

# It's time to impose rules

Self-regulation does not work, so a change in culture and approach is needed to avoid the anxiety and depression lawyers suffer.

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We know long working hours and heavy workloads increase the likelihood of mental illness. It is time for law firms to be proactive in eliminating risks to the mental health of employees and review workloads, working hours and billable hour targets.

The evidence is clear: lawyers are suffering from mental health conditions at an alarming rate. Research suggests that the high pressure, large workloads and long working hours that typify the work of a lawyer are a significant cause.

The legal profession should be applauded for recent attempts to deal with lawyers' mental health more honestly and openly than in the past. However, a more fundamental shift is required.

Too much focus on the individual responsibility of lawyers to manage their own working hours, workloads and stress levels is ineffective in the face of structural and cultural problems. Instead, law firms must actively manage the high workloads, billing targets and resultant excessive hours worked by their employees to reduce the incidence of mental health problems and increase overall wellbeing.

## An emerging crisis

It is now well accepted that there is a serious mental health problem among Australian lawyers. Repeated studies have shown that lawyers suffer anxiety and depression at rates significantly higher than the general population.

A 2014 study of Australian lawyers<sup>1</sup> found:

- 37 per cent of lawyers experienced moderate to extremely severe depressive symptoms, compared with 12 per cent of the general population;
- 31 per cent of lawyers experienced moderate to extremely severe anxiety symptoms, compared with 9 per cent of the general population; and →

### SNAPSHOT

- Lawyers suffer stress, anxiety and depression at significantly higher rates than the general population and suffer mental illness at higher rates than other professionals.
- Although some firms promote measures to self-manage, these haven't been successful.
- It's time for an organisational approach reviewing workloads and targets along with external regulation via a modern award to back up the culture change needed.



- 49 per cent of lawyers experienced moderate to extremely severe stress symptoms, compared with 11 per cent of the general population.<sup>2</sup>

These statistics cannot be explained away as a consequence of the stress generally experienced by people working in professional employment. Other studies show that lawyers suffer mental illness at rates significantly higher than other professionals.<sup>3</sup>

### **A perfect storm**

Looking at the factors known to contribute to workplace stress, the job of a lawyer is an almost perfect environment for the development of mental health problems. It is a truism that, in general, lawyers work long hours. The cliché of a lawyer working all day and then long into the night is reality for many.

According to the 2006 census, 45 per cent of solicitors worked 49 hours or more in the week leading up to the census.<sup>4</sup> In a 2006 study of Victorian solicitors, 64 per cent reported their daily working hours to be between nine and 10 hours, excluding breaks.<sup>5</sup>

A 2007 study of solicitors in New South Wales found the average working hours for full-time solicitors was about 50 hours a week.<sup>6</sup> The research also points to a culture within the law of working on weekends and missing lunch breaks.<sup>7</sup>

Though law firms rarely expressly request or require their employees to work 10 or 12 hours a day or to work on the weekend, by calibrating employees' workloads and targets in a way that simply cannot be met within ordinary working hours, law firms are implicitly requiring, or at least encouraging, their employees to work excessive hours.

It almost goes without saying that a significant contributor to the long hours worked by lawyers are billable hour targets.<sup>8</sup>

Billable hour targets tend to be between 5.5 and 6.5 hours of billable time worked each day. Lawyers' contracts generally

pay them to work for about 38 hours a week, or 7.6 hours a day, meaning the billable hours target is set to allow for one to two hours each day to be spent on non-billable work such as administration, business development, mentoring and education.

However, the amount of administration and other non-billable work required of lawyers appears to be routinely underestimated in the setting of billable hour targets. A 2005 study found that, on average, Victorian lawyers were required to do three to four hours of non-billable work each day.<sup>9</sup>

More recently it has been suggested that when non-billable work required of lawyers is properly taken into account, a billable hour target of 6.5 hours a day may result in a 12-hour working day.<sup>10</sup>

Research has shown that long working hours can cause poor mental health.<sup>11</sup> A 2008 study found that:

"The strongest predictor of psychological distress was the number of hours the employee perceived that they were expected to work . . . High work demands are known to be associated with a decrease in mental wellbeing. Pressure to work overtime is associated with worsening mental wellbeing. Increased working hours may also produce a negative work-to-family spill over, which is associated with increased risk of depression".<sup>12</sup>

Large workloads and hard to meet billable hour targets make the working environment of a lawyer perfect for developing stress and anxiety. Lawyers themselves report that their working conditions cause them stress.<sup>13</sup>

Given the statistics demonstrating a high incidence of mental ill health among lawyers and the research demonstrating that working hours and job demands can cause mental illness, it can be concluded that the working conditions of lawyers are, at least in part, causing the high levels of anxiety and depression in the legal profession.

## **A reactive approach**

The profession has responded to the high incidence of mental ill health among lawyers with various programs and strategies – from high profile lawyers sharing their stories to counselling services. Law firms often provide health and wellbeing programs which include fitness initiatives, availability of counselling for employees experiencing stress, and awareness and education for employees on stress management and resilience.

These initiatives are to be commended. However, they are directed at two distinct aims: first to educate employees in self-care and resilience, and second, to provide assistance and support when a lawyer is already experiencing distress.

In both these respects they are directed at the individual, not the organisation. They place responsibility on the individual to manage and adapt their responses to the working conditions to which they are exposed, rather than adapting the conditions themselves.

There are two types of intervention into workplace mental health: an individual approach and an organisational approach.<sup>14</sup>

An individual approach focuses on the attitudes and behaviours of individual employees, and consists of initiatives such as counselling, lifestyle education and other behaviour change strategies such as relaxation training.

An organisational approach focuses on the physical and social environments that may produce stress, and consists of strategies such as job redesign and identifying and eliminating working conditions that cause extreme stress.

Individual approaches to workplace mental health have been widely condemned as they tend to overlook adverse working conditions. It has been said that proponents of an approach that tries to teach employees to cope with stressful working conditions “can be seen to be blaming the victim of . . . [the] . . . sources of workplace stress”.<sup>15</sup> Research has repeatedly shown that while individual interventions may be effective for the individual in the short term, they do not have long-term effects or improve overall organisational effectiveness. Organisational approaches are more effective at ensuring long-term individual health outcomes and creating a positive workplace culture.<sup>16</sup>

Take for example, an Australian call centre which was suffering from high absenteeism, increasing customer complaints, and low morale.<sup>17</sup> Staff reported high stress levels.

In response, management introduced a program of health checks and relaxation classes. After six months it was apparent that this program had not significantly reduced absenteeism. Management changed its approach and spoke with employees – it was quickly identified that the times at which error rates were particularly high were weekday afternoons. It turned out that many employees were mothers who were worrying about their children getting home from school safely.

They introduced a 10-minute break each afternoon to provide people with both a rest and the chance to call home to make sure their children were home. This initiative alone resulted in a significant improvement in service quality and employee morale.

This simple example illustrates how structural change in the workplace is the more effective approach to resolving issues, rather than trying to train or educate staff to adapt their behaviour.

## **An organisational approach**

In the context of a law firm, an effective organisational approach would combine measures such as resilience training and counselling with proactive workload monitoring and management, and a review of billable hour targets to ensure that any target genuinely takes into account all the work the lawyer is required to undertake, both billable and non-billable. Targets would be determined based on employee capacity and health, not annual budgets.

Stress management and resilience training would be directed at providing lawyers with strategies for dealing with aspects of working in the law that are less readily changed, such as the regular interpersonal conflict and vicarious trauma, not how to cope with excessive workload, pressure and targets.

## **Why change?**

Not only is it the moral thing to do, there is a strong business case for law firms being proactive in improving lawyers' working conditions.

Many studies have found mental illness has a significant impact on productivity in Australian workplaces.

It has been estimated that mental illness costs Australian businesses \$1.1 billion a year, made up of \$4.7 billion in absenteeism, \$6.1 billion in presenteeism (where an employee attends work but is working less productively than they ordinarily would), and \$146 million in compensation claims.<sup>18</sup>

Further, under s21 of the *Occupational Health and Safety Act 2004* (Vic), employers have a duty to, as far as is reasonably practicable, provide and maintain a working environment that is safe and without risk to health.

Research shows that lawyers work in environments that are known to cause mental ill health. The Act imposes a duty on employers to eliminate those risks. In circumstances where there are approaches for employers to adopt, choosing to continue to require or encourage long working hours and high workloads is not reasonable and, therefore, arguably unlawful.

## **A regulatory option?**

Unlike other professionals such as architects, engineers and government lawyers, private sector lawyers are not covered by any modern award, and rely only on the absolute baseline of entitlements provided in the National Employment Standards.

This means that unlike most Australian employees, and unlike many other professionals, lawyers are generally not entitled to be paid for the overtime they work.

The imposition of a penalty for requiring employees to work additional hours plays two important roles: first, to compensate employees for their time, and second, to act as a disincentive for employers to require their employees to work excessive hours.

Given the ingrained culture of working long hours in the law, it is worth considering dramatic action to remedy it –

## Organisational change

→ including ensuring that lawyers are covered by a modern award. Self-regulation has not served employee lawyers well and a change in culture and approach is long overdue.

### Conclusion

Lawyers are suffering anxiety and depression at alarming rates. The research suggests that working hours, billable hour targets and lawyer workloads are contributing to the development of these conditions.

Self-regulation of the industry has had many casualties, and it is time to consider an external regulatory option.

Further, law firms have a legal and moral responsibility to be proactive in improving the working conditions of lawyers, and in particular, to review billable hour targets, and more proactively manage employee workloads to ensure that a lawyer's work can be completed in their working hours. ■

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