



**The Honourable Anne Ferguson**  
**Chief Justice of the Supreme Court of Victoria**  
**National Wellness for Law Forum 2024<sup>1</sup>**

**Good morning.**

It is a pleasure to be with you at the National Wellness for Law Forum 2024.

I would like to acknowledge Peoples of the Kulin Nation who are the traditional custodians of the land on which we stand. I celebrate their connection to this land, to Country, to culture, knowledge and stories.

I pay my respects to their Elders, knowledge holders and leaders past and present and extend that respect to all First Nations people present today.

Thank you Judith for your warm introduction.

I would also like to thank the organisers and their supporters for giving me this opportunity, in particular:

- **Associate Professor Judith Marychurch** – Assistant Dean - Teaching and Learning, Melbourne Law School
- **Kate Fischer Doherty** – Director, Melbourne Law School Clinics
- **Dr Jacqueline Weinberg** – Director of Clinical Units, Monash Law

I am privileged to address this forum a second time.

Importantly, I acknowledge the collaboration between Melbourne University's Law School and Monash University, Faculty of Law.

The first time I addressed this conference was in 2019. The theme of that speech was Making Wellness Core Business.

A lot of what I said five years ago still stands.

Keeping a healthy balance continues to present a challenge for all of us.

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<sup>1</sup> A speech delivered at the first day of the National Wellness for Law Forum 2024. I would like to express my appreciation to my Associate, Ivana Smojver, and Sarah Dolan, Executive Director of Communications at Court Services Victoria, for their assistance preparing this speech.

We know that maintaining wellbeing holds many benefits; it leads to greater enjoyment in our work and boosts productivity.

Five years ago, I said it was not acceptable to place responsibility for maintaining wellbeing solely on the individual. The structure of our systems must also change – if they don't, we're in danger of merely paying lip service to a critical issue.

I also said that the ongoing dialogue about the wellbeing of lawyers is a great leap forward for the profession.

Today I want to build on that message.

So, what has changed? What have we learnt?

### **Acknowledging the profession and others in the audience**

At the Supreme Court, one of our values is a commitment to unity and wellbeing.

It underpins our purpose which is to serve the community through just, independent and impartial decision making and dispute resolution.

Victorian lawyers have worked tirelessly over the past five years to change the way they work and to assist the courts to fulfil that purpose.

It feels like so much has changed in that five years and that 2019 is a world away from where we are now.

In the intervening period, the biggest disruptor to the way we live, work and study has been the pandemic. For example, it had a major impact on the way lawyers and the courts operate. Widespread use of online platforms for client meetings, court hearings and other things were introduced almost overnight.

The legal profession was adaptive and responsive.

Thank you to all the lawyers here for all you have done; particularly what you have done to support the work of the courts.

The pandemic also had an enormous impact on education with remote learning becoming the norm. For many law students, lecturers and other teachers, the past few years have not been easy. I acknowledge that and thank you for your dedication and commitment.

I certainly don't overlook that in the last five years other events apart from the pandemic have also changed our society, indeed the world – floods, armed conflict, and cyber events to name a few. They have all had an impact on us.

So why do I start with this? Because the way I see things, now more than ever, seismic change and uncertainty are part of everyday life. And in that context, prioritising wellness is essential.

### **State of wellbeing**

So what is the state of our wellbeing now?

People may now find themselves juggling different priorities and pressures. Change upon change upon change is what we have to expect. There is little time for constancy before the next change is upon us. It can feel like uncertainty is all around us.

This can be stressful and exhausting. Overwhelmed is a word I often hear. As a culture we are pushing against the human limit – we keep doing more with less – we keep doing things faster - but we can't do that anymore. The negative impact is too big to ignore.

The National Study of Mental Health and Wellbeing 2020-22 by the ABS found that two in five Australians (42.9 per cent) aged 16–85 years have experienced a mental disorder in their lifetime, with one in five Australians (21.5 per cent) experiencing a mental disorder in the previous 12 months.<sup>2</sup>

In my experience, it feels like many more people are dealing with mental health issues. It does feel as though people who have not experienced a mental health issue are in the minority.

As highlighted in the Lawyer Wellbeing Report released by the Victorian Legal Services Board and Commissioner, research suggests that for legal professionals, levels of non-specific psychological distress are high compared to population norms, as are their levels of depression.<sup>3</sup>

The Lawyer Wellbeing Project was undertaken in response to the high rates of psychological distress, burnout, anxiety, depression and vicarious trauma affecting the legal profession in Australia.<sup>4</sup>

The Lawyer Wellbeing Report drew attention to a professional culture which made it difficult for the average individual to attain wellbeing.<sup>5</sup> For some individuals, negative early career experiences resulted in them seeking a career change.<sup>6</sup>

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<sup>2</sup> Australian Bureau of Statistics, *National Study of Mental Health and Wellbeing, 2020-2022* (Report, 5 October 2023); Australian Bureau of Statistics, 'Two in five Australians have experienced a mental disorder' (Media Release, 5 October 2023).

<sup>3</sup> Michelle Brady, VLSB+C Lawyer Wellbeing Project (Report) 4 ('*Lawyer Wellbeing Report*').

<sup>4</sup> *Ibid* 2.

<sup>5</sup> *Ibid* 2, 9.

<sup>6</sup> *Ibid* 2, 11.

The report highlighted a range of cultural and institutional barriers that made it hard to improve the wellbeing of legal professionals.<sup>7</sup> The report also reflected on research by Sharon Medlow, Norm Kelk and Ian Hickie<sup>8</sup> referring to the Annual Professions Study 2007.<sup>9</sup> The 2007 study found that the severity of depression scores amongst professionals, including lawyers, increased with age; suggesting that individual wellbeing does not self-correct with maturation, or acculturation, or seniority, as we might have thought.<sup>10</sup>

Importantly, the report speaks to the career lifecycle of lawyers.

In a balanced lifecycle, individuals share their skills, experience and wisdom as they progress through their career – and that is 360 degrees. What each generation of the cycle has to contribute will differ from another. But each of us has the potential to make a positive impact. We all have an integral role to play. This leads to improvement and betters the profession.

To succeed, the balanced lifecycle requires a big picture, long term view of the benefits of sharing knowledge and insights. It requires an open and supportive environment where people feel psychologically safe. We know that high performing teams have an atmosphere of trust, where people feel included and free to share what they think and to challenge norms. Underpinning it all must be a culture of respect. A culture that does not tolerate blaming and shaming.

It is clear that the legal career lifecycle is being broken, sometimes as early as law school.

How can the legal profession progress if the type of supportive and inclusive environment I have spoken about is not fostered or if there is only a ‘fix it when it breaks’ attitude or a culture of expendability?

That isn’t just detrimental to individuals in the profession; it comes at a cost to employers and ultimately the quality of service provided to the community.

In order to retain talent and skills; to foster improvement, it is imperative that the lifecycle supports individuals from the very start of their career until they retire.

And to do this, we must start with understanding wellbeing and its importance. We need to understand it from an individual and system perspective.

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<sup>7</sup> Ibid 2, 12-14.

<sup>8</sup> Sharon Medlow, Norm Kelk and Ian Hickie, ‘Depression and the Law: Experiences of Australian Barristers and Solicitors’ (2011) 33(4) *Sydney Law Review* 771, cited in the *Lawyer Wellbeing Report* (n 3), 5.

<sup>9</sup> Beaton Consulting, Annual Professions Study (2007), discussed in Medlow, Kelk and Hickie (n 8).

<sup>10</sup> Medlow, Kelk and Hickie (n 8), cited in in the *Lawyer Wellbeing Report* (n 3), 5.

## Changing conversation

I have spoken about the importance of wellbeing many times. It was rare to see individual judges speaking out 10 years ago. I want to acknowledge those who started that conversation. That took courage.

Discussion about what was an ‘unmentionable topic’, to use the words of the Hon. Michael Kirby AC CMG, is now building momentum.<sup>11</sup> More judges are acknowledging the importance of judicial wellbeing and the inherent psychological challenges that come with the role.

Last year, Justice Stephen O’Meara of the Supreme Court of Victoria, spoke to the Victorian Bar Readers.<sup>12</sup>

He spoke about his career at the Bar; he told stories about his colleagues and the cases he’d worked on.

Justice O’Meara also spoke publicly about something else for the first time – the bad days, breaking down in tears on his kitchen bench, a ‘dark feeling’ inside him.

He said to the Readers:<sup>13</sup>

*“ ... all of you will experience bad days, and more than one of you will experience something similar to what happened to me. And when that happens, you shouldn’t feel alone.*

*“We shouldn’t be pretending that everything’s fine; and you shouldn’t be left blaming yourself and pretending that it’s ok.”*

How can you not be moved by what Justice O’Meara said, and by the openness of others who have spoken out about mental health?

Compared to population norms, research shows that Australian judicial officers experience elevated levels of stress.<sup>14</sup> A 2022 study by Carly Schrever which surveyed five Australian courts showed that judicial officers in the summary jurisdictions (such as magistrates) experience the most stress.<sup>15</sup> A subsequent

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<sup>11</sup> See Michael Kirby, ‘Judicial Stress: An Unmentionable Topic’ (1995) 13 *Australian Bar Review* 101.

<sup>12</sup> Justice Stephen O’Meara, (Remarks, Victorian Bar Readers’ Dinner in Melbourne, 18 May 2023) <<https://www.supremecourt.vic.gov.au/about-the-court/speeches/speeches-by-the-hon-justice-omeara>>.

<sup>13</sup> Ibid.

<sup>14</sup> Carly Schrever, Carol Hulbert and Tania Sourdin, ‘The psychological impact of judicial work: Australia’s first empirical research measuring judicial stress and wellbeing’ (2019) 28(3) *Journal of Judicial Administration* 141.

<sup>15</sup> Carly Schrever, Carol Hulbert and Tania Sourdin, ‘Where stress presides: predictors and correlates of stress among Australian judges and magistrates’ (2022) 29(2) *Psychiatry, Psychology and Law* 290.

University of NSW study of traumatic stress among the NSW judiciary found the same thing.<sup>16</sup>

Schrever's 2023 study, to be published later this year, makes it clear that workload was an issue for almost all judicial officers.<sup>17</sup> Notwithstanding this, there is a deep sense of job satisfaction.<sup>18</sup>

A key finding was that judicial officers sourcing the most enjoyment from the role, are those who prioritise their own wellbeing.<sup>19</sup>

Two overarching themes emerged when it came to how courts might support judicial officers better: (1) judicial wellbeing requires judicial time; and (2) judicial wellbeing requires committed leadership.<sup>20</sup> I have taken on board those findings.

The Australian Research Council has recently funded a 3-year national project on judicial stress and wellbeing, which in time will reveal if these experiences are shared by judicial officers around Australia.

### **Individual and system support and culture**

Returning to the profession – there are many support resources available to practitioners through the Victorian Bar, the Law Institute of Victoria, the Victorian Legal Services Board and Commissioner and some firms.

These resources are terrific, but it shouldn't stop there.

Making cultural, systemic and structural changes aimed at avoiding 'ill-being', and promoting psychological safety among other things, is essential. If we don't take those steps, then more people will suffer and more supports will be needed. We don't have to get to that point.

As I touched on before, while each of us is responsible for prioritising our wellbeing, the culture, systems and structures in our organisations must support us in order to do so.

What can be done at an organisational level to manage the risk to people? How can we foster health and wellbeing, collaboration and respect? How do we build workplace cultures that are safe and where people can thrive?

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<sup>16</sup> Kevin O'Sullivan et al, 'Judicial Work and Traumatic Stress: Vilification, Threats, and Secondary Trauma on the Bench' (2022) 28(4) *Psychology, Public Policy, and Law* 532.

<sup>17</sup> Carly Schrever, Carol Hulbert and Tania Sourdin, 'The privilege and the pressure: Judges' and magistrates' reflections on the sources and impacts of stress in judicial work' (forthcoming).

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

For clearly wellbeing is affected by how people are treated. And treating people respectfully comes as part of a good culture. We must each treat our interactions with others as central to our roles. This includes the judiciary.

I have spoken many times about the responsibility on us and the importance of making sure that our courts as workplaces are safe, inclusive and respectful. Workplaces where we don't tolerate sexual harassment, bullying, discrimination and other unlawful or inappropriate behaviour.

There is a lot of work underway – better training for the judiciary and staff, clearer policies and reporting mechanisms, new judicial guidelines. Underpinning this work is our goal to develop a stronger culture of respect which contributes to the wellbeing of all. By putting in place sustainable work structures, we can also work towards creating healthier environments which firmly put wellbeing on the agenda.

Senior members of the profession can help by keeping the conversation going and setting an example themselves. As the profession's leaders speak out more, others may follow. It has a ripple effect.

A significant change of course is required to our thinking. We must replace old belief systems with solutions supported by empirical evidence.

### **New research needed**

While there is some research that is specific to the legal profession, there is more research in other occupational settings that is worth considering.

Research helps to inform us. It gives us an evidence base upon which to make decisions and to introduce changes that will make things better.

In preparing for today, I read the first study to systematically review and synthesise the global literature on lawyers' wellbeing over the past 50 years. That review is by UK-based researchers, Lucinda Soon, Almuth McDowall and Kevin Teoh.<sup>21</sup>

The researchers found that lawyers' wellbeing is primarily conceptualised as 'ill-being' – focusing on negative facets such as stress, anxiety, depression, and burnout.<sup>22</sup> You might have noticed I used the term 'ill-being' earlier and talked about the importance of avoiding that state.

There is far less prominence in research and literature on the positive elements of wellbeing, such as work engagement, job autonomy, skill and intellectual challenge, support from colleagues, social value, or meaningfulness.<sup>23</sup>

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<sup>21</sup> Lucinda Soon, Almuth McDowall and Kevin RH Teoh, 'Towards a context-specific approach to understanding lawyers' well-being: a synthesis review and future research agenda' (2023) *Psychiatry, Psychology and Law* 1.

<sup>22</sup> Ibid 15.

<sup>23</sup> Ibid 17.

The authors found that few studies have qualitatively explored how lawyers define and make sense of the balance between their life and work contexts.<sup>24</sup>

They also deduced that the current literature on lawyers' wellbeing largely focused on two distinct contexts (or subfields) of legal practice – large commercial law firm practice and legal aid practice.<sup>25</sup>

Despite lawyers working in diverse settings, only a handful of studies have examined findings within different work contexts. We need more information about this.

Last year, Lucinda Soon wrote:<sup>26</sup>

*“We suggest that legal sector organisations may achieve meaningful change by focusing on what resources are important to lawyers within their subfield of practice and examining what opportunities exist to protect these resources from loss.”*

She went on to say that potential opportunities included redesigning work practices and upskilling line managers using frameworks and methods which have been found to be effective in other occupations and professions.<sup>27</sup>

The program of presenters over the next two days and the ongoing research of many academics and professionals are making a significant contribution in helping to increase our understanding of wellbeing in the law. I also note that there are several international speakers who are able to contribute perspectives from different jurisdictions.

Just this week I was made aware of the launch of a new study by the Australian National University and the University of Melbourne researching lawyer wellbeing, workplace culture and ethics in Victoria, New South Wales and Western Australia.

Thank you all for the work you are doing.

It is important to continue to build on the existing research to learn more so that we can address what further system and other changes are needed.

## **Conclusion**

I strongly believe that wellbeing is a vital element of a healthy, well-functioning and sustainable profession.

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<sup>24</sup> Ibid 11.

<sup>25</sup> Ibid 10.

<sup>26</sup> Lucinda Soon (LinkedIn, 2023) <[https://www.linkedin.com/posts/lucindason\\_towards-a-context-specific-approach-to-understanding-activity-7083884341017112576-5jBU?trk=public\\_profile\\_like\\_view](https://www.linkedin.com/posts/lucindason_towards-a-context-specific-approach-to-understanding-activity-7083884341017112576-5jBU?trk=public_profile_like_view)>.

<sup>27</sup> Ibid.



It is possible to have a very rewarding and balanced life as a lawyer, and it is possible to thrive personally and professionally at the same time. We are now better at recognising the need for fostering sustainable careers, rather than careers that burn bright and fade fast.

My message today is simple: let's keep talking but let's also do more in the next stage; the stage beyond talk. Let's do that based on evidence obtained through meaningful research. Let's focus on prevention rather than cure. Let's look through the lens of collective and individual responsibility. Let's keep in mind that culture, systems and structures can play a large part in giving us the best opportunity to thrive.

I want to thank and commend all those here today for your interest in and meaningful contribution to the critical issue of wellness in the law.

**Thank you.**