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RECOMMENDATIONS

Victorian legal community health and wellbeing strategy

1. The Victorian legal community health and wellbeing strategy seeks to promote mental health and wellbeing and manage depression and anxiety within the legal community.

2. The strategy operates across a therapeutic continuum, recognising responsibilities for lawyers’ wellbeing of the individual lawyer, their close network of family and friends, employers, educational institutions and jurisdictional stakeholders.

3. The health and wellbeing strategy addresses the four stages of the preventative therapeutic continuum.

4. Health and wellbeing initiatives should be evidence-based and expanded over a three-year implementation period, subject to funding levels.

WATL/ wellbeing in the law program

5. Support from the Wellbeing and the Law Foundation (WATL) Board should be sought to expand its mandate to deliver an independent program for the legal community (the WATL/wellbeing in the law program) that targets health promotion and primary prevention (stages 1 & 2) and addresses:
   a. systemic and work environment issues and creates a forum for health promotion, research and policy development in the legal profession; and
   b. individual risk factors and raises awareness and provides education, training and information about wellbeing.

6. The WATL/wellbeing in the law program should operate across the legal community, working with law students and law schools, PLT students and providers, legal practitioners (barristers and solicitors), legal support staff and employers, legal academics and judges.

7. The activities of the WATL/wellbeing in the law program should include:
   a. undertaking research on the impact of unhealthy working environments.
   b. encouraging legal employers to:
      i. adopt preventative strategies that aim to ensure that working as a lawyer has a health enhancing impact; and
      ii. implement policies and practices to prevent and manage mental illness arising in the workplace.
   c. undertaking awareness raising and education activities in relation to:
      i. individual personality and cognitive styles and their impact on wellbeing;
      ii. stress management and resilience training;
      iii. physical health, fitness, sleep and nutrition;
      iv. potential risk factors for becoming unwell and identifying when it would be beneficial to seek assistance;
      v. preventing alcohol and substance abuse; and
vi. reducing stigma about depression and anxiety and encouraging members of the legal community to seek assistance.

8. WATL should be supported by the LIV and Victorian Bar to obtain funding for implementation of the WATL/wellbeing in the law program.

WATL resourcing and governance

9. The WATL Board should be expanded to include experts in mental health and wellbeing.

10. WATL should employ a Program Manager to develop an implementation plan and deliver the WATL/wellbeing in the law program.

11. Key stakeholder input to the WATL program should be obtained through a stakeholder reference group with representatives from across the legal community.

12. Ad hoc experts should be used to obtain input to WATL projects and activities.

LIV wellness at work program

13. The LIV should expand its secondary and tertiary prevention activities for its members, by:

a. extending the Vic Lawyers’ Health Line service to provide telephone counselling 24 hours a day, 7 days a week;

b. establishing a peer support program, connecting those experiencing depression, anxiety, alcohol and substance abuse disorders with mentors and peers with similar experiences; and

c. subject to available funding, establishing an assessment and referral service that provides face to face health assessments for lawyers and PLT students to help assess the most appropriate therapeutic intervention and refer them to the most appropriate therapist.

14. The LIV wellness at work program should:

a. have clinical and quality assurance mechanisms in place, including strict confidentiality requirements and key performance indicators;

b. include a feedback mechanism to help evaluate services; and

c. be reviewed annually to measure its effectiveness.
Compulsory continuing professional development on health and wellbeing

15. To promote individuals taking responsibility for their personal health and wellbeing, amendments should be made to Continuing Professional Development Rules to ensure that legal practitioners participate annually in health and wellbeing related activities.

Complementary health and wellbeing programs

16. Legal employers and organisations (such as the Victorian Bar) should continue to provide their own health and wellbeing programs for their employees and members, funded and managed independently from this strategy, such the Barristers Counselling Service and EAP programs run by law firms or other employers.

Insurance and funding strategies

17. Partnerships with the insurance industry should be explored to better identify health risks in the legal sector and develop an insurance and risk management strategy to address those risks.

18. The LIV, the Victorian Bar and WATL should explore funding options to implement the health and wellbeing strategy, including:

a. exploring corporate partnership opportunities to raise funds through an insurance strategy addressing health risks;

b. applying for funding for health promotion and primary prevention activities (stages 1 and 2) from the LSB under s 6.7.14 of the Legal Profession Act 2004 (Vic) and commencing discussions with the LSB about ongoing funding from the Public Purpose Fund; and

c. applying for project grants where appropriate to fund specific activities.

Moving to a consistent national approach

19. The health and wellbeing strategy should inform discussions about a consistent national approach to legal community health and wellbeing.
INTRODUCTION

Since 2007,¹ there has been growing awareness in the Australian legal profession that lawyers are more likely than the general population to experience depression and anxiety.² Most significantly, the Brain and Mind Research Institute reported in 2009 that almost a third of solicitors and one in five barristers surveyed suffered from clinical depression.³ A major finding of the 2009 Brain and Mind Study was that assisting law students and lawyers with psychological distress is a task for legal and educational communities, not just the individuals experiencing psychological distress.⁴ Now, in 2014, it is generally accepted that lawyer mental wellbeing is an industry and profession-wide issue requiring action by professional associations like the Law Institute of Victoria (LIV).

In late 2011, the LIV obtained funding from the Legal Services Board Grants Program for the Mental Health and the Legal Profession project (the project), comprising three activities:

a) To operate a pilot health and wellbeing service providing independent and confidential services for lawyers, now known as the Vic Lawyers’ Health Line;⁵

b) To undertake a literature review on lawyer personality traits and the susceptibilities towards particular forms of psychological distress; and

c) To scope out options for an ongoing lawyers’ health program (the scoping study).

This final report of the project sets out detailed proposals for the introduction of a preventative health and wellbeing strategy for the Victorian legal community. Proposals are informed by research on existing legal and medical profession health programs and literature on lawyer personality traits and causes of distress in lawyers, consultations with members of the legal and medical community and learnings from the Vic Lawyers’ Health Line pilot.

A report on the Vic Lawyers’ Health Line pilot service is contained in Appendix Two.

² For an overview of the major depressive illnesses and anxiety disorders, see http://www.beyondblue.org.au/the-facts.
³ See Kelk, Norm, Georgina Luscombe, Sharon Medlow and Ian Hickie (2009), Courting the blues: Attitudes towards depression in Australian law students and legal practitioners, Sydney: Brain & Mind Research Institute, University of Sydney (the Brain and Mind Study).
⁴ Brain and Mind Study, ibid, p.48.
EXECUTIVE SUMMARY

The LIV is committed to implementing a new integrated preventative health and wellbeing program for members of the legal community in Victoria, and being a champion for change at the national level.

The outcomes of this project call for implementation of health and wellbeing programs that are proactive in their approach to wellbeing, and preventative in their focus on mental health and which operate in tandem with initiatives and programs within legal practices, organisations and educational institutions.

Why a Victorian legal community health and wellbeing strategy?

This Victorian legal community health and wellbeing strategy seeks to address:

- the stressful nature of working as a lawyer (including work culture and environments and the risk of vicarious trauma in some areas of law);
- the need for profession-wide responsibility for a profession-wide issue; and
- the importance of access to appropriate services, regardless of where a lawyer works.

Improving levels of wellness and wellbeing across the legal community will have benefits to employers, employees and the profession by:

- improving productivity and reducing costs to employers;\(^6\)
- safeguarding professional responsibility;
- improving personal wellbeing for individuals and their families; and
- advancing the administration of justice.

The strategy provides a framework for health and wellbeing programs and initiatives across the Victorian legal community and sets out detailed recommendations for implementation.

What are we proposing?

The recommendations in this report call for the implementation of a legal community health and wellbeing strategy that targets:

- systemic and work environment issues;
- potential individual risk factors for becoming unwell;
- early detection and intervention; and
- relieving the impact of mental illness.

To achieve these objectives, the report recommends establishing programs that:

- create a forum for health promotion research and policy development in the legal profession, focusing on creating healthy working environments and working closely with stakeholders across the legal community, to achieve cultural change;
- raise awareness about wellbeing and risk factors for becoming unwell and assist individuals and their immediate networks to understand how and when to seek assistance;
- provide LIV members access to 24 hour telephone counselling services;
- enable peer support by connecting those experiencing depression, anxiety, alcohol and substance abuse disorders with mentors and peers with similar experiences; and
- provide access to tailored individual health assessments and referrals to facilitate access to the most appropriate programs and treatment, depending on individual needs.

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\(^6\) Including WorkCover claims, WorkCover premium increases, salary continuance insurance premiums and claims, TPD insurance premiums (if not covered through superannuation), lost productivity through under-performing employees and replacing employees lost long term to depression and other mental illness. See ROI report below at n 74.
The proposed programs are not intended to replace existing employer and organisational programs, but to be complementary. Their primary objective is to drive cultural change in the profession, and provide access to tailored health and wellbeing services across the diversity of the legal community.

An important focus for the LIV during the project has been to examine ways to prevent serious mental health issues from developing in lawyers. The hope is that, over time, a focus on prevention will reduce the incidence of depression and anxiety among lawyers.

A focus on prevention means understanding the health risks associated with legal practice. The strategy recommends exploring partnerships with the insurance industry to identify and address those risks and to develop a tailored insurance strategy.

**What is the basis for our proposals?**

The LIV has considered a number of options to establish a preventative health strategy for the Victorian legal community, based on a comparative study of legal and medical profession health programs and feedback obtained during consultations with health professionals and stakeholders in the legal community.

The LIV’s research focused on health and wellbeing initiatives in the legal professions in Australia, New Zealand, USA, Canada and the UK, reflecting their shared common law heritage, and the medical professions in Australia, Canada, USA and the UK. Medical profession programs were examined because of the many similarities between regulation of the legal and medical professions (including accreditation of initial training, legislative control of admission to the profession and certification by the individual of their fitness to practise for annual renewal of the right to practise), with the issue of fitness to practise being key to the similarities between the legal and medical professions in terms of regulation and managing mental health and substance abuse problems.  

Six different models of profession health programs were identified in the research:

1. Triage and referral service with no regulatory interface
2. Peer support model
3. Triage and referral service with regulatory interface
4. Diversionary model
5. Treatment model
6. Diversionary and/or treatment

The preventative health and wellbeing programs recommended in this report are based on a hybrid triage and referral service (with no regulatory interface) and peer support model, combining the strengths of various existing health programs and tailoring those to the Victorian legal community experience. The strategy also proposes a significant new health promotion program, acknowledging that legal and workplace culture have a significant role to play in creating healthy working environments for lawyers.

This report recommends that health and wellbeing strategy objectives be delivered by different organisations. Programs driving cultural and behavioural change across the legal profession require a profession-wide approach and this report recommends that the Wellbeing and the Law Foundation (WATL) implement a ‘wellbeing in the law’ program with a significant focus on health promotion and addressing individual risk factors. Programs delivering services directly to individual members of the LIV should be managed by the LIV (outsourced where appropriate) for LIV members. Employers, universities, the Victorian Bar and other organisations will continue to develop and run their own programs for their own members, students and employees.

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7 Research on professions partially regulated by the state, including auditors, and self-regulated professions including engineers and accountants, suggested that health programs have not been developed.
What are the key features of the proposed programs?

WATL wellbeing in the law program

- The recently established independent charitable organisation would champion a whole of profession approach to wellbeing in the legal community.
- The primary focus would be on promoting mental health and wellbeing and managing depression and anxiety within the legal community, drawing recognition to the fact that anxiety and depression, along with other mental illnesses are health issues, not matters of professional failing.
- Health promotion strategies would recognise the responsibilities of individual lawyers, their close network of family and friends, employers, educational institutions and jurisdictional stakeholders, with a particular focus on systemic legal and work culture and environments.
- It would be a centre for knowledge and expertise on lawyer health and wellbeing with support across the Victorian legal community.

LIV “wellness at work” program would provide:

- expert guidance and support for lawyers and PLT students experiencing stress and/or possible symptoms of depression and anxiety;
- 24 hour telephone helpline for LIV members, providing professional health assistance when it is needed most;
- subject to funding, a tailored assessment and referral service allowing 1 - 1.5 hour appointments for development of an individual plan and following through with referrals to a network of mental health service providers with a range of treatment offerings;
- independence and confidentiality by outsourcing services to appropriate mental health experts; and
- monitoring of industry trends on health risks through collection of non-identifying data and working with the insurance industry to develop an insurance and risk management strategy for the profession.

Why should the profession support the proposed programs?

The recommended programs seek to address barriers to accessing services and assist lawyers to seek help to prevent them becoming unwell or in the event they become unwell. They also include a number of important safeguards and features designed to ensure that legal practitioners can have confidence in the delivery of proposed programs, including:

- a strong positive focus on wellness and wellbeing for all members of the legal community through health promotion and early intervention activities that seek to reduce stigma about seeking assistance when necessary;
- protecting patient confidentiality through delivery of individual support activities by independent service providers, with rigorous quality assurance and program design and monitoring of non-identifying reports by the LIV to ensure the needs of lawyers are met;
- using appropriate expertise, including delivery by a mix of health and legal professionals who understand the health and wellbeing issues facing the profession and establishing a high level advisory body of experts in wellbeing in the legal profession to guide and oversee the program; and
- addressing potential geographical barriers by providing 24 hour telephone counselling and working with suburban and country law associations to develop peer support programs.
What is needed to implement the strategy?

Secure, ongoing funding is needed to support implementation of sustainable programs that can make an impact on the wellbeing of the profession in the long term.

The LIV is committed to working with stakeholders, including the Victorian Bar, WATL and the Legal Services Board to explore funding options for implementation of a health promotion ‘wellbeing in the law’ program.

The LIV is also exploring partnership opportunities with the insurance industry to support implementation of the strategy.

The LIV will promote this report across the legal community as a platform for a new approach to wellness and wellbeing.
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| - undertaking research on the impact of unhealthy working environments. | - undertaking awareness raising and education activities in relation to:  
  - individual personality and cognitive styles and their impact on wellbeing;  
  - stress management;  
  - physical health, fitness, sleep and nutrition;  
  - preventing alcohol and substance abuse;  
  - reducing stigma about depression and anxiety; and  
  - encouraging members of the legal community to seek assistance. | - subject to available funding, establishing an assessment and referral service that provides face to face health assessments for lawyers and PLT students to help assess the most appropriate therapeutic intervention and refer them to the most appropriate therapist. | - extending the Vic Lawyers' Health Line service to provide telephone counselling 24 hours a day, 7 days a week.  
- establishing a peer support program, connecting those experiencing depression, anxiety, alcohol and substance abuse disorders with mentors and peers with similar experiences.  
- providing information about disclosure requirements for applicants for admission to practise and for application and renewal of practising certificates. |
| - encouraging legal employers to:  
  - adopt preventative strategies that aim to ensure that working as a lawyer has a health enhancing impact; and  
  - implement policies and practices to prevent and manage mental illness arising in the workplace. | | | |
METHODOLOGY

The LIV’s approach to developing a health and wellbeing strategy for the Victorian legal community has been grounded in its philosophy that mental health is a health issue. When mental health is understood as a health issue, it is possible to take steps to prevent serious health issues from developing.

A project consultant, Kym Sheehan, was initially appointed in April 2012. Kym researched legal and medical professional health programs, in Australia and overseas, and literature on lawyer personality and psychological distress, as a basis for understanding what steps could be taken in Victoria to establish a therapeutic health program for lawyers, and potentially law students, barristers, judges and academics (the whole profession). Kym prepared a research report and a draft consultation paper.

The consultation paper proposed a number of options to establish a preventative health program for the Victorian legal community, based on a comparative study of profession health programs. The LIV’s research focused on health and wellbeing initiatives in the legal professions in Australia, New Zealand, USA, Canada and the UK, reflecting their shared common law heritage, and the medical professions in Australia, Canada, USA and the UK. Medical profession programs were examined because of the many similarities between regulation of the legal and medical professions (including accreditation of initial training, legislative control of admission to the profession and certification by the individual of their fitness to practice for annual renewal of the right to practice), with the issue of fitness to practice being key to the similarities between the legal and medical professions in terms of regulation and managing mental health and substance abuse problems.

Six different models of profession health programs were identified in the research:

1. Triage and referral service with no regulatory interface
2. Peer support model
3. Triage and referral service with regulatory interface
4. Diversionary model
5. Treatment model
6. Diversionary and/or treatment

A brief explanation of each is set out in Appendix Four, together with examples of each of these models. Each model is a discrete program, whether run by the relevant professional association, or independently by an organisation established specifically for that purpose. Further, each model operates at varying stages of the public health policy concept of the intervention continuum, which focuses on health promotion, prevention and early intervention.

In August 2013, Legal Policy and Practice department lawyer Laura Helm was appointed project manager to complete the scoping study, including by finalising the consultation paper for publication, conducting consultations and preparing this final report.

The LIV’s “lawyer health and wellbeing consultation” was conducted between 15 November and 13 December 2013. Participants in the consultation were invited to consider a consultation paper and respond to 10 discussion questions.

The project manager also participated in the Wellness for Law Forum in Brisbane on 6 and 7 February 2014. Individual meetings continued into May 2014 as new issues and research arose.

A detailed report of LIV’s lawyer health and wellbeing consultation is set out in Appendix One.

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8 Research on professions partially regulated by the state, including auditors, and self-regulated professions, including engineers and accountants, suggested that health programs have not been developed.

The LIV is grateful for the input of the project steering committee, comprising interested Council members, LIV committee members, a young lawyer representative and chair of the Victorian Bar Health and Wellbeing Committee, which has provided strategic direction for the project and reviewed draft documents and proposals.
Focus on promoting wellness and mental wellbeing

Consultation feedback confirmed that a legal community health and wellbeing strategy should focus on mental health and wellbeing, rather than health more broadly, because of the reported prevalence of mental illness (in particular, depression and anxiety) within the legal profession when compared to the general population. Consultation feedback also highlighted that according to available studies (and anecdotal experience of many participants), alcohol abuse (and to a lesser extent, substance abuse) is prevalent in the legal profession as a maladaptive strategy for dealing with stress.

Mental wellbeing is a fundamental component of the World Health Organisation (WHO) definition of health. The WHO Mental Health Action Plan for 2013 – 2020 goes further and states “good mental health enables people to realize their potential, cope with the normal stresses of life, work productively and contribute to...”

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10 See Brain and Mind report, above n 3.
11 See Brain and Mind report, above n 3.
12 Constitution of the World Health Organisation: "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."
their communities”. The action plan recognises “the essential role of mental health in achieving health for all people”.

Under the WHO definition, mental health is a broad term that is positively focused on a person’s overall wellbeing. The terms “mental health” and “mental wellbeing” can be compared to a more narrow focus on “mental disorders” or mental illness. “Mental disorders” can be classified under a medical model. Mental health therefore goes beyond absence of mental illness.

The WHO definition can be adapted for the legal profession:

Promoting mental health and wellbeing for the legal profession means creating safe working environments where lawyers are working in appropriate roles where they are able to reach their full potential, can cope with the normal stresses of legal practice, work productively and contribute to the broader community.

It is therefore recommended that a legal community health and wellbeing strategy should focus on:

• promoting mental health and wellbeing; and
• preventing and managing depression, anxiety disorders, and alcohol and substance abuse within the legal community.

Understanding responsibility for lawyer mental health and wellbeing

The aims, objectives and activities of the Victorian legal community health and wellbeing strategy are informed by an understanding of responsibility for lawyer mental health and wellbeing.

The LIV consultation paper proposed four levels of proactive responsibility for good health in legal practice:

• the individual lawyer;
• the team in which the lawyers works;
• the firm or organisation in which the lawyer works; and
• the state as regulator (and its delegated agents) in its approach to admission and practising certificate matters.

The LIV sought feedback on this model during consultations.

The Legal Services Commissioner agreed that the profession needs to look at how assistance can be provided at different levels (individual, organisational and jurisdictional) of responsibility. The Judicial College of Victoria agreed with the importance of shifting from an individual focus to understanding and dealing with mental health as a systemic issue.

Focus group feedback suggested that work needs to be done to improve the way lawyers treat each other (especially in litigation practice), to prevent bullying and other destructive competitive behaviour within and between firms, and in court. Individual lawyers need to take responsibility for the way they treat fellow professionals to achieve change in long-standing legal culture. Individual responsibility for self-care should be reinforced through changes to CPD Rules to require practitioners to participate annually in health and wellbeing related activities.

14 The WHO defines mental disorders ”as a range of mental and behavioural disorders that fall within the International Statistical Classification of Diseases and Related Health Problems, Tenth revision (ICD-10). These include disorders that cause a high burden of disease such as depression, bipolar affective disorder, schizophrenia, anxiety disorders, dementia, substance use disorders, intellectual disabilities, and developmental and behavioural disorders with onset usually occurring in childhood and adolescence, including autism.”
15 The Mental Health Act 1986 (Vic) defines mental illness as “a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory”, s 8(1A).
University representatives suggested during the Education Focus Group that the model should be adapted to include law students at the individual level and education providers at the organisational level, to make it clear that responsibility for mental health of the legal profession begins at law school.

The preliminary results of the 2012 survey “Lawyering Stress and Work Culture: A Survey of Australian Lawyers” also suggest that the level of the team in which the lawyer works could be adapted to represent a lawyer’s immediate support network, to include close family and friends as well as colleagues and team members, as lawyers are likely to seek help and support from this extended network. This would be consistent with the approach taken by LawCare UK, which is an advisory and support service designed to help lawyers, their immediate families and their staff to deal with issues such as stress, depression, addiction, eating disorders and related emotional difficulties.

The concept of ‘jurisdictional’ responsibility can also be broadened from a narrow understanding of the state as regulator to include organisations operating across the profession, such as professional bodies that have legal practitioner members (like the LIV). If an independent health program is established as a separate entity, with ownership by stakeholders across the whole profession, this would operate at the ‘jurisdictional’ level in so far as taking responsibility at the macro level for implementing initiatives and offering services across the profession.

Research and consultation feedback therefore suggests that a legal community health program that aims to promote mental health and wellbeing and prevent and manage depression, anxiety disorders, alcohol and substance abuse across the legal community should develop strategies targeting the individual lawyer, their immediate network, employers, educational institutions and jurisdictional stakeholders.

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The following diagram incorporates consultation feedback into the four layer approach to responsibility for lawyer health and wellbeing:

**Responsibility for Lawyer Wellbeing**

**Individual**
- Maintain appropriate levels of professional conduct and discharge obligations in relation to the administration of justice
- Contributor to workplace culture and legal community culture through professional interactions
- Self-awareness and self-care and recognising limits of competence

**Jurisdictional**
- Regulation
  - Board of Examiners (admission to profession)
  - Legal Services Board (annual licensing)
  - Legal Services Commissioner and delegates (complaint-handling)
  - VCAT (disciplinary hearings)
- Professional associations
  - LIV
  - Victorian Bar

**Immediate Network**
- Team members – responsibility to ensure others in team act appropriately, to look out for their colleagues and to provide appropriate support when help is sought
- Professional networks – responsibility to look out for their colleagues and provide appropriate support when help is sought
- Immediate family members and close friends – responsibility to be aware of supports available to lawyer

**Organisational**
- Employers
  - Duty of care to avoid workplace injury
  - Have systems in place to ensure lawyers comply with required professional standards
  - Positive working environments, conditions and culture
- Educational institutions
  - Duty of care to students
  - Implement relevant educational standards
Aims and objectives over a preventative therapeutic continuum

The consultation paper suggested that a lawyers’ health program should focus on prevention to reduce the incidence of depression and anxiety among lawyers. It adopted the preventative model of an ‘intervention continuum’, based on professional preventative health programs and public health policy approaches reviewed during the LIV’s research.

Under the intervention continuum the levels of activity range from proactive health promotion activities to reactive preventative activities, on the following scale:

- health promotion activities – focusing on the broader determinants of mental health, such as workplace culture and conditions, physical activity and social connectedness (such as by undertaking work culture surveys and developing workplace policies);
- primary prevention – focusing on potential risks for developing problems at the individual level (such as offering resilience training and mental health first aid courses);
- secondary prevention – focusing on early detection of health problems and intervention in developing problems (such as easy access to assessment and counselling services); and
- tertiary prevention – focusing on established mental illnesses (such as by providing treatment for established problems).

Discussions with Dr Kym Jenkins, medical director of Victorian Doctors Health Program, Associate Professor Bosanach, chief psychiatrist and clinical director of Mental Health and Aged Care Services at St Vincent’s Hospital and Professor James Ogloff, director of psychological services at the Victorian Institute of Forensic Mental Health during consultations confirmed the intervention continuum is an appropriate basis for a preventative lawyers’ health and wellbeing strategy. Stephen Tang, lecturer and psychologist at the ANU Legal Workshop, in a presentation about critically evaluating and applying psychological interventions in the legal education and practice environment at the 2014 Wellness for Law Forum, confirmed the validity of the LIV’s approach to prevention, but cautioned on the importance of language to encourage lawyers to access services. Stephen, a leading researcher in this area, suggested that ‘therapeutic continuum’ is more conducive to positive wellness messaging than ‘intervention’.

The Legal Services Commissioner highlighted in his submission that practitioners’ mental health issues arise on a spectrum, running from those with ongoing conditions that have developed or exist independent of their profession (albeit possibly exacerbated by work) to those whose mental health issues are clearly linked to work. A health and wellbeing program for members of the legal community will need to cater for the diverse range of mental health issues arising in the profession and should specifically address prevention of mental illness caused by work-related stress. A therapeutic continuum recognises the diverse needs of lawyers, which range from healthy functioning individuals with no prior or current diagnoses of mental illness to those with a diagnosed mental illness.

Importance of developing and delivering evidence-based programs

It is critical that in delivering this health and wellbeing strategy, all activities are evidence based and are evaluated to ensure that they will be helpful and not well meaning but unhelpful or harmful interventions.

At the Wellness for Law Forum in Brisbane in February 2014, Stephen Tang, psychologist and researcher at ANU Legal Workshop, proposed the following common factors in successful evidence-based interventions:

- relationship (trust between therapist/client);

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18 The World Health Organisation defines health promotion as “the process of enabling people to increase control over their health and its determinants, and thereby improve their health”, Bangkok Charter for Health Promotion in a Globalised World (2005).
- authority (evidence basis for intervention);
- narrative (explanation to client for their illness);
- normalisation; and
- voice (client can speak in their own voice, listened to in a supportive way).

He suggested that interventions can be more harmful than helpful when they:

- pathologies normal behaviour;
- pathologies normal levels of distress;
- legitimise dysfunctional responses; and
- reinforce power imbalances.

He also cautioned against ‘othering’ of health and wellbeing programs, by focusing too heavily on reactive prevention activities at the expense of proactive promotion of wellness, which can have the effect that people perceive that the program is not aimed at them or catering for them.¹⁹

A number of resources have been developed that assess the evidential basis for interventions.

Beyond Blue has published “A guide to what works for depression” and “A guide to what works for anxiety”, which look at the evidence behind various psychological, medical and complementary and lifestyle interventions.²⁰ The Beyond Blue publications highlight that there are many different types of depression and anxiety disorders. There is also no one proven way that people recover from depression or manage anxiety. Beyond Blue emphasises that the important thing is finding the right treatment and the right health professional for the individual’s needs. On this basis, this report recommends that a legal community health and wellbeing program should offer an assessment and referral service, rather than specific psychological or other ‘treatments’, which prioritises certain approaches to therapy over others (see recommendation 13(c)).

In the health promotion area, researchers from Deakin University reviewed evidence on interventions to promote mental health and wellbeing for the (then) Department of Human Services and VicHealth.²¹ The Evidence-based mental health promotion resource provides a useful list of evidence-based mental health promotion activities, including (relevantly) relating to workplace mental health promotion, workplace bullying and group physical activity.

WATL/ WELLBEING IN THE LAW PROGRAM

Recommendations

WATL/ wellbeing in the law program

5. Support from the Wellbeing and the Law Foundation (WATL) Board should be sought to expand its mandate to deliver an independent program for the legal community (the WATL/wellbeing in the law program) that targets health promotion and primary prevention (stages 1 & 2) and addresses:
   a. systemic and work environment issues and creates a forum for health promotion, research and policy development in the legal profession; and
   b. individual risk factors and raises awareness and provides education, training and information about wellbeing.

6. The WATL/wellbeing in the law program should operate across the legal community, working with law students and law schools, PLT students and providers, legal practitioners (barristers and solicitors), legal support staff and employers, legal academics and judges.

7. The activities of the WATL/wellbeing in the law program should include:
   a. undertaking research on the impact of unhealthy working environments.
   b. encouraging legal employers to:
      i. adopt preventative strategies that aim to ensure that working as a lawyer has a health enhancing impact; and
      ii. implement policies and practices to prevent and manage mental illness arising in the workplace.
   c. undertaking awareness raising and education activities in relation to:
      i. individual personality and cognitive styles and their impact on wellbeing;
      ii. stress management and resilience training;
      iii. physical health, fitness, sleep and nutrition;
      iv. potential risk factors for becoming unwell and identifying when it would be beneficial to seek assistance;
      v. preventing alcohol and substance abuse; and
      vi. reducing stigma about depression and anxiety and encouraging members of the legal community to seek assistance.
   d. providing information about disclosure requirements for applicants for admission to practise law and for application and renewal of practising certificates.
   e. supporting community building initiatives across the legal community to foster collegiality and prevent professional and social isolation.
   f. undertaking research to:
      i. understand the efficiency and effectiveness of delivery of health and wellbeing programs to the legal community; and
      ii. monitor rates of depression and anxiety in the legal community, to help assess the impact of programs.

8. WATL should be supported by the LIV and Victorian Bar to obtain funding for implementation of the WATL/wellbeing in the law program.
Expanding the Wellbeing and the Law Foundation (WATL) mandate

During consultations, the LIV explored options for delivering the health and wellbeing strategy, including:

1. Establishing a separate entity;
2. Managing a health program within the LIV but outsourcing treatment services (similar to the operation of the Vic Lawyers’ Health Line); and
3. Operating a health program within the current structure of the LIV.

Consultation feedback supported delivery of a health promotion and primary prevention program through an independent entity, rather than the LIV. Benefits doing this through an independent entity include:

- Ability to work across the entire legal community, (ie not limited by membership);
- Potential benefit from charitable status and access to a broader range of funding streams; and
- More likely to be supported by stakeholder groups such as the Victorian Bar, Legal Services Board, the education sector, Judicial College of Victoria and heads of jurisdiction.

The Wellbeing and the Law (WATL) Foundation has already been established as an independent entity and could potentially take carriage of a health promotion ‘wellness in the law’ program.

Currently, WATL board priorities are to raise funds for the foundation and to identify and evaluate grants and allocation of funding to projects, in line with the principal purpose of the Foundation according to its constitution. The WATL constitution may allow for expansion into program delivery under its objects clause, which includes:

2.1.1 Providing education, counselling and assistance to individuals suffering from Mental Health Conditions and to the broader community so that they have access to, and knowledge of, resources available to them to assist them or others to prevent, manage and control Mental Health Conditions and also educating these individuals and the broader community about how to prevent, manage, control and cope with Mental Health Conditions;

2.1.2 Engaging in medical research into the causes, prevention and treatment of Mental Health Conditions;

2.1.3 Developing relationships and support with the community and engaging in activities to raise community awareness of Mental Health Conditions and educate the community about causes, effects and how to prevent, manage and control Mental Health Conditions; and

2.1.4 Providing education and counselling to carers and service providers, family members and other similarly affected persons of Mental Health Conditions sufferers to better enable these persons to efficiently and effectively deliver support, care and services to the sufferers of Mental Health Conditions.

Presently, the LIV and Victorian Bar are initial members of the company.

If WATL were to expand its operations to include delivery of a legal community health promotion program, it would need appropriate in-house expertise. This includes expertise in wellbeing, such as organisational psychologists and allied health professionals.
Need for a profession-wide health promotion and primary prevention program

The LIV’s research and consultations identified that there are numerous health and wellbeing services available to various members of the legal community (see details in Appendix Three).

While recognising the potential benefits of centralising provision of services across the profession, the LIV has determined that profession-wide secondary and tertiary prevention services (in particular, counselling) should not be pursued at this time, for three main reasons:

- Many members of the legal community already have access to funded counselling services (including students, barristers, judges and lawyers working in large law firms, some medium firms, government and community lawyers);
- The Vic Lawyers’ Health Line has been accessed predominantly by lawyers, in line with usage rates for the parallel Law Care counseling service for LIV members; and
- Funding for profession-wide counselling seems unlikely at present.

This report therefore recommends that the LIV provide secondary and tertiary prevention activities to its members (see recommendations 13 and 14).

The LIV’s research and consultation highlighted, however, that there is a need for profession-wide coordination to address health promotion and primary prevention in the legal community. Gaps identified include:

- Very low awareness about health and wellbeing services and initiatives available to lawyers and others in the legal community;
- A lack of research on the efficiency and effectiveness of delivery of health and wellbeing programs to the legal community; and
- Limited forums for information sharing about health and wellbeing initiatives.

Levels of awareness about wellbeing issues facing the legal profession have improved since the first Australian study of depression and anxiety in the legal profession was released in 2007.\(^22\) In his response to the consultation paper, the Legal Services Commissioner highlights however that despite improved awareness levels and a high level of engagement with the legal community about the Board’s approach to mental health (in particular through education seminars but also through communication channels such as the *LJ*), it is still often difficult to get practitioners to acknowledge when they have mental health issues and to seek appropriate treatment. The Commissioner reflected that “[t]his problem reflects the ingrained cultural taboos relating to disclosing mental health issues in Australian society generally, but particularly within the legal profession”.

Both the Board and Commissioner acknowledged “the continuing need for a coordinated approach to education and communication with the legal profession to engender cultural change. A consistent message must be disseminated regarding the need for practitioners to acknowledge warning signs and seek help where necessary”.

Recent research has suggested that lawyers most commonly turn to their spouse or partner, friends outside work and colleagues when they encounter a personal or work-related problem.\(^23\) Only 7 per cent of respondents to the survey would seek professional help.\(^24\) In contrast, 76 per cent of respondents were likely or very likely to seek professional 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 professional or work life*.

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22 See eg Beaton Research and Consulting and Beyond Blue, “Mental Health in the Workplace”, *Annual Business and Professions Study 2011*.
24 Ibid.
The Commissioner’s response highlights the ongoing need for awareness-raising and education activities about when emotional or mental health symptoms warrant professional help. Further, discussions held during consultations highlight the ongoing need for strategies to affect cultural change in the legal profession, by individuals and employers, about acknowledging and managing depression, anxiety and stress, to address the continuing issue of stigma and perceptions of discrimination.

There is also a need for a coordinated approach to education about disclosure requirements for applicants for admission to practise law and for application and renewal of practising certificates. The Legal Services Board Mental Health Policy, endorsed in December 2011, is designed to encourage lawyers with mental health issues to voluntarily seek appropriate treatment and to only require disclosure where a mental impairment affects the lawyer’s capacity to engage in legal practice. Where a mental impairment affects the practitioner’s capacity to engage in legal practice, the regulator is obliged to consider suitability against the backdrop of the consumer protection provisions in the Legal Profession Act 2004 (Vic).

In contrast, the Board of Examiners has a Practice Direction that refers specifically to disclosure around capacity. Candidates must disclose a ‘material mental impairment’. The Practice Direction suggests that matters which an applicant might disclose include any condition which might affect the applicant’s present ability to engage in legal practice such as physical impairment, mental illness or addictions.

The proposed wellbeing in the law program seeks to:

- create a new forum for research and policy development;
- identify industry trends, best practice and commercial drivers, including developing metrics for measuring return on investment and understanding productivity gains and risk management through spending on employee health and wellbeing initiatives; and
- create a forum for information sharing on the effectiveness of interventions.

**Addressing potential individual risk factors and systemic and work environment issues**

Alarming statistics on mental wellbeing in the legal profession lead to questions about why its members suffer such high rates of anxiety and depression.

Most people agree that working as a lawyer is often stressful, whatever branch of the profession you work in. Whether it is high workloads or client expectations, dealing with people’s problems on a daily basis, billable hours or commercial pressures, workplace culture, dealing with traumatic material, or feelings of isolation as a lawyer in sole practice or as part of a larger firm or business, the everyday demands of legal practice can be great. Lawyers are officers of the court with high professional and ethical responsibilities. Many of these external pressures might be considered to be reasonably part of practising law. And stress is a normal response.

For some lawyers, distress levels may only become severe and lead to illness when additional stresses happen in their personal lives, such as relationship breakdown or loss and grief. But the same life events will affect all people differently. The risk of a person experiencing illness through depression and/or anxiety is a complex issue which, like any health issue, depends on a variety of personal factors.

Understanding the causes of psychological distress, and in particular the high prevalence rates among lawyers, is therefore important in the development of strategies that promote health and wellbeing of lawyers and prevent them from becoming unwell.

While further research is necessary as to why lawyers’ rates of depression and anxiety are so high, the LIV has considered two distinct perspectives in developing the Victorian legal community health and wellbeing strategy:

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23 Practice Direction No. 2 of 2012 (Disclosure Requirements for Applicants).
the individual (and specifically the impact of personality attributes and coping strategies); and

- the environment in which they work (and specifically the impact of external stressors that may affect mental health and wellbeing).

**The individual: impact of personality attributes and coping strategies on mental health**

While many lawyers feel stressed during their careers, only some will experience symptoms that lead to depression and/or anxiety.

Psychological literature suggests that a person’s personality traits, combined with their cognitive strategies (in particular, their coping strategies), impacts on their susceptibility to particular forms of psychological distress. A “transactional model” of stress broadly suggests that the level of psychological distress experienced by a person will depend on the interaction between life’s stressors (or external demands), a person’s personality traits and their coping strategies.\(^{27}\)

Beyondblue identifies that certain traits or behavior can impact on a person’s risk of suffering depression. These include if they have a tendency to worry a lot, have low self-esteem, are perfectionists, are sensitive to personal criticism or are self-critical and negative.\(^{28}\)

Personal factors such as family history of depression and serious medical illness are also relevant to a person’s risk of developing depression.\(^{29}\)

There has been very little psychological research on the personality traits and coping strategies of lawyers as a sub-group of the general population, so that little is understood about the particular susceptibility of lawyers to anxiety and depression. High rates of depression and anxiety among lawyers has, however, led to numerous theories based on observed attributes of lawyers (as distinct from psychological indicators of personality trait and cognitive strategies).

Common attributes observed in lawyers that can potentially have a negative impact on mental health have been variously described to include:

- a high need for achievement;\(^{30}\)

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26 Personality traits are ‘organised mental structures, varying from person to person, which initiate and guide behaviour’: Matthews, Gerald, Ian Deary and Martha Whiteman (2009), Personality Traits, 3rd edition. Cambridge: Cambridge University Press (Matthews, Deary and Whiteman 2009), p.6.


• a preference for dominance and leadership;
• competitiveness that can also be at the level of aggressiveness;
• materialism;
• low interest in emotional concerns;
• an emphasis on rational analysis, based on a preference for thinking as a decision-making style;
• an emphasis on rights rather than an ‘ethic of care’;
• an internal locus of control;
• the cognitive analysis of viewing problems from all sides, also labelled as pessimism, and
• perfectionism.

One study went so far as to say:

Lawyers, as a group, are more introverted, more doubt ridden, and more cool and logical than most people. They are less open about their feelings and less inclined to live in the present than most people. Lawyers are competitive, confident (sometimes a kiss away from arrogant), aggressive and achievement-oriented; they can be argumentative.

Sharpe has observed that “as Daicoff points out ... while the attributes of lawyers identified might be useful, or even desirable, to lawyers professionally, they can be personally detrimental. Obviously, being a predominantly rational, achievement-oriented, competitive and aggressive person can be destructive of interpersonal relationships.”

The LIV’s literature review has found that a person’s particular susceptibility to depression or anxiety is likely to differ depending on their coping strategies. While lawyers may share some observable attributes, lawyer personality attributes cannot necessarily be separated into categories of ‘good’ or ‘bad’. The legal profession is diverse and employers should recognise the different strengths of team members with different personality traits.

The Tristan Jepson Memorial Foundation Psychological Wellbeing: Best Practice Guidelines for the Legal Profession (discussed further below) emphasise the importance of a work environment where there is a good fit between people’s interpersonal and emotional competencies and the requirements of the position they hold.

The impact of external stressors on lawyer mental health

Workplace and legal culture

The relationship between work, stress and mental health conditions is complex. For some people, work can be therapeutic. For others, work may contribute to depression and anxiety. A recent study suggests that the

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31 Ibid.
32 Ibid.
33 Ibid.
34 Ibid.
35 Ibid.
36 Daicoff, above n 30.
37 Ibid.
38 Ibid.
39 The Brain and Mind Study 2009, above n 3
40 The Brain and Mind Study 2009, above n 3, p. 46.
42 Australian Law Students Association (ASLA) (2011), Depression in Australian law schools: A handbook for law students and law student societies, ALSA, Canberra, p. 7
health benefits of work are dependent on the quality and type of work, as well as positive workplace supervision.  

The LIV’s research and consultation identified growing concern and discussion about potential “excesses” of certain legal work practices, and legal culture more generally, that potentially place unreasonable and unhealthy demands on individual lawyers. Consultation participants discussed a culture of fierce competition among lawyers and within and between firms, particularly in litigation, and a continuing culture of loss of face and humiliation. There is also increasing awareness and research about the prevalence of unlawful or unacceptable behavior that place additional stress in particular on female lawyers.

The following potentially “unhealthy” external stressors have been identified in recent reports:

- bullying – both in the workplace and in court;
- vicarious trauma;
- working conditions and workplace culture – including the reasonableness of expectations; and
- sex discrimination, sexual harassment, attitudes to family responsibilities and part time work.

These external stressors are systemic workplace issues occurring across many areas of legal practice that require further research and collective action to ensure that working as a lawyer is not detrimental in itself to individual mental health.

Leading Canadian research has identified a set workplace factors that alone, but more typically in combination, impact on psychological safety. The Canadian research identified 13 “psychosocial factors” that impact on employees’ psychological responses to work and work conditions, potentially causing psychological health problems. Psychosocial factors include the way work is carried out (deadlines, workload, work methods) and the context in which work occurs (including relationships and interactions with managers and supervisors, colleagues and co-workers, and clients). These factors have been conceptualised as human needs that, when unmet or thwarted, can become risk factors for psychological distress.

The Canadian research led to the development of the National Standard of Psychological Safety in the Workplace (the National Standard). The National Standard is the basis of the Tristan Jepson Memorial Foundation Psychological Wellbeing: Best Practice Guidelines for the Legal Profession, launched on 11 May 2014 (the TJMF Guidelines).

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45 See New South Wales Law Society’s 2002 Remuneration and Work Conditions Survey, in which 21% of respondents reported that they were bullied at their current place of employment; Western Australian Law Society Report, Maryam Omari, “Towards Dignity and Respect at Work: An Exploration of Work Behaviours in a Professional Environment” August 2010; and new Victorian Bar Conduct Rules prohibiting bullying and establishing grievance procedures.
49 See New South Wales Law Society’s 2002 Remuneration and Work Conditions Survey, in which 21% of respondents reported that they were bullied at their current place of employment; Western Australian Law Society Report, Maryam Omari, “Towards Dignity and Respect at Work: An Exploration of Work Behaviours in a Professional Environment” August 2010; and new Victorian Bar Conduct Rules prohibiting bullying and establishing grievance procedures.
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Unhealthy lifestyle responses to workplace and legal culture

Long working hours and the sedentary nature of legal practice create health risks – both physical and mental – where they impact on a person’s fitness, sleep and nutrition. Participants in the LIV’s consultation agreed that exercise, adequate sleep and a healthy diet are all important preventative strategies to maintain wellbeing.

Legal employers should recognise that working conditions and workplace culture have the capacity to impact negatively on a person’s ability to take responsibility for their fitness, sleep and nutrition. This is particularly acute, for example, where lawyers are regularly required to work excessive hours. Legal employers should take a proactive approach to promoting opportunities for lawyers to maintain fitness and a healthy diet and allow lawyers to get adequate sleep (for example, by managing client expectations about the ability of their lawyers to regularly work late into the evening).

Drug and alcohol use can also lead to (and result from) depression. The Annual Professions Study 2007 found that lawyers were more likely than their colleagues in other professions to use alcohol and other drugs to cope with their depression. Discussions during consultations suggested that lawyers potentially have an unhealthy approach to alcohol consumption, with anecdotal feedback discussing a tendency to rely on alcohol to ‘unwind’. Further research should be undertaken to understand the legal profession’s attitude to alcohol and drug use and strategies developed to provide education about the effects of excessive use of alcohol and drugs and when to seek assistance.

Conclusions from the literature

The literature suggests that a profession-wide preventative health and wellbeing program should:

- work at the individual level to improve a lawyer’s awareness of his or her own personality and cognitive styles e.g. through promoting resilience training, cognitive behavioral therapy, acceptance and commitment therapy (or mindfulness) and counseling;
- undertake further research on the impact of unhealthy working environments and to adopt strategies that aim to ensure that working as a lawyer has a health enhancing impact; and
- seek to bring about cultural change to eliminate unreasonable and excessive stressors in legal workplaces.

The TJMF Guidelines seek to provide a resource for the Australian legal profession to raise awareness of mental health issues and to understand the initiatives and methods of management that assist in the creation and maintenance of mentally health and supportive workplaces. These guidelines should be promoted to the Victorian legal community.

Significant changes to professional conduct rules are expected to come into operation in Victoria on 1 January 2015. The Australian Solicitors Conduct Rules will for the first time create a link between the conduct of lawyers in the workplace and potential disciplinary action. Significantly, the Australian Solicitors Conduct Rules expressly prohibit workplace bullying. Education and training about these Conduct Rule changes is necessary to ensure they have their desired impact and lead to positive changes in workplace culture.

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58 Tristan Jepson Memorial Foundation, Psychological Wellbeing: Best Practice Guidelines for the Legal Profession.
60 Pursuant to s. 4.4.4 of the Legal Profession Act 2004 (Vic) conduct which contravenes the legal profession rules, made under Part 3.2 of the LPA, is conduct that is capable of constituting unsatisfactory professional conduct or professional misconduct.
61 Law Council of Australia Australian Solicitors Conduct Rules above, Rule 42.1.3.
Feedback further suggested that non-legal community building initiatives are important to provide ways for lawyers to interact socially and develop non-work interests. For example, in 2013 the Victorian Bar established a choir and Bottled Snail productions established a legal profession orchestra. Other annual health promoting activities include the Legal Fun Run and support for the Global Corporate Challenge. The wellbeing in the law program should participate in community building initiatives operating across the profession.

Operating across the legal community

The consultation paper suggested that the legal community includes solicitors, barristers, lawyers working in government, in-house and at community legal centres, judges, academics, and law students and noted that at present, many different organisations have established programs to address mental health issues in these populations.

During consultations, there was strong support for profession-wide coordination to address health promotion and primary prevention across the legal community. The most common responses to the online questionnaire discussed the stressful nature of work as a lawyer and in particular work environments in firms and the need for profession-wide responsibility for a profession-wide issue. Some participants also highlighted that there are many important actors in the legal community who contribute to the administration of justice and that accordingly, a health program should operate across the legal community.

There was strong support from educational institutions to collaborate to address issues of competition for those entering the profession, exacerbated by increasing numbers of law graduates and a contracting legal employment market, leading to significant career anxiety.

During many discussions, support for a profession-wide health program was premised on the basis that it would be run by an independent entity (and not the LIV), allowing the program to take a leadership role that is not linked to a membership organisation.

For many organisations, support for an independent profession-wide health program was specifically for health promotion and primary prevention activities only. For example, the Victorian Bar and university representatives expressed the view that there will be a continuing need for organisations to manage and deliver secondary and tertiary programs that meet the specific needs of their member demographic (i.e. barristers and law students).

Anecdotal feedback from some judges suggests that while there would be benefits from working collaboratively with the judiciary (and Judicial College of Victoria) to share information about education initiatives and successful interventions, the primary focus of a legal community health program should be legal practitioners.

This report recommends that a preventative approach to promoting mental health and wellbeing in the legal profession requires a health program to undertake strategies at different levels of responsibility for lawyer health and wellbeing.

The wellbeing in the law program should therefore be empowered to operate across all levels of the ‘legal community’.

A profession-wide health program should not try to take the place of health and wellbeing initiatives by individual organisations, whether employers, professional associations or education institutions.
**WATL/ wellbeing in the law program activities**

There is support for a broad range of activities by a legal community health promotion program. In reality, the scope of activities will depend on funding sources. This report recommends that WATL undertake activities in the following areas, subject to funding levels:

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<tr>
<th>Activity</th>
<th>Health Promotion</th>
<th>Primary Prevention</th>
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<tr>
<td>Information</td>
<td>Disclosure requirements for applicants for admission to practise law and for application and renewal of practising certificates</td>
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<td>Awareness raising and education</td>
<td>Reducing stigma about depression and anxiety and encouraging members of the legal community to seek assistance</td>
<td>Self-awareness about individual personality and cognitive styles and their impact on wellbeing</td>
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<td>Stress management</td>
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<td>Physical health, fitness, sleep and nutrition</td>
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<td>Policy and advocacy</td>
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<td>• Bullying prevention</td>
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<td>• Work hours and workloads</td>
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<tr>
<td>Research</td>
<td>Impact of unhealthy working environments</td>
<td>Survey of firm practices</td>
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<td>Efficiency and effectiveness of delivery of health and wellbeing programs to the legal community</td>
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<td>Monitor rates of depression and anxiety in the legal community, to help assess the impact of programs</td>
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<tr>
<td>Collaboration and stakeholder engagement</td>
<td>External stakeholder reference group Encouraging legal employers to:</td>
<td>Community building initiatives across the legal community to foster collegiality and prevent professional and social isolation</td>
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<td>– adopt preventative strategies that aim to ensure that working as a lawyer has a health enhancing impact; and</td>
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<td></td>
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WATL RESOURCING AND GOVERNANCE

Recommendations

WATL resourcing and governance

9. The WATL Board should be expanded to include experts in mental health and wellbeing.

10. WATL should employ a Program Manager to develop an implementation plan and deliver the WATL/wellbeing in the law program.

11. Key stakeholder input to the WATL program should be obtained through a stakeholder reference group with representatives from across the legal community.

12. Ad hoc experts should be used to obtain input to WATL projects and activities.

Appropriate in house expertise will be necessary to deliver an effective health promotion program, including expertise in wellbeing, such as organisational psychologists and allied health professionals.

Expanding the WATL board

The WATL board is currently comprised of two lawyers and one former judge. This report recommends expanding the board to include experts in mental health and wellbeing to assist the Board to provide oversight of and strategic direction to the delivery of the proposed wellbeing in the law program.

Employing a program manager

WATL currently has no employees. This report recommends that a program manager be employed to develop an implementation plan and deliver the proposed wellbeing in the law program (in conjunction with appropriate experts/service providers where appropriate). Administrative support and project officers should also be employed subject to funding constraints.

External stakeholder reference group

An external stakeholder reference group would provide a formal opportunity for key stakeholders in the legal profession to contribute to the strategic direction of the legal community health and wellbeing program. The advantage of establishing this group is that the board of directors need not seek to be representative of the profession, but instead be of a size and with the skills and experience necessary to oversee the operations of the program.

An external stakeholder reference group would seek to be representative of the profession, therefore including representatives from Victorian-based law schools, practical legal training providers, law student associations, the Legal Services Board, the Legal Services Commissioner, the Board of Examiners, the judiciary, the different types of law firms by size (large, medium and small), and location (city, suburban, rural...
country); sole practitioners, barristers, and, depending on the extension of the program to all members of the profession including support staff, legal executives, paralegals and law clerks.

An example of this governance structure is the Consultative Council of the Victorian Doctors Health Program Ltd.

**Ad hoc groups of experts**

There is also the potential to convene ad hoc groups of experts to oversee the development of policy and services for particular components of the program identified above.

By convening such groups of experts it is possible for the lawyers’ health program to obtain relevant oversight of its policy development without the need to have a large board of directors or an extensive executive management team.
# LIV WELLNESS AT WORK PROGRAM

## Recommendations

### LIV wellness at work program

13. The LIV should expand its secondary and tertiary prevention activities for its members, by:

   a. extending the Vic Lawyers’ Health Line service to provide telephone counselling 24 hours a day, 7 days a week;
   
   b. establishing a peer support program, connecting those experiencing depression, anxiety, alcohol and substance abuse disorders with mentors and peers with similar experiences; and
   
   c. subject to available funding, establishing an assessment and referral service that provides face to face health assessments for lawyers and PLT students to help assess the most appropriate therapeutic intervention and refer them to the most appropriate therapist.

14. The LIV wellness at work program should:

   a. have clinical and quality assurance mechanisms in place, including strict confidentiality requirements and key performance indicators;
   
   b. include a feedback mechanism to help evaluate services; and
   
   c. be reviewed annually to measure its effectiveness.

## Expanding LIV member services

This report recommends that the LIV should address secondary and tertiary prevention objectives of the Victorian legal community health and wellbeing strategy, by expanding its member services to deliver a ‘wellness at work’ program.

The proposed wellness at work program is intended to complement the range of funded counselling services already provided to many members of the legal community (summarised in Appendix Three). While many lawyers have access to subsidised counselling programs (either through an Employee Assistance Program in large or medium firms, government or the community sector, or, as a barrister through the Barristers Counselling Service), at least half the practising profession are likely to have no such access. In particular, the LIV research and consultations have identified gaps in service provision for lawyers working in sole practice or small firms and many lawyers working in corporate practice.

As a membership organisation, with a vision to be its members’ essential professional partner, it is appropriate that the LIV provide member services to bridge this gap. Further, consultations suggested there is presently insufficient support for delivery of such secondary and tertiary prevention activities through WATL (or another independent entity) as part of a whole of profession service.

The LIV “wellness at work” program should be managed within the current structure of LIV (either through Member Services or Legal Policy and Practice.). The proposed telephone counselling and assessment and referral services should be outsourced to protect patient confidentiality. LIV should have input to service
delivery modality and receive generic non-identifying reports to monitor the service and ensure the needs of members are being met. In developing the peer support program (discussed further below), the LIV should consider further how to protect participant privacy.

The expanded telephone counselling service and proposed peer support program should be subsidised services, provided as a member benefit. Funding options should be explored to establish the assessment and referral service which is also recommended in this report.

It is crucial that the program budget includes adequate funds to promote services to improve awareness levels. Marketing and communications should encourage lawyers to seek assistance early. Early intervention increases the likelihood of mental illness being successfully managed, before potential fitness to practise or disciplinary issues arise.

This report recommends that secondary and tertiary prevention services should be targeted primarily to lawyers working in the profession. The report therefore recommends that law student members should not have access to subsidised “wellness at work” services. Its existence, however, should be promoted within law schools to raise awareness about the program for new entrants into the profession and as part of general education about the need for professionals to actively manage their health and indicating that the legal profession understands mental illness as a health issue.

There have been numerous American62 and Australian63 studies suggesting alarming rates of psychological distress among law students. Numerous American studies suggest that law school itself has a harmful impact on student mental health.64 Law student mental health has been the subject of increasing academic interest in Australia in recent years and through the Wellness for Law Network, efforts have been made to share research and strategies to improve student wellbeing outcomes.

Repeated empirical findings about psychological distress rates among law students, which are much higher than the general population, coupled with statistics on depression and anxiety in the legal profession, have created a community of understanding based on the assumption that law students fare much worse than any other students. Research undertaken by the University of Melbourne in 2013, however, challenges this assumption, finding high levels of psychological distress across all participating faculties (including law), with being a university student the only common risk factor.65 Lead researcher Dr Wendy Larcombe has suggested that the issue of ‘student distress’ is not, or is no longer, ‘just’ a law student problem. While there has been detailed study of law student wellbeing, there is a need for more comparative data for other disciplines to confirm whether law students experience different risk factors and higher prevalence in mental illness.

On balance, this report recommends that law students should (at least initially) be excluded from direct individual service offerings through the LIV “wellness at work” program, for the following reasons:

- Primarily, to avoid duplicating counselling services and other wellbeing programs available to all law students through central university programs. These programs understand the stresses associated with being a university student and are already fully funded by government;
- Budgetary concerns that the sheer number of law students could overwhelm the program; and
- Health program clinicians can focus on understanding work-related stressors affecting lawyers working in legal practice, compared to stressors affecting university students.

It is crucial, however, that law students and universities are included in health promotion activities through the WATL “wellbeing in the law” program, so that young lawyers entering the profession have knowledge and awareness about available services and the potential issues they could face during their careers.

63 *Brain and Mind* report, above n 3.
64 Stuckley, above n 62.
PLT students should have access to individual preventative activities on the same basis as lawyers because they do not currently have access to counselling and will very shortly be entering the profession.

Expanding the Vic Lawyers’ Health Line to provide 24 hour telephone counselling

The Vic Lawyers’ Health Line (VLHL) was established in April 2012 as a pilot health and wellbeing service, funded by the Legal Services Board as part of this project. VLHL is operated independently, currently by Optum (formerly PPC Worldwide) under a service agreement with the LIV, and is entirely confidential. It provides a ‘triage and referral service’ between 8am and 6pm for all Victorian lawyers, law students, judges and other members of the profession who are feeling stressed or burnt out, are concerned about anxiety, depression or substance abuse or who are supervising or managing staff with mental health issues (i.e. the service is available to non-LIV members of the profession). Currently, participants can also receive up to three fully subsidised face to face counselling sessions. See Appendix Two for a detailed report on the service.

The LIV’s research and consultation suggests that there is an ongoing need for telephone counseling as a safety net service for lawyers. Many consultation participants also thought that it was valuable to have a service that is not linked to your employer.

The VLHL can be distinguished from telephone crisis services such as Lifeline, because it is targeted towards the particular stresses and experiences of lawyers. Regular review meetings between the LIV and VLHL service provider ensure that psychologists working on the helpline understand the issues facing the profession and has led to a buildup of expertise in dealing with lawyers.

Telephone counselling is also the most cost effective and practical service delivery model to provide immediate problem solving for distressed individuals across the state.66 Such counselling should be solutions focussed, including immediate risk assessment to de-escalate or deal with any mental health crisis and assisting callers to understand options for ongoing support. (If funding is obtained to establish the proposed assessment and referral service, the telephone helpline should encourage callers to make an appointment for a face to face assessment – discussed further below).

Critically, consultation participants emphasised the importance of expanding the telephone helpline to provide 24 hour coverage, 7 days a week, because evidence suggests that people are more likely to reach out for assistance outside normal working hours.67

Ideally, telephone counselling should be provided to the whole profession and not limited to LIV membership, in line with the safety net objectives of the service. If non-LIV members are excluded, there is a risk of excluding vulnerable members of the profession who due to their illness, may have let their membership lapse, may be experiencing financial difficulties if their illness has affected their ability to work and who may no longer feel included in the profession.

Until a sustainable funding source is confirmed, however, telephone counselling should be provided as an LIV member service, funded by membership fees.

The budget for the currently subsidised LIV member counselling service, LawCare, which has been operating in parallel to the VLHL during the pilot, should be allocated to the new 24 hour VLHL service.

The LIV should regularly review service provision in line with its service level agreements to ensure that the objectives of the health and wellbeing strategy are being met.

67 On average, the greatest number of calls made to Lifeline’s 24- hour counselling service were outside normal public service hours, between 6pm and 11pm – see Wilson et at, Improving NSW mental health care: evidence for the unique role of Lifeline’s 24-hour telephone counselling service, February 2005 at http://www.aph.gov.au/-/media/wopapub/senate/committee/mentalhealth_ctte/submissions/sub329_attach2_pdf.ashx.
Establishing a peer support program

During consultations, participants noted that available peer support programs (notably, the LIV mentoring program) are not targeted towards mental health and wellbeing.

Peer support, whether formally through a mentoring or similar program, or informally though professional networks or by colleagues, is an important strategy for preventing social and professional isolation that can exacerbate mental illness and assist individuals to implement coping strategies for dealing with stress, depression and anxiety. Successful programs operate currently in Victoria, for example, through the County Court and a number of law firms through Mental Health First Aid initiatives. A more developed peer support program has been established through Law Care UK, called Lawyers Helping Lawyers, which relies on a network of volunteers.68 The Victorian Nurses and Midwifery Health Program69 is also based on a peer support model, with nurses trained in counselling answering calls, conducting face to face counselling and providing case management support to assist nurses to navigate treatment options. In contrast to Law Care UK, nurses are paid staff members of the program.

Consultation feedback suggests that the LIV should develop a peer support program, providing lawyers with the opportunity to connect with peer supporters who have experience dealing with mental illness (either personally or through close personal connection). Such a program would provide support for lawyers outside the employment context, which could give confidence to lawyers dealing with their employers and team members while also managing their illness.

A peer support program should include training for peer supporters to understand their role and its limits. The program should also be structured to appropriately protect participant privacy.

Discussions during consultations also identified the importance of professional networks as a way to facilitate peer support. An example of professional networks that currently exist are Suburban and Country Law Associations (SLACS and CLACs), which provide opportunities for lawyers (who generally work in small to medium sized firms) to meet socially and develop local professional networks. Some consultation feedback suggested that collegiality is greater among regional and suburban lawyers because lawyers get to know each other through transactional work and through local networks and are more likely to treat each other respectfully. Other feedback suggested, however, that competition for work in regional areas contributes to competitive behaviour that encourages lawyers not to seek help for mental health issues when they arise. Feedback from the Legal Services Commissioner also suggests that sole practitioners working in regional areas are most at risk of coming into contact with the regulator where mental health has impacted their ability to run a law practice.

The LIV should work with SLACs and CLACs to implement peer support strategies at a local level and to ensure that the people most in need of support are participating in local networks.

Establishing an assessment and referral service

One critical issue raised during consultations is whether treatment for diagnosed mental illnesses should be provided as a secondary and tertiary prevention measure under the profession-wide health and wellbeing strategy. Counselling, one form of treatment, is currently provided to various degrees through the Vic Lawyers’ Health Line, different Employee Assistance programs run by firms and other employers, the Barristers’ Counselling Service and university counselling services.

Feedback obtained during consultations suggested that a new health and wellbeing program should offer assessment and referral to a designated panel or network of participating health practitioners, rather than offering treatment within the program itself, similar to the Victorian Doctors’ Health Program. The program would ideally fund an initial assessment consultation, after which the cost of treatment could be borne by the

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68 See further Appendix Four.
69 See www.nmhp.org.au.
legal practitioner. Existing employer or organisational programs should continue to provide their own services to their employees or members with any new assessment and referral service established by the LIV for members aimed at complementing those existing services and providing services to people who may not have access to existing employer and organisational programs.

An assessment and referral model would provide a new service that aims to identify the best treatment and best therapist for the individual lawyer’s needs and seek to avoid duplication of funded counselling services already available to many members of the legal community.

Factors critical to the success of the assessment and referral model, according to consultation feedback, are:

1. **Appropriate expertise**:

   There were mixed views about whether assessment should be undertaken by a psychologist or a medical practitioner. Some feedback suggested that assessment by medical practitioners would overemphasise a clinical approach at the expense of a holistic approach to wellbeing, which could negatively impact on uptake of the service. The alternative view was that the assessment process should be undertaken by a medical practitioner with mental health care experience and a holistic wellness approach. This could be a general practitioner (GP) with mental health skills training, selected through a tender process.

   Beyond Blue recommends that a GP is the best starting point for professional help. This is because a GP, unlike a psychologist can:
   - check for any physical health problem or medication that may be contributing to the depression;
   - make a diagnosis and discuss available treatments;
   - work with the person to draw up a Mental Health Treatment Plan so he or she can get a Medicare rebate for psychological treatment;
   - provide brief counselling or, in some cases, talking therapy;
   - prescribe medication if necessary; and
   - refer a person to a mental health specialist such as a psychologist or psychiatrist.

   This suggests that there are a number of benefits of triage being undertaken by a GP/medical practitioner:
   - experienced GPs can assess whether pathology is exhibited in a patient so that lawyers with diagnosable mental illnesses can be appropriately referred for medical assistance;
   - it avoids medicalisation of work-related stress where no pathological (diagnosable) mental health issues exist so that where stress can be related, for example, to particular working conditions and is a ‘normal’ response, appropriate counselling or other support can be suggested;
   - GPs with a holistic approach to mental health and wellbeing will be able to help lawyers make informed choices about appropriate treatment and wellbeing offerings, rather than requiring lawyers to self-select programs such as counselling or Mindfulness training, where this might not be the most appropriate program for the person; and
   - where ongoing treatment with a psychologist is recommended, a GP with mental health skills training can prepare a GP Mental Health Treatment Plan, which is listed under the Medicare Benefits Schedule, so that treatment accessed by participating lawyers would be eligible for Medicare rebates. This option should be done in conjunction with a lawyer’s usual GP (or if they don’t have one, they should be assisted to find one).

   A medical model, that is, assessment and referral based on formal diagnosis by a medical professional, could deter lawyers from accessing the service if any insurance consequences flow (for example, so as to constitute a pre-existing medical condition). The LIV will further explore the

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70 There could be a ‘hardship’ type fund to subsidise cost for groups identified as ‘at risk’ and unable to pay for treatment services, eg where a practitioner is facing external intervention and receivership of their firm. This option would need to be explored in consultation with the Legal Services Board.
insurance implications of a GP run assessment service in the development of an insurance strategy, in partnership with the insurance industry (see recommendation 17 of this report).

2. Allowing sufficient time for assessment:

1 - 1.5 hour appointments should be available for full exploration of a person’s potential health issues, development of a tailored plan and referral appointments followed up on the day. Where a person presents with complex issues, further appointments could be made available based on the clinical judgement of the assessor. This service can be compared to a 15 minute visit to a local GP, where there is insufficient time for detailed discussion and where referrals are made by letter only, relying on the patient to follow up and make an appointment with the relevant health professional.

3. Adequate referral resource base:

The service should maintain an up-to-date referral network including psychologists, psychiatrists and allied health practitioners with experience working with lawyers and who are willing to accept referrals directly from the program for a range of therapeutic offerings. The service should develop a quality assurance program to vet listed providers and monitor feedback from participating legal practitioners. Participating providers could be invited to attend an annual seminar/training session hosted by the LIV to network, discuss developments in research and discuss anonymous case examples as professional development. Legal practitioners would be required to pay any costs arising from referrals.

4. Avoiding fragmentation of care:

Legal practitioners should be encouraged to develop a relationship with a trusted local GP if they have not already done so. With consent, the program medical practitioner should report to the legal practitioner’s usual GP about the outcome of the assessment appointment and referrals made for further follow up.

5. Addressing geographical barriers:

If sessional clinicians are employed, various regional appointments could be made available and travel costs covered by the program. Alternatively, the program could work to develop a list of participating local GPs, who could attend the proposed annual seminar for participating clinicians.

An assessment and referral service should be outsourced, with non-identifying monitoring of services by the LIV. Service level agreements should ensure that rigorous clinical and quality assurance mechanisms are in place, including strict confidentiality requirements and should be periodically reviewed to evaluate the effectiveness of service delivery.

Contrary to alternative models discussed in the consultation paper, there should be no interface between regulators and a health program. This is desirable to protect the preventative health objectives of the proposed program. There should be a clear distinction between monitoring of material health concerns by the regulator under current regulatory processes (which is for consumer protection reasons) and delivery of a health program (which is for therapeutic purposes).

There is currently no funding available to establish an assessment and referral service. The LIV will continue to explore funding options to fully implement this aspect of the health and wellbeing strategy.
CHANGES TO CONTINUING PROFESSIONAL DEVELOPMENT REQUIREMENTS

Recommendations

Compulsory continuing professional development on health and wellbeing

15. To promote individuals taking responsibility for their personal health and wellbeing, amendments should be made to Continuing Professional Development Rules to ensure that legal practitioners participate annually in health and wellbeing related activities.

During consultations, participants supported changes to Law Institute Continuing Professional Development Rules 2008 to:

a) require legal practitioners to participate annually in health and wellbeing related activities; and
b) allow legal practitioners to claim CPD points for attending health and wellbeing education activities relating to legal practice.

This change to CPD Rules would be in line with developments in law degree and PLT curriculum requirements and would support implementation of this strategy.\(^71\)

The LIV will work with the Legal Services Board to make appropriate amendments to CPD Rules in light of the implementation of the Legal Profession Uniform Law.

\(^{71}\) In line with new curriculum requirements under the Threshold Learning Outcomes and new Practical Legal Training Competency Standards for Entry Level Legal Practitioners.
COMPLEMENTARY HEALTH AND WELLBEING PROGRAMS

Recommendations

Complementary health and wellbeing programs

16. Legal employers and organisations (such as the Victorian Bar) should continue to provide their own health and wellbeing programs for their employees and members, funded and managed independently from this strategy, such the Barristers Counselling Service and EAP programs run by law firms or other employers.

Since May 2009 confidential counselling has been available to barristers through the Barristers Counselling Service (provided independently by the Re-Vision Group from consulting rooms in Collins Street). The Re-Vision Group consists of a group of psychologists of no less than 10 years’ experience. The Re-Vision Group is headed by Bernadette Healy who represents the Barristers’ Counselling Service. The service provides telephone counselling 24 hours a day, 7 days a week and fully subsidises up to five face-to-face counselling sessions. See further details in Appendix Three.

The proposed programs recommended by the strategy are not intended to replace existing employer or organisational programs, such as that conducted by the Bar. This strategy recommends that the Victorian Bar would continue to provide health and wellbeing programs tailored to the needs of its members as it sees fit.

The WATL/wellbeing in the law and LIV wellness at work programs recommended in this report will complement the programs being run through the Bar’s Health and Wellbeing Committee and other EAP and health and wellbeing initiatives run by employers or universities.

INSURANCE AND FUNDING STRATEGIES

Recommendations

Insurance and funding strategies

17. Partnerships with the insurance industry should be explored to better identify health risks in the legal sector and develop an insurance and risk management strategy to address those risks.

18. The LIV, the Victorian Bar and WATL should explore funding options to implement the health and wellbeing strategy, including:

   a. exploring corporate partnership opportunities to raise funds through an insurance strategy addressing health risks;
   
   b. applying for funding for health promotion and primary prevention activities (stages 1 and 2) from the LSB under s 6.7.14 of the Legal Profession Act 2004 (Vic) and commencing discussions with the LSB about ongoing funding from the Public Purpose Fund; and
   
   c. applying for project grants where appropriate to fund specific activities.

Insurance partnerships and strategies

Recent media reports have suggested that salary continuance insurance premiums are rising for law firms because of the prevalence of mental health conditions in the legal profession.\(^3\) The LIV is exploring partnerships opportunities with the insurance industry to better identify health risks in the legal sector and develop an insurance strategy to address those risks. This will include analysing available trend data on the impact of depression and anxiety on premiums and other costs to the workplace, for example through absenteeism and loss of productivity (‘presenteeism’), and the potential return on investment through implementing risk management strategies.

The LIV will also further explore the impact of formal diagnosis of depression or anxiety on income protection premiums, and the negative impact this is likely to have on lawyers seeking necessary assistance.

Funding options

The LIV, in partnership with the Victorian Bar and WATL, will continue to explore funding options to support full implementation of this health and wellbeing strategy.

The consultation paper explored a number of funding options, including seeking ongoing funding through a levy on practising certificates. Moves towards a national legal profession make state-based levies untenable, however, as governments move to implement single fee structures across NSW and Victoria. The LIV notes that the change to national regulation of health professionals affected funding arrangements for the Victorian Doctors Health Program.

The LIV is continuing to explore potential funding arrangements with the Legal Services Board, including under s 6.7.14 of the Legal Profession Act 2004 (Vic) for education purposes. Funding under s 6.7.14 could

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meet the costs of health promotion and preventative education activities through the WATL/wellbeing in the law program.

The LIV is also exploring options to deliver aspects of a health and wellbeing program through a corporate partnership with the insurance industry. The LIV has commenced discussions with an insurance broker to explore the potential for raising funds through an insurance strategy. Under a corporate partnership model, funds could be raised through a tailored insurance scheme developed to address the specific insurance needs of the legal industry. The LIV will continue to explore the benefits and opportunities arising from an insurance based partnership to support the establishment and delivery of the legal community health and wellbeing strategy.

Some aspects of a health and wellbeing program should be user pays. Some private health insurance policies may offer rebates for some services that are offered and Medicare rebates may be accessible under a GP assessment and referral model. This will be explored further during implementation.

Specific projects could also be funded through grant applications, for example to the Professional Standards Council or the Solicitors Managed Mortgage Fund.

**Costs and benefits of taking action**

**Return on investment**

Mental health conditions present substantial costs to organisations, including through absenteeism, presenteeism (reduced productivity at work), compensation claims and insurance premiums.

The Beyondblue and PriceWaterhouseCooper (PWC) report *Creating a mentally healthy workplace: Return on investment analysis* (the ROI report), launched on 20 May 2014, has developed a matrix to evaluate the cost of mild, moderate and severe depression and anxiety disorders to Australian workplaces. The report analyses the return on investment from seven specific interventions across small, medium and large organisations to quantify the benefit of investing in health and wellbeing programs. Benefits are quantified for reduced absenteeism, increased productivity and reduced compensation claims.

A key finding of the ROI report is that for every dollar spent on effective action to create a mentally healthy workplace, organisations can expect an average benefit of $2.30 (typically increased productivity through reduced absenteeism and presenteeism and reduced compensation claims).

The ROI report acknowledges that productivity gains generated from different actions will vary depending on the industry and size of organisation. Importantly, the ROI report found that actions tend to be more effective in smaller organisations, because the single most important critical success factor is employee participation in the action.

Recent media reports have suggested that salary continuance insurance premiums are rising for law firms because of the prevalence of mental health conditions in the legal profession. More work needs to be done to understand the cost of health risks specifically arising in the legal profession and their impact on insurance costs (see recommendation 17).
Cost benefit analysis at the profession-wide level

It is more difficult to assess empirically the costs and benefits of taking action at a macro level across the legal community, because dollars spent on preventative programs cannot be measured in financial return (e.g. through increased productivity). This difficulty reflects the general difficulty in evaluating the impact of public health initiatives. 78

Long term benefits can be measured, however, through monitoring the prevalence of depression and anxiety among members of the legal community, and tracking the implementation of initiatives against rates of depression and anxiety.

Other measures of success could include reductions in:

- defalcations in trust money;
- complaints or disciplinary matters against legal practitioners; and
- attrition rates (people leaving the profession). 79

This report recommends that the WATL/wellbeing in the law program undertake research periodically to monitor the rates of depression and anxiety in the legal community, to help assess the impact of programs.

Increased individual participation rates in health and wellbeing programs may be an indicator that awareness raising and education activities are beginning to change the culture in the legal community about seeking assistance. Experience in other allied health profession support programs indicates that it takes time to build awareness and confidence in a service. The following figure shows participation rates for an allied health profession support program, provided to the LIV during its research. 80

The graph demonstrates the gradual increase in participation over seven years.

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79 See Law Council of Australia, National Attrition and Re-engagement Study, above n 49.
80 Usage statistics were provided confidentially to LIV during its consultation process.
MOVING TO A CONSISTENT NATIONAL APPROACH

Recommendations

Moving to a consistent national approach

19. The health and wellbeing strategy should inform discussions about a consistent national approach to legal community health and wellbeing.

This report sets out a framework for dealing with mental health and wellbeing in the Victorian legal community. Based on research and consultations, the report provides a road map for continuing the profession’s ongoing strategy for promoting wellness among lawyers and in the workplace.

Central to the report’s recommendations is the proposal to establish two health and wellbeing programs:

- the WATL/wellbeing in the law program; and
- the LIV wellness at work program.

The LIV recognises that many steps have been taken by many organisations across the legal community in the area of wellbeing and we acknowledge the important contributions these continue to make in the lives of lawyers and others in the profession. The LIV hopes a new legal community program, driven by the whole profession, will provide the impetus for cultural change necessary to address the systemic issues affecting the wellbeing of our profession.

While not explored in this report, during consultations it became apparent that approaches to mental health and wellbeing vary across the country and that regulators, legal employers and professional associations are at different stages of addressing the challenging issue of promoting wellness and wellbeing. Large firms involved in LIV consultations indicated they would also like to see a consistent national approach to health and wellbeing, particularly in relation to communications (recognising that service delivery should be done at the state and territory level).

Based on the outcomes of this project, the LIV will advocate for a consistent national approach on health and wellbeing across the legal community. The LIV will share this report with the Council of Australian Law Societies and the Law Council of Australia as a proposed model.
APPENDIX ONE: REPORT ON LAWYER HEALTH AND WELLBEING CONSULTATION

The LIV’s lawyer health and wellbeing consultation was conducted between 15 November and 13 December 2013. Participants in the consultation were invited to consider a consultation paper and respond to ten discussion questions.81

The consultation paper summarised LIV research into health and wellbeing programs for lawyers internationally and in other professions and set out the major issues for consideration in designing a health and wellbeing program for lawyers in Victoria.

The consultation had three main components:

a. An online questionnaire seeking input on the 10 questions set out in the consultation paper;
   b. Three focus groups; and
   c. Individual meetings.

The consultation was advertised in Friday Facts on 15, 22 and 29 November 2013 and was featured on the LIV website homepage ‘top 5’ for the week 18 – 22 November. A dedicated webpage was created under the LIV Submissions and Projects webpage.82

Key stakeholders and other interested persons were identified through the LIV’s ongoing work on the project and were invited to attend focus groups and individual meetings and sent copies of the consultation paper and online questionnaire.

Online questionnaire

The online questionnaire was not intended to generate statistical or representative data but rather, was developed as a convenient way for interested people to provide input to the consultation (as an alternative to requiring written submissions). Written submissions were also invited by email, but only two were received (from the Legal Services Commissioner and College of Law Victoria), suggesting that participants valued the ability to respond in a survey format.

There were 42 respondents to the online questionnaire (although participation dropped off as the survey progressed so that 30 respondents answered all 10 questions).

In summary, the online questionnaire responses identified the following themes:

- **low awareness levels and importance of communication strategies**: Among respondents there was generally low awareness of services available to lawyers, despite the fact that respondents self-selected to answer the questionnaire and therefore had an interest in the topic;
- **broad definition of health and wellbeing**: Preventative strategies for protecting mental health must address physical health, fitness and nutrition as important drivers of mental wellbeing;
- **whole of profession**: The stressful nature of work as a lawyer and in particular work environments in firms, the need for profession-wide responsibility for a profession-wide issue and the importance of equality of access due to prevalence across the profession underpin the importance of a health program for all members of the legal community;
- **health policy approach**: Range of program activities must recognise the distinction between pathological/clinical mental health issues (diagnosable) (tertiary prevention) compared to early intervention activities addressing potential causative factors (health promotion and primary prevention);

• **addressing barriers to access:** Program design must address continuing issues of stigma, concerns about confidentiality and potential repercussions from employers, educators or regulators, potential geographical barriers, lack of time for busy lawyers to access the service and potentially cost for individuals as well as adequately promoting the service to ensure high awareness levels;

• **ownership by the profession:** Core funding could be obtained through a levy on practising certificate or LIV membership fees, with additional funding sought from law firms and other external funders; and

• **more information sharing:** Most respondents agreed there is a need for more information sharing about lawyer health services and some respondents thought there could be better coordination between lawyer and law student health and wellbeing programs.

## Focus groups

Three focus groups were held during the consultation period with three distinct stakeholder groups across the education sector, regulation and legal practitioners and law firms. The following provides an overview of participants and discussions:

1. **Legal practitioners and law firm representatives:** Participants included various interested LIV members and law firm human resources professionals, discussing:

   • **importance of positive messaging**, including focusing on productivity gains and the business case for firms to invest in staff wellbeing and turning lawyer trait of competitiveness into a positive force, as ways to destigmatise mental illness;

   • **understanding physical health as a driver for mental wellbeing**, including the sedentary nature of legal practice and impact of long working hours and high workloads on diet and exercise;

   • **changing longstanding legal culture** (in firms and among practitioners) by focusing on ethics, including fierce competition among legal practitioners and within and between firms, particularly in litigation, loss of face/humiliation, bullying and how legal practitioners treat each other generally; and

   • **importance of personal investment** in programs so that participants are taking responsibility for their own health and see value in the relevant activity.

2. **Regulation:** Participants attended from the Legal Services Board, Legal Services Commissioner, Board of Examiners and LIV Members’ Advocate and discussed:

   • **taking a preventative approach** by encouraging lawyers to seek help early before more serious disciplinary or fitness to practise issues arise and targeting programs to sub-groups of lawyers identified as most at risk because of their work environment, location or demographic factors;

   • **ensuring a clear distinction between regulatory monitoring (which is for consumer protection reasons) and medical or other treatment (for therapeutic purposes)** so that there is no interface between the regulators and a health program;

   • **improving awareness about disclosure obligations**, which arise only where a lawyer (or applicant for admission)’s fitness to practise is in question because of the impact of a mental impairment on their ability to carry out their professional responsibilities; and

   • **advocating for CPD Rules to be amended** to address health and wellbeing objectives.
3. Education: Participants attended from Victorian law schools and PLT providers, including academic staff and student representatives and discussed:\(^{83}\)

- **institutional responsibilities**, including relating to duty of care, the impact of mental health on educational outcomes, new curriculum requirements under the Threshold Learning Outcomes\(^{84}\) and new Practical Legal Training Competency Standards for Entry Level Legal Practitioners;\(^{85}\)

- **education provider plans and co-ordinated activities**, including community-building initiatives, academic-student engagement activities, targeting a culture of competition with a focus on alternative careers and role modelling;

- **impact of external stressors on law students**, including financial stress, carer responsibilities, legal employment market vs oversupply of law graduates creating career anxiety, stigma and fear of discrimination by future employers;

- **student led initiatives** through Law Student Societies (LSS), including publications, helplines and diversification of social activities (beyond alcohol-related activities); and

- **reviewing latest research** on law student stress, depression and anxiety, in particular the student wellbeing survey undertaken by the University of Melbourne.\(^{86}\)

**Individual meetings**

Meetings were held with the following stakeholders:

- Dr Kym Jenkins, medical director and senior clinician, Victorian Doctors’ Health Program
- Amanda Jackson, national HR and organisational development manager, Norton Rose Fulbright Australia
- Samantha Burchell, director education, and Louise Hicks, project officer, Judicial College of Victoria
- Chris Jamieson and Matthew Bacon, JLT Australia
- Stephen Hare, CEO, Peter Fox and Michelle Sharpe, Health and Wellbeing Committee, Victorian Bar
- Stephen Shipp, president, Mornington Peninsula Solicitors Association
- Paula Chatfield, legal counsel, St Vincent's Hospital (Report of Paula’s discussion with Chief Psychiatrist Associate Professor Bosanach, clinical director of Mental Health and Aged Care Services
- Judge Hampel and County Court staff Jeanne Beaty, Carole Geddes and Ian Edwards
- WATL board and chair Bernard Teague
- Professor Jim Ogloff, director of psychological services at the Victorian Institute of Forensic Mental Health (Forensicare) and Foundation Professor of Forensic Behavioural Science at Swinburne
- Dr David Isaacs, GP liaison consultant, St Vincent's Hospital
- Glenn Taylor, CEO, Nursing & Midwifery Health Program, Victoria (NMHPV)

Meetings are also being arranged with Trish Hyde of the Australian Corporate Lawyers Association. The project will also be suggested for discussion with heads of jurisdiction during the LIV president's meet and greets and at upcoming meetings with the Legal Services Commissioner and LPLC.

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\(^{83}\) Representatives attended from Deakin Law School and Law Students' Society, Monash University Faculty of Law and Law Students’ Society, Melbourne Law School, RMIT College of Business (Juris Doctor program), Australian Catholic University Faculty of Law, Leo Cussen Centre for Law and The College of Law Victoria.

\(^{84}\) Threshold Learning Outcome 6 relates to self-management and includes a health and wellbeing component.

\(^{85}\) Not yet published.

Feedback included:

- **Consistent national approach**: the LIV should work towards a consistent national approach to health and wellbeing in the legal profession. Large law firms reported that communication to lawyers can be confusing because each state and territory law society is implementing different programs.

- **Ongoing role for specific local interventions**: Organisations with their own health programs expressed the view that because of the specific needs of their members, there is an ongoing need for local management of health concerns. Lawyers also highlighted that employers have a responsibility to protect their employees from workplace injury and therefore must implement internal policies and initiatives in relation to mental health and wellbeing.

- **Evidence-based interventions**: All activities should be evidence based to ensure effective outcomes.

- **GP led assessment and referral service**: A lawyers’ health program should offer assessment by a GP and referral to a designated panel of participating health and allied health practitioners, rather than offering treatment within the program itself.

- **Using appropriate expertise**: Delivery of a health program for lawyers needs appropriate expertise including input from organisational psychologists, health psychologists, counsellors and General Practitioners. Ideally, health professionals will have experience working with lawyers and law firms as program design must be based on the nature of work as a lawyer.

- **Alcohol and substance abuse**: A lawyers’ health program must address alcohol and substance abuse as part of its mental health and wellbeing strategy, as studies have identified that alcohol in particular is commonly used as a maladaptive self-help strategy among lawyers.
APPENDIX TWO: REPORT ON THE VIC LAWYERS’ HEALTH LINE PILOT

Overview of service

The Vic Lawyers’ Health Line (VLHL) was launched by the LIV in April 2012.

VLHL is operated independently by Optum (formerly PPC Worldwide) under a service agreement with the LIV and is entirely confidential. It provides a triage and referral service between 8am and 6pm for all Victorian lawyers, law students, judges and other members of the profession who are feeling stressed or burnt out, are concerned about anxiety, depression or substance abuse or who are supervising or managing staff with mental health issues (i.e. the service is available to non-LIV members of the profession).

An initial telephone consultation with a qualified Optum psychologist allows for a discussion of the issues of concern, after which the caller may be referred on to an appropriate service within the program. Services include:

- Counselling (face-to-face or telephone)
- De-briefing (by telephone)
- Health Steps Online (self-paced online modules)
- Manager Hotline (for supervisors, mentors and colleagues to proactively address issues at an early stage and encourage employees, mentees and colleagues to access the VLHL)
- Information about mental health, admission and renewal of practising certificates
- Referral (to appropriate external services).

The LIV pays for telephone consultations, online modules and up to three counselling consultations. The LIV receives quarterly generic, non-identifying reports about usage, client demographics and primary presenting issues and responsible Legal Policy and Practice staff members meet quarterly with Optum employees to monitor progress of the service.

The LIV developed the VLHL brand, manages the website viclawyershealth.com.au and is responsible for communications about the service.

The VLHL pilot was initially funded by the Legal Services Board to June 2013 but uptake levels meant that the funding period was extended to June 2014 (using unexpended funds).
Usage statistics

The following provides an overview of usage since the service was established in April 2012 – 31 March 2014:

<table>
<thead>
<tr>
<th>Vic Lawyers’ Health Line Statistics</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Since program launch on 10 April 2012 – 31 March 2014:</strong></td>
</tr>
<tr>
<td><strong>79 client cases</strong></td>
</tr>
<tr>
<td>– 66 face-to-face sessions (42 clients participated in 66 counselling hours)</td>
</tr>
<tr>
<td>– 79 telephone counselling sessions (41 counselling hours)</td>
</tr>
<tr>
<td><strong>Demographics:</strong></td>
</tr>
<tr>
<td>50 females / 26 males</td>
</tr>
<tr>
<td>41 Melbourne CBD / 18 Melbourne metro / 8 regional Victoria (11 non-specified Victoria)</td>
</tr>
<tr>
<td>54 lawyers / 11 law students / 5 managers / 2 support staff</td>
</tr>
<tr>
<td><strong>Sizable sub-groups (where provided):</strong></td>
</tr>
<tr>
<td>20 in-house lawyers / 13 sole practitioners / 33 small practice</td>
</tr>
<tr>
<td><strong>Primary presenting issue:</strong></td>
</tr>
<tr>
<td>18% work-related / 82% personal (Majority access for anxiety or stress and coping)</td>
</tr>
</tbody>
</table>

The LIV has continued to offer one free counselling session to LIV members through Law Care during the pilot period. Law Care is provided through an agreement with a CBD based clinical psychologist and is entirely confidential. There is no reporting to the LIV on usage, except for invoices for sessions delivered. For the period 1 April 2012 – 30 April 2014, Law Care provided 88 one-on-one counselling sessions (either face-to-face or by telephone). Law Care continues to be listed as a service under the LIV members ‘personal support services’ webpage, but has not been actively promoted to members.

A total of 233 counselling hours have therefore been provided to members of the legal profession in a two year period through Vic Lawyers’ Health Line and Law Care combined.

Even when combined, usage rates of Vic Lawyers’ Health Line and Law Care are low when taking into account the size of the population entitled to access the services and comparing this to usage statistics for EAP (which range from 3 – 5%). Usage rates are difficult to assess in absolute terms, however, because large portions of the entitled population have access to alternative counselling schemes (i.e., barristers, law students, employees with access to EAP). In this context, Vic Lawyers’ Health Line counselling can be viewed as a safety net for those in the profession who are unable (or unwilling) to access counselling elsewhere. This context explains the higher usage rates from smaller firms, where employees are unlikely to have access to an EAP. Interestingly, a high proportion of corporate lawyers accessed the service.

Unlike the Bar and County Court services, the clinical psychologist managing the Vic Lawyers’ Health Line has not been promoted personally to the profession. This could be affecting uptake of the service, given the importance of trust between therapist and client in the success of a therapeutic intervention.

Low awareness could partly explain the usage statistics of the Vic Lawyers’ Health Line (and the more established but less marketed LawCare counselling service). Other factors affecting usage could include the hours of operation (limited to 8am – 6pm) and the corporate branding of the service (compared to a more personal approach based on the actual person(s) delivering counselling services).

Usage rates can be compared to the Victorian Doctors Health Program, which had 110 individual participants in FY 2012-13 (out of c. 23,500 doctors) and the Victorian Nurses and Midwives Health Program 217 individual participants (out of c. 90,000 nurses and midwives). The doctors’ and nurses’ health programs have been operating for 13 years and 8 years respectively. Each program has reported that usage rates
have increased over time as awareness and confidence levels increase about the existence and benefits of the service.

The Barristers’ Counselling Service has a usage rate of 3.8% of barristers annually, which falls in the middle of average take up rates for Employee Assistance Programs (EAP) (3 – 5%).87 Barristers, however, are self-employed and do not have access to any employer programs, so that the Barristers’ Counselling Service operates as an EAP for members of the Victorian Bar. Further, the program has been in place since 2009, with usage increasing over the seven years consistent with experience in the doctors’ and nurses’ programs.

Evaluation of services

Clients of the Vic Lawyers’ Health Line are not currently asked to evaluate the service, so that satisfaction rates are unknown. PPC Worldwide has been requested to seek feedback from future clients and clients for the last six months.

There has been no uptake of the telephone de-briefing service or Health Steps Online modules.

The de-briefing service was designed as a preventative measure for lawyers to discuss emotionally difficult cases or clients before the need for counselling arises. Anecdotal feedback obtained during the consultation period suggests that reasons for lack of uptake of the de-briefing service are likely to be two-fold:

- The concept of de-briefing is not part of legal professional culture (compared to health professions, which incorporate de-briefing into professional practice); and
- Lawyers are more likely to (and should be encouraged to) debrief with colleagues who are involved in a matter, rather than with a health professional who is removed from the situation.

Anecdotal feedback in relation to online self-paced modules suggests that people seeking help for stress and psychological distress generally seek human interaction. Literature suggests that effective interventions depend largely on a trusting relationship between therapist and client, which is lacking under online intervention models.

Consultations with clinicians highlighted that the Vic Lawyers’ Health Line model (like Employee Assistance Programs, or EAP) relies on lawyers’ self-referring for counselling. While counselling is an important treatment offering, many mental health specialists note that counselling is only one type of treatment available and will not always be the most appropriate depending on the needs of the individual. This could lead to dissatisfaction for individuals who participate, if they feel like the service has not addressed their particular needs. It may also affect usage rates if people think that counselling is not appropriate for them.

The outcomes of a recent UNSW survey (not yet published)88 support this feedback, with many participants rating the effectiveness of EAP and counselling as not very effective in dealing with work-related stress, for example. The LIV Scoping Study for a legal community health and wellbeing program responds to this feedback by proposing a new assessment and referral service, which will help lawyers to better understand their own personal wellbeing issues and the most appropriate treatment or program for them.

A further drawback of the Vic Lawyers’ Health Line model, as with most EAPs, can be that the total number of funded sessions is capped. If three sessions is insufficient to resolve a person’s issues, their care will become fragmented if they need to seek another therapist to continue treatment. Under the LIV’s arrangement with PPC Worldwide, clients are referred to a network of private psychologists rather than PPC employees so that they can continue care with the same therapist should they wish to do so. Due to confidentiality agreements, we are not aware if any Vic Lawyers’ Health Line clients have continued seeing

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their psychologist beyond the funded sessions. Without a Mental Health Care Plan and referral from a GP, Medicare rebates are not available to clients wishing to continue counselling with a VLHL psychologist.

Anecdotal feedback received during consultations with the profession suggests that usage could also be affected by the limited operating hours (8am-6pm) of the Vic Lawyers’ Health Line. The Victorian Barristers’ Counselling Service reports that many calls are received after hours. Long working hours and the stress and coping issues faced by many practitioners who request support from the service mean that health and wellbeing is unlikely to be top of mind in working hours. Evidence suggests that people are more likely to seek assistance after hours and especially when they are not in the office. The LIV Scoping Study recommends that access to 24 hour telephone counselling is necessary to assist people to access services.

**Awareness of service**

The Vic Lawyers’ Health Line was initially promoted through a soft launch of the dedicated website through Friday Facts. Flyers were printed and distributed to various stakeholders (including the Legal Services Board, the courts, Judicial College of Victoria, Leo Cussen Institute, The College of Law Victoria, Law Schools at Melbourne, Monash, La Trobe, Deakin and Victoria universities, Victorian Women Lawyers, Board of Examiners and Victorian Bar) with a covering letter seeking support and endorsement of the service. Adverts regularly appear in the Law Institute Journal and information regularly appears in Friday Facts. Adverts were also included in the Victorian Women Lawyers Portia publication in 2012 and an Institute of Legal Executives newsletter. The service has been mentioned in Presidents and Young Lawyer Blogs on mental health and during presentations to members, including suburban and country law associations. The service is mentioned in the Legal Services Board Mental Health Policy as a potential resource. Information about the service is also included on the LIV personal services webpage.

Despite efforts to promote the Vic Lawyers’ Health Line, general awareness of the service appears to be quite low (for example, among respondents to the online questionnaire). Awareness is likely to affect usage rates, where members of the profession are not aware that free face to face counselling is available. Some anecdotal feedback has suggested that the name of the service gives the impression that only telephone assistance is provided, which could also affect usage.
APPENDIX THREE: OVERVIEW OF LEGAL HEALTH AND WELLBEING SERVICES AND PROGRAMS

The consultation paper asked stakeholders about their approach to addressing lawyer health and wellbeing and sought details about what services or programs are currently provided to lawyers, law students and the profession more broadly (including judges). The paper also sought information about the level of uptake of any services, evaluation practices and how confidentiality is ensured.

During consultations, the Legal Services Commissioner emphasised the importance of undertaking an analysis of current programs and needs, noting that it is not possible to talk about the scope and nature of any program until this analysis is complete.
Overview of services

Our research indicates that there are numerous programs already providing health and wellbeing services to members of the legal community. The following diagram provides an overview of the health and wellbeing initiatives, programs and services currently available to members of the legal community:

<table>
<thead>
<tr>
<th>Legal practitioner type</th>
<th>Programs and Services</th>
<th>Providers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Law students</strong></td>
<td>• Self-management curriculum requirement (TLO 6)</td>
<td>• Universities</td>
</tr>
<tr>
<td></td>
<td>• University central counselling services</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Law Student Society Health and Wellbeing Officers and publications</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Community-building, academic-student engagement activities, alternative careers fairs</td>
<td></td>
</tr>
<tr>
<td><strong>PLT students</strong></td>
<td>• Practical Legal Training (PLT) Competency Standards for Entry Level Practitioners</td>
<td>• PLT providers</td>
</tr>
<tr>
<td></td>
<td>• Resilience and wellbeing for lawyers workshop (College of Law Victoria)</td>
<td>• College of Law Victoria</td>
</tr>
<tr>
<td><strong>Legal practitioners (solicitors)</strong></td>
<td>• Law Care (for LIV members)</td>
<td>• LIV</td>
</tr>
<tr>
<td></td>
<td>• LIV Continuing Professional Development (CPD) activities and events on health and wellbeing, stress management and mindfulness</td>
<td>• MJ Clarabrough &amp; Associates</td>
</tr>
<tr>
<td></td>
<td>• LIV Mentoring Program</td>
<td>• LegalServices</td>
</tr>
<tr>
<td></td>
<td>• Legal Services Board Mental Health Policy, Compliance and Enforcement Policy and CPD Policy</td>
<td>Board/Commissioner</td>
</tr>
<tr>
<td></td>
<td>• Some employers have Employee Assistance Programs (EAP), Mental Health First Aid Officers, R U OK and other events</td>
<td>• Employers</td>
</tr>
<tr>
<td><strong>Barristers</strong></td>
<td>• Barrister Counselling Service</td>
<td>• Victorian Bar</td>
</tr>
<tr>
<td></td>
<td>• Health and Wellbeing Committee</td>
<td>• Re-Vision Group</td>
</tr>
<tr>
<td></td>
<td>• Seminar program and presentations to Readers’ Course</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Health Central website</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Mental Health First Aid training for clerks</td>
<td></td>
</tr>
<tr>
<td><strong>Judges</strong></td>
<td>• Judicial College of Victoria (JCV) programs on resilience, trauma and judicial role, impact of accumulated stress and 360 degree feedback</td>
<td>• JCV</td>
</tr>
<tr>
<td></td>
<td>• County Court onsite counselling pilot</td>
<td></td>
</tr>
<tr>
<td><strong>Legal support staff</strong></td>
<td>• Some employers have EAP, Mental Health First Aid Officers, R U OK and other events</td>
<td>• Employers</td>
</tr>
<tr>
<td><strong>All</strong></td>
<td>• Vic Lawyers’ Health Line</td>
<td>• LIV</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Optum</td>
</tr>
</tbody>
</table>

**KEY:**  
EAP = Employee Assistance Program  
PLT = Practical Legal Training  
TLO = Threshold Learning Outcome
The types of services and programs currently available to members of the legal community include:

- funded counseling services;
- education initiatives;
- policy and advocacy – workplace and regulation;
- peer support; and
- Mental Health First Aid.

Funded counselling services

Many large legal employers (whether law firms, government or corporate)\(^9^3\) pay for their employees to access an employee assistance program (EAP). Typically, an EAP will provide a limited number of counselling sessions (usually around three or four per annum) for each employee by an independent service provider. Despite some negative media coverage,\(^8^0\) we understand that EAP are generally entirely confidential, with employers receiving only anonymous reports about usage. PPC Worldwide, who administer the Vic Lawyers’ Health Line and provide EAP to many law firms and government agencies, has suggested that usage tends to be around 5% of employees. Two law firms that participated in consultations indicated that most employees access EAP for personal issues and not work-related stress. Anecdotally during consultations, it was suggested that employees prefer not to access EAP for work-related stress because they are concerned about confidentiality, however this cannot be verified.

Judicial officers have access to counselling services through a judicial counselling scheme established by the Chief Justice and court staff have access to an EAP funded by the Department of Justice.

In 2013, the County Court piloted onsite counselling for judges and staff as a measure to improve uptake of counselling services. Under the pilot, a PPC Worldwide senior consultant psychologist presented to staff and judges at their respective annual conferences on vicarious trauma and managing workplace stress (a particular concern for the County Court) and invited staff to attend onsite counselling sessions. The County Court reported a huge increase in uptake of counselling, which they attribute to both the increased accessibility of appointment (being onsite), so that judges and staff do not have to take time away from work and also familiarity with the counsellor, following presentations at various conferences.

Since May 2009 confidential counselling has been available to barristers through the Barristers’ Counselling Service (provided independently by the Re-Vision Group from consulting rooms in Collins Street).\(^9^1\) The Re-Vision Group consists of a group of psychologists of no less than 10 years’ experience. The Re-Vision Group is headed by Bernadette Healy who represents the Barristers’ Counselling Service. The service provides telephone counselling 24 hours a day, 7 days a week and fully subsidises up to five face-to-face counselling sessions.

The Victorian Bar Health and Wellbeing Committee oversee the Barristers’ Counselling Service, delivered independently by The Re-Vision Group. Established in May 2009, the service has an uptake rate of approximately 3.8%, which is about an average uptake for EAP services.\(^9^2\) The uptake of services is slightly higher by males.\(^9^3\) The Committee receives generic non-identifying reports from the Re-Vision Group and this informs the Committee’s activities in educating the Bar about good health and wellbeing. Stress management issues, relationship issues and anxiety and depression are the major presenting issues. Other issues include self-esteem, substance abuse and grief and loss. Participating barristers are asked to complete satisfaction surveys and the Health and Wellbeing Committee report a very high satisfaction rate from those who have accessed the service.

\(^8^9\) Lawyers working in Community Legal Centres also have access to an EAP arrangement with the Federation of Community Legal Centres.


\(^9^3\) 52% of all those who accessed the service over the past 3 years were male.
LIV members are able to access one free counselling session through LawCare. The LawCare service operates on a 24/7 basis via a call back service and is operated by MJ Clarebrough.

A lawyer seeking help will initially contact the LawCare service to make an appointment for a consultation. Primarily lawyers self-refer and find contact details via the LIV website or contact the LIV and details are provided. During the initial consultation the counsellor will seek to identify the nature and extent of the presenting problem. At this stage the counsellor may liaise with a medical practitioner or other health professionals to assess the best treatment options available, both therapeutic and or medical.

LawCare is provided as a member service. The LIV covers the cost of the initial consultation for members and their immediate family members. The service is strictly confidential and no information is passed back to the LIV.

All law students can access counselling through central university counselling services.

All members of the legal profession (whether solicitors, barristers, in-house, government, community, students or judges) currently have access to three free counselling sessions through the Vic Lawyers’ Health Line. The Vic Lawyers’ Health Line operates between 8am and 6pm.

A minimum of three funded counselling sessions is therefore currently available to all members of the legal community at present, with the Vic Lawyers’ Health Line providing a safety net where legal professionals do not have access to an EAP (or do not wish to access their EAP). Funding for the Vic Lawyers’ Health Line is secure only until June 2014, however, as this was established as a pilot service as part of this project.

Discounting the VLHL, it is estimated that approximately half the profession have access to an EAP through their employer (or for barristers, through the Victorian Bar). Further research is required to understand the efficiency and effectiveness of delivery of current programs. In particular, it is unclear what, if any, impact available counselling services have on rates of depression and anxiety in the profession and whether they operate to provide early intervention (and are therefore preventative).

Of course members of the profession also have access to counselling privately and subsidised through the Medicare Benefits Schedule Mental Health Treatment Plan scheme like any other member of the general community. Anecdotal feedback suggests that many lawyers do not access the scheme because of a fear of potential regulatory, employment and insurance consequences.

Education initiatives

94 See http://www.liv.asn.au/Practice-Resources/Practice-Support/Health-and-Wellbeing (LIV member log in required).
95 See www.viclawyershealth.com.au and above in Appendix Two.
96 Lawyers working in government and the community sector, large and some medium sized firms.

<table>
<thead>
<tr>
<th>University with law school</th>
<th>Link to university counselling service</th>
</tr>
</thead>
<tbody>
<tr>
<td>The University of Melbourne</td>
<td><a href="http://services.unimelb.edu.au/counsel/individual">http://services.unimelb.edu.au/counsel/individual</a></td>
</tr>
<tr>
<td></td>
<td><a href="http://services.unimelb.edu.au/counsel/community/students">http://services.unimelb.edu.au/counsel/community/students</a></td>
</tr>
<tr>
<td></td>
<td><a href="http://www.monash.edu.au/counselling/">http://www.monash.edu.au/counselling/</a></td>
</tr>
<tr>
<td>La Trobe University</td>
<td><a href="http://www.latrobe.edu.au/students/counselling">http://www.latrobe.edu.au/students/counselling</a></td>
</tr>
<tr>
<td>RMIT</td>
<td><a href="http://www.rmit.edu.au/counselling">http://www.rmit.edu.au/counselling</a></td>
</tr>
</tbody>
</table>
Since the introduction of the Threshold Learning Outcomes (TLO) (and specifically TLO 6), law schools are working to integrate "self-management" into law curricula. The TLO endorsed by the Council of Australian Law Deans notes that TLO 6 "incorporates a capacity for resilience through personal awareness and coping skills that might include openness to assistance in times of personal and professional need."  

Many central university services also offer wellbeing education programs for students. For example, Monash University Mental Health and Safer Communities Program offers courses in mindfulness for academic success, lunchtime drop-in meditation sessions, seminars on motivation, stress and time management, workshops on suicide awareness and first response training and mental health first aid training. Melbourne University Law School offers mindfulness training, although this initially had a low uptake from students.

Following a review of the National Competency Standards for Entry Level Lawyers (the Competency Standards), resilience and wellbeing is due to be included in the revised Competency Standards as a requirement for all Practical Legal Training (PLT) providers and students.

During consultations, College of Law Victoria (COLV) reported that “Resilience and Wellbeing for Lawyers” has been a compulsory module in the College’s PLT program for law graduates nationally since 2011 that relates to Professional Responsibility & Ethics and Work Management & Business Skills. Resilience and Wellbeing for Lawyers is delivered in a 2 ½ hour workshop designed to raise awareness about mental health issues in the legal profession, provide information about mental illness and how to seek help, provide an opportunity for questions and discussion, equip students with tools to support their growth as professionals and encourage better management of different areas of their lives. The DVD resilience@law, developed by COLV in partnership with five large law firms and with the support of the Tristan Jepson Memorial Foundation (TJMF), is shown and discussed during the workshop (see further below).

COLV reported that all lecturers facilitating the workshop must first have completed Mental Health First Aid (MHFA) training and training in delivery of the workshop. Another member of staff with MHFA training is available as a support person for any student who might need to leave the room during the workshop. As the module is compulsory, all students undertaking PLT with the College must attend the workshop. Nationally, some 7000 students have so far completed Resilience and Wellbeing for Lawyers with the College.

Leo Cussen Centre for Law has taken a different approach to COLV, seeking to encourage PLT students to take responsibility for their own wellbeing by embedding various measures throughout the course structure. The Leo Cussen PLT course is structured as a small group mentor model of training. Trainees belong to a practice group (10-14 trainees) led by their mentor as supervising lawyer. The structure and coursework requires each trainee to adopt the professional role and engage with other trainees in the conduct of client files (simulated files). They receive continuous feedback on their work and the management of their time and priorities from their mentor in one on one and group sessions. Leo Cussen PLT course is designed to ensure that trainees have regular contact with more than one lawyer/mentor and that they receive regular feedback on how they are progressing to the competence required. Course objectives include developing a sense of professionalism and professional identity, including through a careers program, and a professional network. In addition, trainees with special needs are identified early and flexibility can be extended to accommodate their needs.

Leo Cussen reported during consultations that it is developing specific training dealing with mental health and wellbeing and aims to build this into key competencies, e.g. work management and business systems. This approach was piloted in 2014 with a practical session on managing stress. Professional development for staff is part of this planning.

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100 See further http://monashlss.com/social-justice-equity/monash-programs.


102 See further below, p 59.
The Victorian Bar delivers monthly continuing legal education seminars on topics including: dealing with stress and depression, mental health first aid, maintaining good health through exercise and diet, nutrition, planning for retirement and mindfulness. In 2014, further seminars are planned on resilience, heart health, mindfulness, dealing with a difficult bench, recovery from alcoholism, and suicide prevention. The Health and Wellbeing Committee has also made presentations to the Readers’ Course about stress management, maintaining health and wellbeing and mindfulness. The 2013 Bar Convention also included a session on mindfulness.

The LIV offers mental health related education sessions through its continuing professional development (CPD) and events program. In 2013, LIV offered the following sessions:

<table>
<thead>
<tr>
<th>Date</th>
<th>Session</th>
<th>Attendance</th>
</tr>
</thead>
<tbody>
<tr>
<td>19 Feb</td>
<td>Triple your Memory and Confidence and Halve Your Stress</td>
<td>15</td>
</tr>
<tr>
<td>12 March</td>
<td>Mindfulness Stress Management 3hr Workshop</td>
<td>11</td>
</tr>
<tr>
<td>26 March</td>
<td>Mindfulness Stress Management</td>
<td>76</td>
</tr>
<tr>
<td>1 Oct</td>
<td>Insight Mental Health Awareness and Suicide Prevention</td>
<td>17</td>
</tr>
<tr>
<td>14 Nov</td>
<td>Hot Topics: Mental Wellbeing &amp; the Law</td>
<td>45</td>
</tr>
<tr>
<td>3 Dec</td>
<td>Insight Mental Health Awareness and Suicide Prevention</td>
<td>19</td>
</tr>
</tbody>
</table>

Judicial College of Victoria (JCV) primarily deals with mental health and wellbeing through its education program. Four years ago, JCV ran a judicial stress program which had unexpectedly high attendance. In 2013 a program for long serving judicial officers identified the impact of accumulated stress and vicarious trauma was further identified as an issue as part of the sexual assault reforms of the previous government. As a result, in 2014 JCV is delivering a program on resilience, trauma and the judicial role and will include themes on judicial culture during a judicial symposium. JCV’s court craft program includes a 360 degree feedback program run by an organisational psychologist. JCV has also run mindfulness training.

A number of larger law firms have also reported delivery of internal education activities on depression, anxiety and substance misuse and resilience.

The Legal Services Board and Commissioner have advised that they undertake approximately 40 educational presentations per year addressing law students at tertiary institutions and Victorian practitioners. All presentations to law students address mental health issues and the Board’s Mental Health Policy, as do most presentations to practitioners. These presentations focus on the high incidence of mental health issues within the profession, encouraging students and practitioners to seek assistance or advice and emphasise that practitioners should not be afraid of discussing mental health issues with the regulator. This approach is reinforced by advice regarding referral services offered on the Board’s website.

A number of not-for-profit organisations provide education activities to workplaces (not specifically to legal employers). For example, SANE Australia has developed the Mindful Employer program, which delivers training through face-to-face workshops and eLearning modules. Participating employers are required to sign up to a Charter, their commitment to becoming a Mindful Employer. SANE report that only one law firm is participating in the Mindful Employer program. The beyondblue National Workplace Program is an awareness, early intervention and prevention program designed specifically for workplace settings. It aims to increase the knowledge and skills of staff and managers to address mental health conditions in the workplace through a variety of tailored workshops that can be delivered to senior executives, managers,

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human resources professionals or employees generally. The Black Dog Institute also offers workplace mental health and wellbeing programs. These programs are not tailored to law firms or legal employers.

**Awareness-raising activities**

In September 2013, the LIV and the Victorian Bar launched the Wellbeing and the Law Foundation (WATL), \(^{106}\) established to raise funds to support the mental health and wellbeing of the legal profession, people who work within the profession and law students. Donations to WATL are tax deductible. WATL activities include raising awareness of the issues and implementing practical initiatives that will help break down the barriers and stigmas attached to asking for help. WATL ambassadors have been appointed from across the legal community assisting the WATL Foundation to raise awareness by sharing their experiences.

The Tristan Jepson Memorial Foundation was established in 2008 in memory of Tristan, a former University of NSW law student, young lawyer and comedian. Tristan suffered from severe clinical depression and took his own life just four weeks after his 26th birthday, on 28 October, 2004. The Foundation’s objective is to decrease distress, disability and the causes of depression and anxiety in the legal profession. The Foundation sponsors an annual lecture, \(^{108}\) has commissioned research on the incidence of depression in the legal profession in Australia, \(^{109}\) and is currently developing the ‘TJMF Psychological Wellbeing: Best Practice Guidelines for the Legal Profession’ (see further below).

The LIV regularly publishes articles relating to mental health in the legal profession in its monthly publication the *Law Institute Journal* \(^{110}\) and frequently discusses the issue of mental health through its social media channels (including the President’s Blog, \(^{111}\) Facebook and Twitter).

The Victorian Bar has sought to effect cultural change towards awareness of health and wellbeing through a number of measures, including:

- incorporating health and wellbeing into organisational policies (for example, workplace bullying);
- providing information through CPD, conferences, articles and a dedicated Health Central section on its website (for example, about positive wellbeing practices such as mindfulness, yoga, running and walking; promoting diverse interest areas outside the law such as music and art; and recognising the impact of career milestones and facing life change challenges);
- encouraging curiosity and a questioning mind, providing a more open, supportive and less judgmental environment where members feel empowered to speak up when they are struggling and are encouraged to seek help;
- giving voice to the issue of mental health through media for example through guest blog posts on the President’s Blog, \(^{112}\) 2012/How to manage stressed staff’ (July 19, 2012) available at http://www.liv.asn.au/LIVPresBlog2012/July-2012/How-to-manage-stressed-staff; and

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\(^{107}\) See http://www.watflfoundation.org.au/.


\(^{109}\) Brain and Mind Institute report, above n 3.


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\(^{112}\) How to manage stressed staff’ (July 19, 2012) available at http://www.liv.asn.au/LIVPresBlog2012/July-2012/How-to-manage-stressed-staff; and

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promoting collegiality through initiatives such as a choir, exhibiting member art work, performance of 12 Angry Men and the Global Corporate Challenge;

- supporting early career barristers through junior and senior mentors and incorporation of wellbeing topics into the Bar Readers’ Course; and

- role modelling senior barristers and others in a position of influence to promote an ethic of caring for one another.

In 2010, Allens Arthur Robinson, Blake Dawson, Clayton Utz, Freehills, Mallesons Stephen Jacques and The College of Law collaborated to produce resilience@law. The resilience@law DVD aimed to provide law students, lawyers and partners with facts about depression and anxiety, strategies to prevent or manage symptoms and information about available treatment, support and resources and to remove the stigma. The DVD was distributed widely and we understand has been used, for example, by a country law association, to initiate discussion about mental health and lawyers.

Many law firms continue to raise awareness internally about mental health, for example by hosting seminars on wellbeing topics, participating in national events such as R U OK? Day and communication devices such as using the intranet and internal email pop ups at the beginning and end of each day.

A number of law student societies publish information for students on wellbeing, such as the Monash University Law Student Society Being publication.  

Policy and advocacy - workplace

The Tristan Jepson Memorial Foundation has developed a set of voluntary industry Best Practice Guidelines that aim to help legal organisations and workplaces as they work with their colleagues and employees to ensure that lawyers and legal staff receive the most effective professional and personal support in their workplace environment. The guidelines were released on 11 May 2014 and the Foundation is seeking signatories across different levels of commitment from basic to advanced. The guidelines are based on the National Standard of Canada for Psychological Health and Safety in the Workplace, which is a voluntary set of guidelines, tools and resources focused on promoting employees’ psychological health and preventing psychological harm due to workplace factors.

Outside the legal profession, the Institute for Safety, Compensation and Recovery Research (ISCRR) recently funded the development of workplace guidelines on Prevention of Mental Health Problems. The guidelines consist of actions organisations can take to prevent common mental health problems in the workplace. The aim of the guidelines is to improve the practices of organisations as they work to reduce the risk of job stress and mental health problems in the workplace. The guidelines are intended to complement existing legislative requirements for occupational health and safety and the prevention and management of discrimination and harassment.

Significant resources have also been developed to assist people involved in the process of returning to work after absence due to depression, an anxiety disorder or a related mental health problem (including employers, employees, colleagues and family and friends), based on guidelines developed jointly by the University of Melbourne, beyondblue and Orygen Youth Health Research Centre.

Some law firms have mental health and wellbeing policies to guide their work on mental health and wellbeing. Many workplaces also have return-to-work co-ordinators and associated programs.

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113 See http://www.mentalhealthcommission.ca/English/node/5346.
114 Joint initiative of (then) WorkSafe Victoria (WorkSafe), the Transport Accident Commission (TAC) and Monash University – see http://www.iscrr.com.au/.
115 See http://prevention.workplace-mentalhealth.net.au/.
116 See http://returntowork.workplace-mentalhealth.net.au/.
Policy and advocacy - regulation

The Legal Services Board has a Mental Health Policy, endorsed in December 2011, designed to encourage lawyers with mental health issues to voluntarily seek appropriate treatment and to only require disclosure where the impairment affects the lawyer’s capacity to engage in legal practice. Where a mental impairment affects the practitioner’s capacity to engage in legal practice, the regulator is obliged to consider suitability against the backdrop of the consumer protection provisions in the Legal Profession Act 2004. The Mental Health Policy explicitly states that the Board is not concerned with those who are effectively managing mental impairment and there is no requirement to disclose in this instance.

The Board and Legal Services Commissioner’s Compliance and Enforcement Policy, endorsed in December 2012, reinforce the Mental Health Policy’s therapeutic approach. This policy requires the Board and Commissioner to take account of the practitioner’s health in considering the appropriate level of regulatory intervention.

The Board’s Continuing Professional Development (CPD) Policy directs the Board to consider mitigating factors in assessing non-compliance with CPD requirements, including any mental impairment suffered by the practitioner.

The Board of Examiners has a Practice Direction that refers specifically to disclosure around capacity. Candidates must disclose a ‘material mental impairment’. The Practice Direction suggests that matters which an applicant might disclose include any condition which might affect the applicant’s present ability to engage in legal practice such as physical impairment, mental illness or addictions. The requirement of capacity is separate and distinct from the requirement that an applicant be a fit and proper person or of good fame and character.

The LIV undertakes legal policy work through its Practice Sections and has made a number of submissions to the Board of Examiners, Legal Services Board and National Legal Profession Taskforce in relation to their approach to mental illness.

Peer support

The LIV Mentoring program links experienced legal practitioners with those seeking professional development, support or guidance. The program provides an opportunity for lawyers to confidentially discuss practical legal and ethical issues with an LIV trained mentor. LIV mentoring training includes some information about mental health and Vic Lawyers’ Health Line services. The Mentoring program is not intended to provide counselling or psychological support and mentors are encouraged to refer mentees to the Vic Lawyers’ Health Line if they are concerned about their wellbeing. Mentors can also contact the Vic Lawyers’ Health line Managers Hotline if they need advice on how to encourage a mentee to seek help. The LIV mentoring program is available to all current LIV members.

The chair of the Victorian Bar Health and Wellbeing Committee will make informal and confidential approaches to barristers when he/she is made aware that a particular barrister might be in need of assistance. The chair may facilitate the provision of whatever Victorian Bar resources may assist the barrister (including access to the Barristers’ Counselling Service) but only with the barrister’s consent. Alternatively, the chair and/or Bernadette Healy who heads the Barristers’ Counselling Service will coach clerks or barristers on how to approach a barrister they know and have identified as requiring assistance.

The County Court has developed a Peer Support Network that includes judges and staff. Identified peer supporters have undergone training addressing topics such as the role of peer supporters, its limits and developing skills such as active listening.

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118 Practice Direction No. 2 of 2012 (Disclosure Requirements for Applicants).


Mental Health First Aid (MHFA)

Mental health first aid is the help provided to a person developing a mental health problem or in a mental health crisis, until appropriate professional treatment is received or until the crisis resolves. Like other first aid courses, it does not train people to diagnose or treat health problems, but it does give participants the knowledge and confidence to help someone who may be in the early stages of a mental health problem, or experiencing a mental health crisis. Mental health first aid strategies are taught in training programs developed by Mental Health First Aid (MHFA) Australia, a national not-for-profit health promotion charity focused on mental health training and research.

A number of law firms have trained MHFA officers or mental wellbeing officers. Norton Rose Fulbright won a MHFA Australia Workplace Award in 2013 for its workplace wide effort to increase mental health literacy of employees by conducting MHFA courses. Norton Rose Fulbright has 30 MHFA officers across the business and has designated MHFA rooms in all its offices to create safe spaces for approaches to be made to its MHFA officers. MHFA officers must adhere to compliance guidelines and meet as a group quarterly to network and discuss case studies. MHFA officers can play an important role as champions within firms, to help reduce stigma relating to seeking help for mental illness.

With the assistance of LSB funding, the LIV provided mental health first aid training in June and August 2009. The course ran for 2 days and approximately 40 people attended one of two sessions. The LIV also ran follow up round table lunch sessions later in the year to consolidate the learning from the main sessions and address any issues. Typically the participants were from firms ranging from small, mid and large firms and many were from an HR background. Some participants from the Vic Bar also joined us.

The LIV sought interest from the participants to continue to run the workshop on a user pays basis and promoted several workshops however there was not enough interest to continue the program.

The Victorian Bar has provided Mental Health First Aid training for all barristers’ clerks and Bar office staff in 2013 and is rolling out the training to other groups within the Bar and barristers in 2014.

Recruitment and induction

Recognising the risk of vicarious trauma for judges and staff, in particular arising because of the high volume of sexual offence matters, the County Court has incorporated information on vicarious trauma and managing workplace stress in recruitment and induction processes.
APPENDIX FOUR: MODELS OF PROFESSION HEALTH PROGRAMS

Research on models of profession health programs was undertaken in May - September 2012. Six different models of profession health programs were identified in the research:

1. triage and referral service with no regulatory interface;
2. peer support model;
3. triage and referral service with regulatory interface;
4. diversionary model;
5. treatment model; and
6. diversionary and/or treatment

A brief explanation of each is set out below, together with examples of each of these models.

Triage and referral service with no regulatory interface

A triage and referral service operates to take initial calls from members of the profession, with a face-to-face initial assessment by a qualified professional (typically either a medical practitioner or psychologist), before referral onto the appropriate services.

Many lawyer assistance programs take this form with the professional body offering the program meeting the costs for a limited number of sessions (typically within the range of one to three free sessions of counselling), with the costs of any ongoing counselling to be met by the lawyer. In some instances, the service is unable to continue to offer counselling beyond the limited number of sessions the professional association pays for. In these instances, the lawyer will be referred onto another professional for ongoing counselling and support.

The Vic Lawyers’ Health Line[^120] is an example of this type of service, providing triage via an initial conversation with a psychologist to identify the particular concerns, before referral onto an appropriate counsellor within the providers’ network for ongoing counselling. It also offers a debriefing service for lawyers to discuss emotionally difficult cases or clients, as well as an advice service for managers and an online health information program.

Other examples include Assist (for lawyers in the Canadian province of Alberta),[^121] the counselling program component of the Ontario Lawyers’ Assistance Program,[^122] parts of LawCare UK,[^123] and the New York City Bar Association’s Lawyer Assistance Program.

Peer support model

The peer support model frequently sits within a professional body and consists of volunteers who can be contacted on a confidential basis to discuss areas of concern relating to personal issues, professional practice, ethical matters, career concerns, and personal matters. The peers are lawyers or doctors either currently in practice or retired.

A peer support model differs from a support group that may be part of a treatment program or a diversionary program in that it offers one-on-one support.

Examples of this model include the National Friends Panel of the Law Society of New Zealand,[^124] the Doctor Support Service in the UK (for doctors facing fitness to practice hearings),[^125] and the Doctor Advisor Service.

operated by the British Medical Council, the Lawyers Helping Lawyers service run by LawCare UK and the peer support component of the Ontario Lawyers’ Assistance Program.

Triage and referral service with regulatory interface

As noted above, a triage and referral service operates to take initial calls from members of the profession, with a face-to-face initial assessment by a qualified professional (typically either a medical practitioner or psychologist), before referral onto the appropriate services. The difference in this model is the potential for the service to provide ongoing coordination of treatment, along with any monitoring that may be required for regulatory purposes.

Victorian Doctors Health Program

Established in 2000 by the Medical Practitioners Board of Victoria and the Victorian branch of the Australian Medical Association, the Victorian Doctors Health Program (VDHP) offers a triage and referral service that coordinates the management of the health of doctors and medical students with health issues related to mental health and alcohol/drug dependence. The service involves an initial assessment by one of the VDHP’s clinicians to identify the necessary services, before referral onto general practitioner, medical specialists and clinical psychologists. It has a strong network of these practitioners, together with an agreement with a psychiatric hospital to facilitate treatment and where necessary admission in urgent cases.

It differs from the service offered by the Vic Lawyers’ Health Line in two key ways: firstly it involves an initial assessment by medical practitioners (as opposed to psychologists). Secondly, it coordinates return to work programs, including liaison with employers and, crucially, liaison with the regulator, the Australian Health Practitioner Regulation Agency (AHPRA).

A feature of this program is the case management aftercare and monitoring program agreements (CAMPs) between an individual doctor and the VDHP. Lasting up to five years, the agreement involves a coordinated service delivery encompassing general practitioner, medical specialist and psychological counselling, together with monitoring of the participant’s attendance at VDHP facilitated support groups, regular reviews by the VDHP, feedback from a workplace monitor and biochemical monitoring via urine, breath or hair analysis.

The VDHP is operated as a not-for-profit public company limited by guarantee with two members: the AMA (Victoria) and the AHPRA, with annual funding of $500,000 provided by AHPRA. Costs of treatment services are paid for by the participant directly.

A more recent example of a variation on this model is ReMed for Swiss doctors, established in 2011 following a four-year pilot project. It offers a broader range of health promotion and primary prevention programs than VDHP, describing itself as a ‘support network for physicians’, with emphasis on coaching and mentoring, alongside the coordinated model of treatment (with treatment services paid for by the physician).

Diversionary model

As its name suggests, the diversionary model operates at the coalface of the disciplinary process, offering an alternative track to the formal disciplinary process to address issues of mental health and substance abuse that have come to light as a result of an investigation into the conduct of a practitioner.

Alternative Discipline Program, State Bar of California

The Alternative Discipline Program (ADP) contained in the Rules of Procedures of the State Bar of California is one example of this model. Attorneys facing disciplinary charges may be referred to a Program Judge to determine the attorney’s eligibility to participate in this program at one of two stages:

before proceedings begin by a judge assigned to conduct an Early Neutral Evaluation Conference of the charges, the Office of the Chief Trial Counsel or the attorney concerned; or
after proceedings against the attorney have commenced, by application of either the attorney or the Office of the Chief Trial Counsel or by the court’s own motion.\textsuperscript{131}

Not all attorneys facing disciplinary charges are eligible to participate in the program, with the following four matters the stated grounds for ineligibility:\textsuperscript{132}

- an attorney has been convicted of a criminal offence that subjects him or her to disbarment; or
- the current misconduct involves acts of moral turpitude, dishonesty or corruption that has resulted in significant harm to one or more clients or to the administration of justice; or
- there is a finding based on expert testimony that the attorney will not substantially benefit from treatment for the problem, or that the substance abuse or mental health problem cannot be overcome or controlled to the extent that it is unlikely to cause further misconduct; or
- the member has previously participated in the Program, either successfully or where his or her participation was terminated (that is, participation in the ADP is a ‘one shot chance’).

Eligibility to participate in the program is subject to the following four requirements:

1) the member is accepted by the Lawyer Assistance Program (LAP) to participate in its monitored LAP program;
2) the Court approves a stipulation of facts and conclusions of law signed by the parties to the originating proceedings (e.g. Office of Chief Trial Counsel and attorney);
3) evidence that the attorney’s substance abuse or mental health issue causally contributed to the misconduct; and
4) any additional conditions the Program Judge may impose.

Crucially, confidentiality is enshrined by statute and is not discoverable or admissible in any disciplinary proceeding or in any civil proceeding without the written consent of the attorney to whom the information pertains unless it relates to the attorney’s non-cooperation with, or unsuccessful completion of the Attorney Diversion and Assistance Program.\textsuperscript{133} An attorney who is not the subject of a current investigation and who voluntarily enters the program (either as a self-referral or referral by a third party) is entitled to absolute confidentiality unless waived by the attorney.\textsuperscript{134}

The actual program an attorney undertakes is the monitored LAP (formally known as the structured recovery program) run by the State Bar of California’s LAP. Under the relevant Rules, an attorney is deemed to have completed the LAP when the Evaluation Committee determines that the participant has:

a) maintained three years of continuous sobriety or in the case of mental health, stability;
b) has made lifestyle changes sufficient to maintain ongoing recovery or stability; and
c) has satisfied the terms of the participation agreement (a formal agreement that sets out the obligations of the attorney in respect of attending sessions, submitted samples for testing).

Thus committing to participate in the diversionary program is at least a three year commitment. This has implications for the level and continuity of funding required, as well as the staffing arrangements for such a program (qualified clinicians with experience in dealing with substance abuse and mental health).

**Treatment model**

The treatment model offers treatment programs within the program itself or via coordination with other providers, with all services paid for by the program rather than the practitioner. It plays no role in the disciplinary process and, as such, has no interface with that process.

\textsuperscript{131} Rule 5.381(B), Rules of Procedure of the State Bar of California (2012).
\textsuperscript{132} Rule 5.382(C), Rules of Procedure of the State Bar of California (2012).
\textsuperscript{133} California, Business and Professions Code § 6234 (a)-(e).
\textsuperscript{134} California, Business and Professions Code § 6232 (d).
The Practitioner Health Programme (PHP) is a service for medical and dental practitioners living within the London Strategic Health Authority area with issues that may relate to a mental or physical health concern or addiction problems, in particular where this might be affecting work.

London-based medical practitioners can self-refer; others around the UK require a GP referral. This reflects the funding sources of the service; namely London Primary Care Trusts for London residents.

The services provided include:

- confidential first contact by telephone/email with ‘signposting’ as appropriate
- assessment, formulation and treatment planning
- brief interventions, motivational interviewing and relapse prevention
- cognitive behavioural therapy
- psychiatry
- psychodynamic psychotherapy
- prescribing
- family therapy, couples therapy
- community based detoxification and access to inpatient alcohol detoxification
- therapeutic blood, urine and hair testing
- access to inpatient residential rehabilitation
- advice and advocacy on return to work strategies
- case management or care coordination
- a range of activities associated with disciplinary hearings or workplace matters including:
  - support for attendance at disciplinary hearings
  - attendance at employment tribunals or other work-related hearings
  - direct liaison with legal defence individuals and organisations
- signposting to financial advice and charities for financial assistance
- support to family, friends and carers.

A treatment program offered at no cost to members of the profession requires a sizeable budget to support it. The NHS PHP service had a budget of £1 million per annum in 2011 which supported 302 new cases for the year to 31 December 2011 (from a population of 30,000 GPs in the London area) (plus ongoing cases). Actual expenditure fluctuates with the case load and some patients cost more than the average cost per patient of £4800 for specialist services, with one patient alone receiving just over £40,000 in treatment for a major mental illness. The staffing arrangements reflect the nature of the program, with clinicians (GPs, psychiatrists), specialist nurses and therapists.

**Diversionary and/or treatment model**

This model adopts aspects of the diversionary model, the triage and referral model, and the treatment model identified above. An example of this is the State Bar of California Lawyer Assistance Program\(^{135}\) established via legislation in 2002.\(^{136}\)

**State Bar of California Lawyer Assistance Program**

The LAP offers four different types of services to attorneys, former attorneys and candidates for admission to the Bar:

- **orientation and assessment:** aimed at attorneys who need only short-term assistance, an assessment is undertaken by a LAP licensed clinician. After this assessment, the attorney is referred to appropriate external resources. He or she is also eligible to participate in one of a number of LAP support groups;

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• **career counselling**: the LAP offers two free sessions via referral to an external career counsellor with experience in working with attorneys;

• **support LAP**: aimed at attorneys who need longer-term assistance but do not need monitoring or verification of participation (e.g. for the ADP program described above in A-4.1), it is primarily based on participation in one of more of the LAP support groups; and

• **monitored LAP**: aimed at attorneys who need to satisfy a specific monitoring or verification requirement (but open to self-referred attorneys who want/need additional structure in the LAP program), this program includes assessment, referrals, support group participation and monitoring (typically via testing for drugs and/or alcohol).

The LAP support groups are of two different kinds: a professionally facilitated support group and less formal self-help groups.

Sitting within the State Bar of California, it has a separate Oversight Committee of 10 members, including lawyers and medical practitioners, with 13 staff (most of whom are clinician case managers). Confidentiality of participation in the program is enshrined in state law as noted above.
Law Institute of Victoria

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Final Report

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