

'Best practice' mental health initiatives in commercial legal practices

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The poor psychological health of lawyers has been widely reported. Further, it has been identified that the characteristics of the practice of law and the working environment of law firms may contribute to the poor psychological health of partners and staff within those firms. However, no studies have reported on the initiatives that have been adopted by firms to address poor psychological health.

Earlier this year, I undertook a study as part of a Masters in Occupational Health and Safety to identify the initiatives that law firms have implemented.

THE RESEARCH PROJECT

To identify how commercial firms in Perth are responding to mental health concerns a qualitative case study was conducted. The development of the interview tool was informed by a literature review¹ and the Tristan Jepson Memorial Foundation Guidelines (Guidelines)².

The identity of participating firms was anonymised. Participants were recruited by approaching the Human Resources departments of fourteen firms within Perth. A response was received from six firms. There was an equal split between those firms that were signatories to the Guidelines and those that were not.

RESULTS

Each of the participant firms comprises in excess of 90 partners and staff. The smallest office has just over 90 people and the largest, just short of 300.

A number of initiatives were broadly consistent between the firms. These similarities can be summarised as follows:

- Each of the firms have developed organisational values, communicated them to partners and staff and developed a mechanism to

measure performance against these values (either directly or through the competency framework).

- Each of the firms has a number of initiatives in place to foster engagement both internally and with the wider community.
- All firms have an employee assistance programme (EAP).
- All firms (with the exception of one) have developed flexible work practices.

Interestingly, none of the firms has undertaken a *specific* assessment of psychological risks within its Perth office. This finding is at odds with the recommendations of Michalak who argues that primary risk management strategies should be adopted to address psychological risks as opposed to relying on 'post exposure' risk interventions³.

Further, it ignores the recommendation of Kelk et al. that "people working to reduce the level of psychological distress in the ... work setting must maintain a focus on the known risk factors for psychological distress in their setting"⁴ (emphasis added).

AREAS OF BEST PRACTICE

While there are similarities between the initiatives adopted by the firms in certain areas, there are also 'stand outs' that may represent 'best practice'. These are discussed below.

Active engagement with EAP

One of the firms engaged very actively with its EAP provider. It indicated that one of the 'lessons' that it had learnt was that the EAP provider needed to be 'legitimised' within the organisation. It found the best way of achieving this 'legitimacy' was to have consistency so that the same person from the provider came to the firm a number of times and for that person to have a connection to

the legal profession.

If the EAP is to be used by firms as the primary psychological support tool it might be suggested that finding a way to legitimise the use of the EAP is of vital importance. This is particularly the case given the level of cynicism associated with EAPs identified by Chan et al.⁵ and the risk identified by Kelk et al. that those in need of support will not engage with an EAP.

Senior personnel talking about their experiences

Another firm discussed the fact that a very senior partner openly discussed their own mental health history within the firm and more broadly. The sharing of such stories was identified by Kelk et al. as important to "challenge prejudicial attitudes" towards mental ill health. While not every firm can identify a person with a story they are willing to share, if they are able to it is likely that this would have a powerful impact on others.

Fatigue management guidelines

Long hours of work are identified as a particular psychological risk characteristic for lawyers in the studies of Campbell and Charlesworth⁶, Chan et al.⁷ and Michalak⁸. Further, Bergin and Jimmieson⁹ identify in particular the pressures caused by time billing targets. Against this background, it might be suggested that management of fatigue risks caused by consistently long hours is required. Only two of the firms surveyed have developed fatigue management guidelines for partners and staff on what acceptable practices look like. There is the potential for such guidelines to be implemented more broadly.

Use of time away from work as a reward

The study of Chan et al. specifically

recognises that better health and wellbeing outcomes can be achieved by "creating a work culture that is sensitive to personal and family needs"¹⁰. Further, the authors of that study identified that allowing people time off work could be an effective way of managing work stress. It is therefore interesting to note that only two firms specifically identified that they used time away from work as a reward for staff performance. It might be suggested that a more widespread use of additional leave may assist partners and staff to manage psychological wellbeing.

Secondment to community legal centre

"Low decision latitude" of, in particular, junior lawyers was identified by Seligman et al.¹¹ as a specific factor that contributed to poor mental health outcomes. The initiative of one firm to send all of its graduates to a community legal centre where they have greater client contact may assist in improving the decision making latitude of these lawyers.

Transparent reward and recognition

The studies of Chan et al. and Michalak identify the importance of appropriate reward and recognition. The calculation of, in particular, bonus pay across the firms differed. Firm D specifically identified its attempts to make its reward structure transparent. This is important so that there is a clear correlation between effort in a role and reward¹². However, in a large part the calculation relied on hours billed. In light of the findings of Bergin and Jimmieson, overreliance on hourly targets to calculate remuneration potentially has attendant risks to psychological wellbeing.

Having identified the similarities between initiatives and those that might be considered to be best practice, it is interesting to note a significant area of the Guidelines not addressed by any of the participant firms. This is discussed below.

CIVILITY AND RESPECT

Michalak identifies that lawyers are more likely that other professionals to be subject to incivility. It is therefore surprising that none of the firms had initiatives aimed *directly* at addressing this issue. All of the firms stated that civility between partners and staff was not an issue and that, in the case of one firm, its other initiatives responded to this issue by embedding how to have "compassionate conversations" into its partner and staff development programmes. However, given the myriad types of incivility in the workplace that have been identified by Schilpzand, Pater, and Erez¹³ and the scale of the issue reported by Michalak, the issue should not be ignored.

CONCLUSION

It is possible to distil a number of common themes to the initiatives that have been implemented. These include the development of organisational values, fostering engagement, providing psychological supports and involving staff in key decisions.

Initiatives in relation to engagement with the EAP provider, senior personnel sharing their personal stories, the development of fatigue management guidelines, rewarding staff with time away from work, providing secondment opportunities to junior lawyers to community based organisations and transparent reward and recognition structures are initiatives that might be

considered to be 'best practice'.

Whether any of the initiatives *work* to improve psychological wellbeing is an area for future research that, for the benefit of the profession should be progressed as a matter of urgency.

NOTES

1. Interested readers may contact Sam at sam.witton@hsf.com for a copy of the full research report on which this paper is based.
2. Tristan Jepson Memorial Foundation. (2014). Psychological Wellbeing: Best Practice Guidelines for the Legal Profession.
3. Michalak, R. T. (2015). *Causes and Consequences of Work-Related Psychosocial Risk Exposure: A Comparative Investigation of Organisational Context, Employee Attitudes, Job Performance and Wellbeing in Lawyers and Non-Lawyer Professionals*. P. P. Ltd. Retrieved from http://media.wix.com/ugd/a8d830_08ea2117408c4b3a9ae1b628f8d0d9ee.pdf.
4. Kelk, N., Luscombe, G., Medlow, S., & Hickie, I. (2009). *Courting the Blues: Attitudes towards depression in law students and lawyers*. Sydney: Brain & Mind Research Institute: University of Sydney.
5. Chan, J., Poynton, S., & Bruce, J. (2014). *Lawyer Stress and Work Culture: An Australian Study*. *University of New South Wales Law Journal*, 37(3), 1062-1102.
6. Campbell, I., & Charlesworth, S. (2012). Salaried lawyers and billable hours: a new perspective from the sociology of work. *International Journal of the Legal Profession*, 19(1), 89-122.
7. Chan et al. (2014).
8. Michalak, R. T. (2015).
9. Bergin, A. J., & Jimmieson, N. L. (2014). Australian Lawyer Well-being: Workplace Demands, Resources and the Impact of Timebidding Targets. *Psychiatry, Psychology and Law*, 21(3), 427-441.
10. Chan et al (2014).
11. Seligman, M. E. P., Verkuil, P. R., & Kang, T. H. (2005). Why Lawyers are Unhappy. *Deakin Law Review* 10(1), 49-66.
12. Tristan Jepson Memorial Foundation. (2014).
13. Schilpzand, P., Pater, I. E. D., & Erez, A. (2016). Workplace incivility: A review of the literature and agenda for future research. *Journal of Organizational Behavior*, 37(S1), S57-S88.



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