



Law Council
OF AUSTRALIA

Wellness and Sustainable Legal Practice for the Modern Lawyer

Speech delivered online by Mr Tass Liveris, Law Council of Australia President, at the Law Society of Singapore's virtual Presidents' Roundtable for Bar Leaders to mark the Opening of the Legal Year.

10 January 2022

Good afternoon.

It is a pleasure to be with you to mark the Opening of the Legal Year.

I would like to congratulate President Tan and Vice Presidents [Lisa] Sam and [Jason] Chan on their election.

“Junior Lawyer Burnout: High pay can’t stop exit from elite firms” blared the headline in one of Australia’s leading national daily newspapers just last week.

The article went on to chronicle the global crisis confronting our profession as workloads take their toll on lawyers’ mental and physical health. It included interviews with lawyers around the world who had experienced insomnia, exhaustion, stress and panic attacks.

We also know that lawyers experience depression, substance abuse and suicide at higher rates than the general population.

The article said attrition is the number one topic of conversation amongst heads of firms.

The challenges faced by members of our profession are not just workload based. A small number of studies have suggested that lawyers experience more post traumatic stress disorder symptoms (PTSD) than other helping professions, such as mental health workers.

While more research in this area is needed, we are becoming increasingly aware of the issue of vicarious trauma in the context of the legal profession. Vicarious trauma refers to the psychological impact of repeated exposure to the trauma of others – for example, through hearing distressing stories or viewing distressing images. Lawyers who practise criminal and family law are particularly susceptible to vicarious trauma, which, similarly to post-traumatic stress disorder, can manifest in insomnia, emotional numbness, risk-taking behaviour, and withdrawing from friends, family and colleagues.

In 2013, the Law Council conducted the National Attrition and Re-engagement Survey (NARS) to investigate the progression, attrition, and re-engagement rates of male and female lawyers, obtain qualitative and quantitative data, and identify gendered trends within the profession. The NARS remains one of the most comprehensive studies of the Australian legal profession and found that approximately one in four women experienced sexual harassment in their legal workplace. More recent studies suggest that these rates may be even higher.

Over the past two years, the pressures members of our profession traditionally face have been exacerbated by pandemic induced anxiety and isolation.

I know I don’t have to tell any of you, but our people – our staff – are our most valuable resource and we need to do everything we can to keep them.

We need to sustain them in order to sustain our firms and our profession.

But we are failing to keep them in the profession. According to the newspaper article I referred to earlier, the number of associates leaving the profession increased by almost 50 per cent year-on-year in 2021.

So, what are we doing to care for ourselves and each other, and is it enough?

In the United States, a National Taskforce on Lawyer Wellbeing has been established which contends that lawyer wellbeing is part of each and every lawyer's ethical duty of competence. It includes lawyers' ability to make healthy, positive work/life choices to ensure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients. This definition highlights that complete health is not defined solely by the absence of illness; it includes a positive state of wellness.

This resonated with me because it seems to flip how we think about wellness. It is not simply a 'nice to have', but a professional obligation. Just like maintaining our qualifications and registration, this says wellbeing must be prioritised and without it our fitness to practice is brought into question.

If we look at wellbeing in that light, we must each strive for our own personal wellbeing, our firms have to support the measures we need to put in place to protect our health and wellbeing, and our professional organisations must assist at a jurisdictional level.

Advancing the mental wellbeing of lawyers has long been a core focus of the Law Council – a priority I know we share with the Law Society of Singapore and other counterpart legal professional bodies in our region.

Improving mental health and wellbeing within the legal profession requires a tiered approach:

- First, proactive approaches that encourage good mental health practices as the best defence against mental illness;
- Second, reactive approaches that provide easily accessible services for lawyers suffering distress or a mental illness; and
- Third, focused approaches that provide support for lawyers who experience trauma in their day-to-day work, such as those working in family law, criminal law or as part of the judiciary, or tailored 'de-briefing practices' after particularly heavy work periods.

Last year, the Law Council of Australia, established a Mental Health and Wellbeing Portal. Through this centralised hub, lawyers can access the range of resources and assistance services currently available across Australia.

These supports include confidential counselling services, educational activities to promote health and wellbeing, and mentoring – to name just a few.

If I can go back to the research I mentioned earlier about trauma and lawyers, one of the reasons lawyers suffer more than others like mental health professionals, is that mental health professionals are trained to deal with difficult situations - and we are not. In Australia, our professional bodies are addressing this shortcoming through continuing professional development, but it may be time to explore whether including it in our law school curriculums would have significant benefits.

As part of its efforts to stamp out sexual harassment in the legal profession, in the last week of 2021 the Law Council of Australia released a National Model Framework to guide firms and organisations in the development and implementation of effective workplace policies.

Our employers are also stepping up. In recent years, several large Australian law firms have appointed an in-house clinical psychologist to advise on workplace changes and initiatives to improve mental wellbeing in their workforce.

For employers, the incentives to reduce attrition are great. The cost of replacing a staff member is estimated to be more than 100 per cent of their salary, but the indirect cost of losing a good, productive employee, of any level, is immense.

Before I conclude, I have to point out that many of the wellness initiatives I have outlined today have been developed in response to the traditional model of legal practice, that is people working within an office environment, meeting clients face-to-face and attending court in person.

However, the pandemic is forcing us to forge new definitions of 'legal practice' and the services provided by a 'modern lawyer'.

During the pandemic, white collar professionals, including lawyers, have come to recognise, perhaps more than ever, the importance of work-life balance. Being able to offer flexible hours and work practices, including working from home, will increasingly be key to attracting and retaining staff and preventing burnout.

While this new way of working may help keep employees and attract lawyers back to the profession, it has its own inherent risks. In particular, our staff will potentially be more isolated and it will be more difficult to identify anyone struggling and who needs help. Those visual signs we might rely on face-to-face will be all but lost to us.

More than ever, firms will have to establish mechanisms for identifying risk factors – which could be hours logged in or times of day work is being conducted – and proactively reach out to their staff rather than waiting for them to ask for help.

I would like to close with a quote from Derrick Jensen's book, *The Problem of Civilisation*: "We cannot hope to create a sustainable culture with any but sustainable souls."

For me, this is what it boils down to – we cannot sustain our profession without focusing on sustaining individual lawyers. Every piece of the whole is important.

Thank you.

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