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Australia's first research measuring judicial stress: what does it mean for judicial officers and the courts?

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This article summarises the key findings of Australia's first research measuring judicial stress and wellbeing, and discusses the implications for individual judicial officers and the courts.

Why the research was undertaken

In May 2019, after several years of data collection and analysis, and one year presenting the findings to the Australian and international judiciary, the first report of Australia's first research measuring judicial stress and wellbeing was published in the *Journal of Judicial Administration*.¹

The original impetus for the research came from the former Chief Judge of the County Court of Victoria, Michael Rozenes AO QC. His Honour was aware of the large and growing body of research on the high rates of psychological ill-health within the legal profession, and was also acutely conscious of the increasingly demanding nature of judicial work within his court. He had, for some years, observed senior judges choosing to leave the court when they reached the minimum, rather than the statutory, retirement age, and sensed that, for many, their decision proceeded from exhaustion, burnout, and the cumulative impact of stress on the bench. He encouraged the author to undertake research that could provide insight into the nature, prevalence, severity and sources of work-related stress among the judiciary, and provide a basis for appropriate interventions by the courts. This ultimately led to a doctoral project through the University of

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1 C Schrever, C Hulbert and T Sourdin, "The psychological impact of judicial work: Australia's first empirical research measuring judicial stress and wellbeing" (2019) 28 *JJA* 141.

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Melbourne (School of Psychological Sciences), in which 152 judicial officers from five Australian courts participated.

The full outcomes of the research project will be published across three long reports. The first, recently published,² compares judicial officers' measured levels of stress with those previously reported for the Australian legal profession and general population (the first report). The second will explore the jurisdictional and gender differences in judicial officers' stress and wellbeing levels. The third will discuss the qualitative findings regarding the sources and experiences of judicial stress arising from 60 in-depth interviews with judicial officers and discuss possible structural and systemic responses. The second and third reports are expected to be published over the forthcoming year.

Key findings of the first report

The key findings of the first report are as follows:

- On a standardised measure of “non-specific psychological distress”, 52.9% of judicial officers scored in the moderate to very high ranges (compared with 32.8% of the general population).³
- On the World Health Organisation’s “Alcohol Use Disorders Identification Test” (AUDIT),⁴ 30.6% of judicial officers scored in the medium to high risk ranges (sometimes referred to as the ranges indicating “problematic” alcohol use) — a rate similar to the Australian legal profession (32%) but considerably higher than the general population (18.8%).⁵
- Three-quarters (75.2%) of judicial officers had scores on at least one of the three burnout factors (exhaustion, cynicism, and reduced professional efficacy) that indicated some level of burnout risk — only one-quarter (24.8%) scored in the low-risk range on all three burnout factors.⁶
- The overwhelming majority (83.6%) of judicial officers reported experiencing at least one symptom of secondary traumatic stress in the week prior to completing the survey, and almost one-third (30.4%) scored in the moderate to severe ranges — the level at which formal assessment for post-traumatic stress disorder (PTSD) may be warranted.⁷

- Despite this, judicial officers' reported levels of mental health concerns were comparatively low — their rates of “moderate to severe” depressive and anxious symptoms were dramatically lower (approximately one third) than those of lawyers, and slightly lower than those suggested for the general population.⁸
- In addition, 62% reported finding judicial office a little or much *less* stressful than their previous careers,⁹ and 76% reported experiencing personal wellbeing and satisfaction related to their work most or almost all of the time.¹⁰

What the research means and doesn't mean

The publication of these research findings attracted some media attention, with a number of outlets, perhaps unsurprisingly, choosing to focus on the alcohol-use data.¹¹ In light of this, it is important to be clear on what the research means, and also what it does not mean.

First, it does not mean that there is a pervasive problem of alcoholism or alcohol dependency among Australian judicial officers. While a little over 30% of judicial officers scored in the medium to high risk (or “problematic” alcohol use) range on the AUDIT, compared with 18.8% of the general population, the great majority scored at the lower end of this range, and the most strongly endorsed items all related to the frequency and quantity of drinking, as opposed to dependent or harmful drinking.¹² A typical profile of a judicial officer scoring at the low end of the “problematic” drinking range is one who drinks no more than twice a week, but has the best part of a bottle of wine (ie six or more standard drinks) each time. There is no indication in the data that judges and magistrates engaging in “problematic drinking” are addicted or unable to control their drinking, and there is certainly no suggestion that judges are “drinking on the job”. What the research does mean is that the pattern of alcohol consumption within the broader Australian legal profession (where the documented rate of “problematic” drinking is 32%)¹³ extends to the Australian judiciary. Whether the use of alcohol among judicial officers and lawyers is principally to manage stress, or is simply a cultural feature of the profession, is not known, nor how this might compare to other professions

2 *ibid.*

3 *ibid* at 155.

4 JB Saunders et al, “Development of the Alcohol Use Disorders Identification Test (AUDIT): WHO collaborative project on early detection of persons with harmful alcohol consumption — II” (1993) 88 *Addiction* 791.

5 C Schrever et al, above n 1, at 162.

6 *ibid* at 163.

7 *ibid* at 159–161.

8 *ibid* at 156–157.

9 *ibid* at 154.

10 *ibid* at 153–154.

11 See eg M Johnston, “Burn-out and booze risks revealed in study of nation’s judiciary”, *Herald Sun*, 8 May 2019, at <http://online.isentialink.com/heraldsun.com.au/2019/05/08/2ad8ecf9-1a71-4999-8315-7301b0a3a2a9.html>, accessed 8/5/2019; M Pelly, “Stressed out judges turn to the drink”, *Financial Review*, 7 May 2019, at www.afr.com/business/legal/stressed-out-judges-turn-to-the-drink-20190506-p51kly, accessed 7/5/2019.

12 C Schrever et al, above n 1, at 163.

13 J Chan, S Poynton and J Bruce, “Lawyering stress and work culture: an Australian study” (2014) 37 *UNSW Law Journal* 1062 at 1087.

like medicine and journalism. However, it is clear that the legal profession as a whole engages in more problematic drinking than the general population.

Second, the research does not mean that there is a widespread mental health problem among the Australian judiciary. Judicial officers' rates of depressive and anxious symptoms were comparable to, and in the severe ranges somewhat lower than, those suggested for the general population. This puts the judiciary in distinction to the broader Australian legal profession, for which research has consistently reported alarmingly high rates of depressive and anxious symptoms — approximately three times the national average.¹⁴ Just what drives this difference between the judiciary and the practising profession is an interesting question, and likely a combination of the age, qualities, and “goodness of fit” of those typically appointed to judicial office, as well as the differing nature of the stressors confronted on the bench.¹⁵ However, the absence of a widespread mental health problem does not mean that there is no problem to be addressed. Most judicial officers reported elevated levels of “non-specific psychological distress”, three-quarters had burnout scores indicating some level of burnout risk, and a third were candidates for PTSD assessment. Also, while rates of severe depressive and anxious symptoms were low, they were not altogether absent among the judicial officers in this study, indicating that, at any given point in time, there are likely to be a small number of judges and magistrates suffering serious psychological ill-health. Continuing to fulfil the intellectually and emotionally demanding task of judging while burdened by severe depression or anxiety must be a very difficult and isolating struggle, and one only complicated further by the public nature and visibility of the role. So, the research does not mean that there is a judicial mental health crisis, nor that there is no judicial wellbeing issue at all. What it does mean, as the author has previously noted, is that there is a simmering occupational health and safety concern among the Australian judiciary that demands attention.¹⁶ Courts, governments, judicial education bodies, and individual judicial officers need to grapple with this reality to prevent a deterioration of judicial occupational wellbeing.

Finally, the research does not mean that there is cause for concern about the quality and integrity of judicial decisions, or any reason for a loss of public confidence in the courts. Implicit in concerns of this nature is an equation of stress with impairment, which is a common but erroneous assumption from a psychological perspective. Stress, and even distress, does not necessarily entail a difficulty or inability to function at a high level — especially when one is experienced and skilled in one's role, and supported to acknowledge the distress and seek appropriate help. There

are many irreducible sources of stress in judicial work, and it is only natural that judicial officers will feel personally impacted from time to time. As the current Chief Judge of the County Court of Victoria, Justice Peter Kidd, said when questioned about the research in a recent radio interview:

Being a really good, competent, hard-working, skilful judge is not inconsistent with being distressed. Distress is sometimes inevitable and just needs to be worked upon, and a judge can be completely functional and they are ... [but] they need to have the opportunity to speak to somebody about it.¹⁷

So, the research does *not* suggest that judicial officers who experience distress are a liability to the court or incapable of fulfilling their judicial function. What it does suggest is that judicial officers and courts need to take action to establish and maintain a culture of openly discussing the human dimension of judging, and to normalise participation in proactive counselling and debriefing to manage the inevitable periods of distress that arise in judicial work. In addition, the research suggests that judicial stress and judicial satisfaction are not mutually exclusive. Supporting judicial wellbeing is as much about fostering meaning, satisfaction and purpose, as it is about responding to stress.

In a nutshell

The first report of Australia's first research measuring judicial stress and wellbeing has revealed a judiciary not yet in mental health crisis, but under considerable stress. This research provides the basis for beginning an *evidence-based* conversation on judicial wellbeing in Australia. This would acknowledge the inevitability of some distress in judicial work, recognise that judicial distress is not necessarily incompatible with high level judicial performance, promote open dialogue among judicial officers about the personal challenges of their work, encourage judges and magistrates to engage proactively with professional and peer support, and foster a deepening of the sense of meaning and satisfaction that judicial officers derive from their work. In many Australian jurisdictions this kind of conversation is already well underway, and underpinning structural and systemic changes to support judicial wellbeing.

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14 *ibid.*

15 C Schrever et al, above n 1, at 163.

16 C Schrever, “Current issues: Australia's first research measuring judicial stress and wellbeing: a preview of the findings” (2018) 92 *ALJ* 859 at 862.

17 Chief Judge Peter Kidd, interviewed by Neil Mitchell on Melbourne Radio 3AW 693 News Talk, 15 May 2019, at www.3aw.com.au/distress-part-of-being-a-really-good-judge-chief-kidd/, accessed 28/5/2019.