job' to work in a government legal position and, while her alcohol use was still at a high risk level, she found her new workplace more supportive and less stressful. At the time of completing the survey, her DASS scores were normal, and her self-rated stress level was 'slight'. This was a dramatic change from her situation in the old job:

For many years I had a very stressful litigation job. I got to the point where I was very depressed and barely coping. Juggling work and family made it worse. All I could do was try to keep all the balls in the air and hope I didn't drop one – and

96 Respondent 837.

97 Hilary Sommerlad, 'Women Solicitors in a Fractured Profession: Intersections of Gender and Professionalism in England and Wales' (2002) 9 *International Journal of the Legal Profession* 213, 229.

98 Respondent 446.

was constantly anxious that I would. If I had answered your questions about physical and psychological symptoms two years ago the answers would have been very different. I decided to leave my old job and take a pay and responsibility cut to move to a public service legal job, that is less interesting, but much less stressful and the expectations of hours of work are civilised. Until you stop you don't know how debilitating living with the constant pressure of litigation is, and how it affects your whole life. This industry has to change as it burns people up and spits them out!⁹⁹

Even though respondents identified several benefits of working in government or community legal practice compared to private practice, some downsides were also acknowledged. For example, a male solicitor reported that his experience of private practice was stressful because of the lack of support as well as the billable hours system. In contrast, he found the work in government and the community legal sector, though equally stressful because of the nature of the work, provided more supportive and collegial work environments:

I have worked in small private practice, ODPP, Legal Aid and the community sector. My experience in private practices ranged from appallingly stressful, unsupportive and testing because of the attitude and personality of the principal to manageable but stressful because of the focus on billable hours. The work for ODPP and Legal Aid was at times very stressful because of the nature of the matters in my practice, but the environment was generally supportive and collegial.¹⁰⁰

Despite finding a more suitable workplace which could accommodate personal and family responsibilities, a 51-year-old female solicitor felt that the change from private practice to government and community sector had come at a cost – both in terms of financial rewards but also in terms of career progression:

I had my first child in 1990 and I basically worked part-time from then until now (except for 1 year). I found private practice at that time very unsupportive of part-time lawyers and hard to find part-time work at all. Consequently I moved in to Government and the CLC sector. This work has made balancing work–family easy however the negatives have been that my income has basically stagnated and to an extent so has my career progression.¹⁰¹

6 From Full-Time to Part-Time Work

Whether they left their current job or remained with the same workplace, some respondents mentioned they had sought to work fewer hours to better meet their needs. For example, a 45-year-old female solicitor explained how she had left her previous role to work part-time to meet her family responsibilities. Although she enjoyed working part-time, she felt that the sacrifices she had to make to find flexible working arrangements were detrimental to her career progression, and that she was doing work that was not as fulfilling as when she was working full-time:

⁹⁹ Respondent 873.

¹⁰⁰ Respondent 160.

¹⁰¹ Respondent 289.

In a previous role I experienced discrimination as a result of having a child and then working part-time. I left that role because of the discrimination I experienced ... I now work in a role that is very part-time in order to accommodate my family commitments. While it is very family friendly it is not as fulfilling from a career perspective as my previous role. I am sure this applies to many part-time lawyers – yes we can be part time, but at the sacrifice of career progression. Perhaps this is not unique to the legal profession, but it would be an interesting study!¹⁰²

In contrast, by working part-time following the birth of her children, a 33-year-old female solicitor in a large private firm found the new arrangement both enjoyable and fulfilling. She no longer measured her success in terms of billable hours:

In the past I suffered from work related stress, anxiety and depression for which I took medication (for around 12 months). For me the significant turn around in my mental health was starting a family. I had identical twin boys 2.5 years ago and 1.5 years ago I returned to work on a part time basis (3 days per week). Upon returning to work in this new capacity (ie, as a mother and working part time) I find I have a new perspective on my work and wider career and a more relaxed and realistic approach to my career ambitions and work life. Prior to having my family I was very caught up in the push to progress, in the quest for the highest billable hours as a measure of my 'success' (and to a degree, my self-worth as a 'good lawyer'). I was well and truly on the proverbial hamster wheel and was unable to get off – and unable to say 'No – I don't have capacity for that ...' The benefit of treating my depression at the time and the perspective with a career break and motherhood has given me has changed everything. Now I work because I enjoy it and I feel fulfilled and I can make a positive contribution to my team ... I feel I am able to achieve this balance as a result of great support from my firm and, in particular, the partner with whom I do most of my work. It took me a long time to get here, and, unfortunately, a bout with depression, but I am a lawyer and I am in a happy place with that. I hope others can achieve the same balance.¹⁰³

As is evident from these stories, there were advantages as well as trade-offs in changing jobs or transitioning from full-time to part-time roles – greater job control and work–life balance were often secured at the expense of income level and career progression. Other research shows how central the norm of full-time work is to the legal profession, with heavy workloads, billable hours and long working hours identified as major obstacles to the availability of part-time positions in the legal profession.¹⁰⁴

VI CONCLUSION

This research is based on a survey of 965 Australian legal practitioners. As pointed out in Part II, results of this survey must be interpreted with caution

102 Respondent 704.

103 Respondent 517.

104 Campbell and Charlesworth, above n 51.

because of the low response rate and the self-selected nature of the sample.¹⁰⁵ Although the results strictly only apply to this survey sample (ie, they are not generalisable to the population of Australian lawyers), our analysis has found some thought-provoking patterns that should form the subject of future investigations and research.

This research is the first attempt in Australia (and as far as we are aware, also internationally) to systematically examine factors associated with work stress in the legal profession by collecting detailed data on the structure and culture of legal work. The large volume of comments from our respondents also provides an important source of qualitative data about the working conditions, work experiences, stressors, and health and wellbeing statuses of Australian legal practitioners. Many respondents have expressed concerns about the structure and culture of legal practice that should be taken seriously by the legal profession.

A Levels of Depression, Anxiety and Stress

The reported levels of depression, anxiety and stress symptoms (according to the DASS scale) among respondents seem alarmingly high, but if results of the recent *Stress and Wellbeing in Australia Survey* are correct,¹⁰⁶ the levels of depression and anxiety found in this study are only a few percentage points higher than those reported in the general Australian population.

The much higher level of SELF-REPORTED STRESS is another potentially concerning result of this study. It is important, however, to understand the differences between the DASS stress scale and the SELF-REPORTED STRESS level: the former asks respondents to check a range of symptoms they had experienced *over the past week*, whereas the latter asks a very general question ('How would you rate your overall work stress level?') *with a focus on 'work' and no timeframe specified*. The specificity of the DASS scale is useful for capturing quite recent *experience* (over the past week) in relation to a *fixed set of symptoms*, while the self-rated stress question relies on respondents' *memory* as well as current experience and can be interpreted differently according to the

105 As mentioned before, low response rates and unrepresentative samples are not unique to this study. It may be that these sorts of surveys attract a higher proportion of respondents who are stressed. On the other hand, stressed lawyers may be under-represented as it is difficult to get overworked lawyers to complete detailed surveys about their own condition.

106 Casey, above n 75.

respondent's own definition of stress.¹⁰⁷ Furthermore, the DASS attempts to identify levels of stress, depression and anxiety which are clinically significant, that is, to define and identify current emotional states that are so intense that they impact upon daily functioning. The SELF-RATED STRESS scale simply asks for a perceived level of work stress. So while someone may rate their work stress levels to be quite high, they may still have a low DASS because that level of stress is not impacting on their daily life in a significantly negative way. This may be due to the presence of protective factors (eg, resilience, family support), or the absence of other risk factors (eg, additional stressors in their lives, genetic predisposition).

B Relationships between DASS Scores and Other Variables

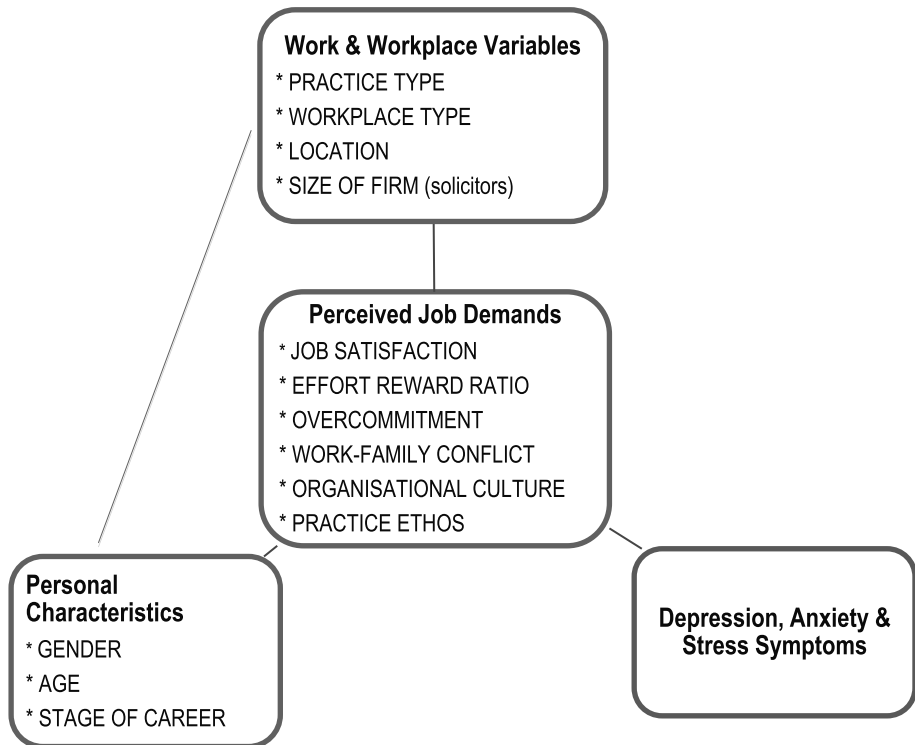
An unexpected finding of this research is that DASS scores were *not* statistically different for respondents doing different PRACTICE TYPE (barrister/solicitor), in different WORKPLACE TYPE (private, government, community, etc), LOCATIONS and FIRM SIZE, or for different personal characteristics (except for whether they had children). Yet DASS scores were highly correlated with all the variables listed under 'perceived job demands', which were in turn correlated with many of the workplace and personal variables. These results can be represented schematically by Figure 2: where a line exists between the boxes, many of the variables were significantly related to each other; the absence of lines between the boxes indicates that the variables were not significantly related to each other. To illustrate, consider our measure of PRACTICE ETHOS.

We found a significant relationship between GENDER and PRACTICE ETHOS, such that males were more likely to agree that there exists a culture of long hours and competitiveness in law than females. We also found a significant relationship between office LOCATION and the PRACTICE ETHOS measure, with lawyers in metropolitan areas more likely to agree that there exists a culture of long hours and competitiveness. Further, the PRACTICE ETHOS measure was significantly positively correlated with DASS scores (ie, respondents with

107 Research by the Nobel Laureate Daniel Kahneman and his colleagues has shown that there can be substantial discrepancies between people's experience and their memory of this experience. Such a memory-experience gap is demonstrated by a 'discrepancy between the average of experienced emotions and the overall evaluation of the experience, which is usually more intense than the averaged emotions': Tayla Miron-Shatz, Arthur Stone and Daniel Kahneman, 'Memories of Yesterday's Emotions: Does the Valence of Experience Affect the Memory-Experience Gap?' (2009) 96 *Emotions* 885, 885. Their research (on women only) found that the gap was more pronounced for negative emotions: 'people remembered being angrier, sadder, and more tense overall than they reported through the measures of their actual experiences': at 890. If this applies more generally, then it is possible that lawyers' self-report of their level of stress was in fact higher than what they actually experienced on a daily basis. Nevertheless, self-perceptions of work stress can be extremely real to the person and should not be dismissed.

higher DASS scores were more likely to agree with the legal culture statements). These significant relationships are represented in Figure 2 by a connection between the boxes containing these variables. There was, however, no significant relationship between GENDER and DASS scores or office LOCATION and DASS scores. This latter finding is reflected in Figure 2 by the absence of a line connecting PRACTICE ETHOS to these two variables.

Figure 2 Relationships between DASS Scores and Other Variables



C Relationships between Self-Rated Stress Levels and Other Variables

In contrast to the lack of significant direct relationships between DASS and work, workplace and personal variables, SELF-RATED STRESS levels were significantly higher for barristers, those aged between 40–9, and those in mid to late stages of their career (ie, practising law for more than five years). SELF-RATED STRESS levels were also highly significantly correlated with all the variables listed under ‘perceived job demands’ – this suggests that these variables are also crucial for understanding self-rated stress levels.

D Implications for the Legal Profession

If the relationships outlined in Figure 2 can be generalised to the population of Australian legal practitioners, then the message is quite clear that no particular type of legal work, workplace, gender, age or stage of career is more prone to depression, anxiety and stress. What really matters are the factors listed under 'perceived job demands'. This suggests that better health and wellbeing outcomes can be achieved by increasing job satisfaction (in terms of job substance, responsibility, control, security, relationships, social value, remuneration and opportunities for advancement); striking a balance between effort and reward in a job; minimising overcommitment to work; creating a work culture that is sensitive to personal and family needs; and promoting a practice ethos that does not regard working long hours as a 'badge of honour' or leave lawyers to 'sink or swim'.

These changes are both structural and cultural. Structurally, they involve designing and implementing better systems for managing workload, deadlines, client demands and expectations, and charging practices. For example, it has been recommended that organisations should have in place effective processes for addressing any 'inappropriate behaviour by customers or clients' or for ensuring that the amount of work that staff are expected to do is appropriate for their positions.¹⁰⁸ Culturally they call for valuing people over profit, supporting a safe psychological environment, encouraging work-life balance, and sustaining respectful, collaborative working relationships. For example, organisational and management support for staff to achieve a balanced work, family and personal life can be fostered by ensuring that staff access the breaks to which they are entitled, including lunch breaks, sick leave, annual leave and parental leave.¹⁰⁹

Respondents of this survey have indicated that while some health and wellbeing initiatives, such as time off work, sport and exercise classes, redistribution of work, extra time to complete work, and mentoring, could be effective for dealing with work stress,¹¹⁰ they were less confident about initiatives such as time/stress management training, counselling, health check-ups and Employee Assistance Programs. In their comments there was considerable dissatisfaction or cynicism about employers 'talking the talk' rather than taking seriously issues of stress, depression and anxiety associated with legal work. This is concerning. As Rhode makes clear, initiatives to address work-family balance 'cannot succeed without the full support of an organisation's leadership. Messages about workplace values are communicated through informal practices

108 TJMF, *Psychological Wellbeing: Best Practice Guidelines for the Legal Profession* (Report, 2014), 6 <http://www.tjmf.org.au/wp-content/uploads/2013/02/TJMFmentalHealthGuidelines_A4_140426.pdf>.

109 Ibid 7.

110 See above Part V.

as well as formal policies'.¹¹¹ Dissatisfied with their workplaces, many of our respondents were contemplating changing jobs or had actually changed jobs in order to reduce work stress.

The Australian legal profession and community have been aware of lawyering stress issues for many years and have implemented a range of initiatives to address them. This article has provided a systematic analysis of risk factors associated with the health and wellbeing of practitioners in different practice settings. We hope that it will form the basis of further research and positive action towards improving the health and wellbeing of the legal profession.

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111 Deborah L Rhode, 'Balanced Lives: Changing the Culture of Legal Practice' (Report, American Bar Association Commission on Women in the Profession, September 2001) 54.