

Report on Psychological Distress and Depression in the Legal Profession

Prepared for

The Council of the Law Society of Western Australia

Prepared by

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1. Committee's Terms of Reference

In January 2009, the Brain and Mind Research Institute of Australia in conjunction with the Tristan Jepson Memorial Foundation (discussed in more detail below) published *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners* (the "**Courting the Blues Report**").

Subsequently, the Young Lawyers Committee of the Law Society of Western Australia (the "**YLC**") wrote to the Council of the Law Society of Western Australia (the "**Council**") and asked that:

- the *Courting the Blues Report* be referred to the Council for noting and discussion; and
- an Ad Hoc Committee be established and charged with reviewing the Law Society of Western Australia's (the "**Society**") existing strategies for dealing with psychological distress and depression amongst lawyers in Western Australia.

On 19 October 2009, the Council resolved as follows:

(a) *The Law Society takes note of the Courting the Blues Report and agrees to form an Ad Hoc Committee to:*

- (i) *review the Society's existing strategies to deal with psychological distress and depression amongst lawyers, articulated clerks/graduates undertaking practical legal training and law students as a matter of high priority for the Law Society;*
- (ii) *ensure a good representation of the profession are involved in the review of the existing strategies and if warranted, make recommendations to Council regarding the inclusion of additional strategies.*

(b) *The purposes of the Ad Hoc Committee is to be as follows:*

- (i) *the review of the Society's existing strategies to deal with psychological distress and depression and review the recommendations of the Courting the Blues Report;*
- (ii) *make recommendations to Council regarding the review of the existing strategies and the inclusion of any additional strategies and associated costs; and*
- (iii) *to ensure that all interested internal and external parties are properly consulted.*

The Ad Hoc Committee on Psychological Distress and Depression in the Legal Profession (the "**Ad Hoc Committee**") was formed as a result of this resolution.

The Ad Hoc Committee's mandate involved reviewing the Society's existing strategies dealing with psychological distress and depression amongst lawyers, determining whether they are effective or ineffective, offering, where necessary, suggested improvements or additional strategies in light of the *Courting the Blues Report* and examining related financial and other resourcing implications of suggested improvements and strategies.

The Convenor of the Ad Hoc Committee is Dr Christopher Kendall, a Barrister at John Toohey Chambers and Society Senior Vice President.

To assist the Convenor, Council also resolved that the Ad Hoc Committee consist of representatives from specified stakeholder organisations, associations and committees.

The Ad Hoc Committee subsequently established comprised:

- Associate Professor, Judith Fordham (Deputy Convenor): Councillor, the Law Society of Western Australia and Associate Professor at the Centre for Forensic Science, University of Western Australia
- Mr David Blades: College of Law (Convenor, Law Society Ad Hoc Committee on Bullying).
- Mr Martin De Haas: Willcraft Services Australia (Sole practitioner/Small Firms Group representative (discussed below)).
- Ms Anne Durack: Law Mutual (WA) (Senior Society staff member).
- Ms Laura De Maio: Carr & Co; and more recently Ms Penny Keeley, Clairs Keeley (Family Law Practitioners Association representatives).
- Professor Bill Ford: University of Western Australia (Council of Australian Law Deans representative).
- Ms Pamela Hass: Councillor, the Law Society of Western Australia (University Secretary and Special Legal Counsel, University of Western Australia)
- Dr Jill Howieson: School of Law, University of Western Australia (representative on behalf of the Council of Law Deans of Australia).
- Ms Carmel McKenzie: (Country Lawyers' Committee representative).
- Ms Lana Paxman: formerly State Solicitors Office (representative for the Government Legal Officers).
- Mr John Poulsen: Partner, Minter Ellison (Corporate Law Association of Perth firms representative).
- Mr Michael Robbins: Mallesons Stephen Jaques (YLC representative).
- Ms Maria Saraceni: Partner, Norton Rose Australia (Past President the Law Society of Western Australia).
- Mr Jeremy Sher: Allens Arthur Robinson; and more recently Ms Elaine Wambeck Norton Rose Australia (YLC representative).
- Mr Marco Tedeschi: Barrister, John Toohey Chambers (Western Australian Bar Association representative).
- Ms Nina Telford: Department of Mines and Petroleum (Government Legal Officers' representative).

- Ms Frances Veltman: Barrister, Sir Clifford Grant Chambers (representative for the Women Lawyers of Western Australia).

The Convenor determined that, as a result of significant interest in the Ad Hoc Committee's mandate from sole and small firm practitioners throughout Western Australia and the unique issues confronted by those practitioners in relation to tackling mental health and related issues, the Society should also establish a Working/Special Interest Group (the "**Sole/Small Firm Practitioner Working Group**") comprised of sole practitioners and practitioners from small firms, from which a representative would be nominated to attend all Ad Hoc Committee meetings. It was intended that there be relevant on-going liaison between the Sole/Small Firm Working Group and the Ad Hoc Committee and that the Sole/Small Firm Practitioner Working Group would meet on an "as needs" basis.

The representatives of the Sole/Small Firm Working Group are:

- Ms Alison Aldridge, Alison Legal
- Mr Martin De Haas, Willcraft Services Australia.
- Ms Nova Oldfield, Oldfield Legal
- Ms Robin Tapper, Robertson Hayles Lawyers
- Mr Matthew Wallis, HHG Legal Group

Mr De Haas was nominated by the Sole/Small Firm Working Group to represent it on the Ad Hoc Committee.

Ms Kelly Hick, Executive Manager (Member Relations and Business Development) for the Society was appointed as the Society Liaison/Ad Hoc Committee Secretary for this review. This Report could not have been written without her invaluable time, enthusiasm and assistance.

The Sole/Small Firm Practitioner Working Group first met on 15 March 2010.

The Ad Hoc Committee first met on 31 March 2010.

The contribution and support of the members of the Ad Hoc Committee and the Sole/Small Firm Working Group is greatly appreciated and particular note is made of a number of Ad Hoc Committee members who undertook comprehensive research and reporting on the mental health and wellbeing initiatives undertaken both within the Society, the Law Council of Australia and the law societies in other states.

Throughout 2010, the Convenor, other members of Council and members of the Ad Hoc Committee met with and/or received formal submissions and a range of information from other relevant stakeholders and persons committed to tackling depression and anxiety in the legal profession.

These persons included:

- The Hon Chief Justice Wayne Martin, Supreme Court of Western Australia

- The Hon Justice Tony Siopis, Federal Court of Australia
- His Hon Chief Judge Peter Martino, District Court of Western Australia
- Chief Magistrate Stephen Heath, Magistrates Court of Western Australia
- Mr Grant Donaldson SC, President, Western Australian Bar Association
- Ms Marie Jepson, Tristan Jepson Memorial Foundation
- Mr Graeme Geldart, Executive Director, Legal Practice Board of Western Australia
- Ms Gael Roberts and Ms Gail McCahon, Legal Profession Complaints Committee
- Ms Elspeth Hensler, President, Women Lawyers of Western Australia (Inc)
- Ms Helen Fowler, Clinical Psychologist
- Dr Peter Morton, Psychiatrist
- Ms Sunili Govinnage, Lawyer, Allens Arthur Robinson (Depression and Anxiety Working Group/Resilience@Law Initiative)
- Dr Geoff Riley, West Australian Centre for Remote and Rural Medicine
- Dr Paulien de Boer, General Practitioner
- Mr Neville Carter, Managing Director and Principal, The College of Law
- Mr Michael Wood, The Winding Staircase
- Ms Sandra Boulter, Principal Solicitor, Mental Health Law Centre

2. Background: Depression in the Legal Profession

There has been an impressive body of research published in recent years on depression and mental health, both within and outside of the legal profession. The reported statistics and findings are alarming and require an immediate and well managed response. Some of these findings, particularly those that highlight and target poor mental health in the legal profession, are summarised below.

(a) The National Depression Initiative

In 2007, Beaton Consulting and beyondblue released the findings of the National Depression Initiative. This Initiative examined the prevalence of depression and attitudes towards people with depression.

Overall, the survey found that professionals and students experience more depressive symptoms than the general population. Relevantly, the resulting report also revealed that the incidence of depressive symptoms amongst lawyers and law students had reached alarming levels. Indeed, when compared to other professions, lawyers were found to have experienced the highest incidence of depressive symptoms. It was also reported that

respondents from law firms were the most likely to use alcohol or other drugs to reduce or manage their symptomology.

(b) The Courting the Blues Report

The *Courting the Blues Report*, published in 2009, extensively detailed the findings of a study conducted by the Tristan Jepson Memorial Foundation and the Brain and Mind Research Institute of Australia in relation to mental health in the legal profession.

The study was conducted with the participation of 741 final year law students from 13 universities, 924 solicitors and 756 barristers.

The study revealed:

- a) high levels of psychological distress and risk of depression in the law students and practising lawyers who were surveyed, when compared with Australian community norms and other tertiary student groups;
- b) a number of attitudes and behaviours which imply a general reluctance to seek help for mental health issues; and
- c) it is not just lawyers and young lawyers, but also law students, who are suffering from high levels of depression.

The *Courting the Blues Report* revealed that more than 35% of law students suffer high to very high levels of psychological distress, and almost 40% reported distress severe enough to require medical or clinical intervention.

Further, the causes of depression amongst lawyers were noted to include:

- a) A culture of competitiveness: fear of failure is common;
- b) Pessimism: legal work often warding off what will go wrong;
- c) Learned helplessness: lawyers must follow a client's instructions, even if those instructions contradict the lawyers better judgment;
- d) Disillusionment: many lawyers feel compromised by ethical dilemmas in their work; and
- e) Perfectionism: lawyers tend to be perfectionists, which is related to obsession and anxiety, both fertile grounds for depression.

The *Courting the Blues Report* recommended that legal educational and professional organisations give priority to instituting changes to increase their members' awareness of issues of mental health and illness in the workplace and in educational settings.

The primary strategies for intervening to improve mental health outcomes of legal educational institutions recommended in the *Courting the Blues Report* included:

- a) increasing legal educators' and students' awareness of mental health issues;
- b) increasing the skills of legal educators in supporting law students generally, and offering support to law students exhibiting psychological distress, in particular; and

- c) establishing effective links between law schools and potential sources of professional treatment for those students requiring professional help.

Similar strategies were suggested in relation to lawyers who were practising in law firms and professional bodies.

The *Courting the Blues Report* also noted that:

- while law students show higher levels of distress than medical students, they are not severely dysfunctional -- just a little more distressed than other young people, particularly males, in the general population. However, those high levels of stress and depression do not abate as practising lawyers show higher levels of psychological distress long past the early stages of their law careers, and significantly higher levels than people in other professions and in the general population.
- young female law students and lawyers report higher levels of psychological distress than do their male counterparts. The researchers note that females are known to report psychological distress more readily than males and had they profiled alcohol and drug use, 'the lower reported level of distress among males would have been balanced by a higher level of drug use and misuse.'
- there are signs of barriers to law students and lawyers recognising their psychological distress and seeking help for it, with a high number of the survey participants saying that they would not seek help, that they had negative views of the effectiveness of medical help for depression and that they held negative views of depressed people - all of which may have an influence on their seeking help and helping colleagues with their depression.
- however, there are also signs that those law students and lawyers who do become depressed get help in high numbers, as would be expected, the researchers say, of a group of well-educated, highly employed and economically well-off people. The researchers therefore see that there are strengths the legal community can draw on to 'produce positive outcomes for the mental health and wellbeing of law students and the legal community generally'.

The *Courting the Blues Report* makes some very specific recommendations, summarised as follows:

- assisting legal students and professionals with psychological distress is a task for legal and educational communities. It is not a problem only for the individuals with mental illnesses or psychological distress;
- all legal training institutions and legal employers must take on the mental wellbeing of their members as a central institutional concern;
- members of legal institutions with an interest in mental health and psychological distress amongst their members should form special interest groups to promote the mental health goals of their institutions;
- people working to reduce the level of psychological distress in the educational or work setting must maintain a focus on the known risk factors for psychological distress in their setting;

- mental health problems and psychological distress must be seen as legitimate health problems for which students and legal professionals can seek special consideration and support;
- education and information dissemination to all staff of legal institutions and training bodies is critical to the development of appropriate mental health practices. The occupational health and safety implications of mental health and psychological distress in the workplace need to be widely recognised by teachers and management staff;
- law students and legal professionals need to be made aware of, and prepared for, normal forms of stress in the normal workplace;
- law students and legal professionals need to be made aware of the importance of developing different skills for managing workplace issues and personal issues. While adopting styles of vigorous competition or high levels of caution in a particular workplace or educational setting may be appropriate, such styles of behaviour are not likely to have satisfactory outcomes in everyday life, or in a situation in which a person is struggling with psychological distress or mental illness;
- services aimed directly at assisting legal professionals or students with psychological distress or mental illnesses need to be reviewed, expanded and made more accessible;
- the profession as a whole needs to identify those members who are isolated or poorly supported and offer them additional education, support and services;
- the diversity of educational and practice settings will generate a wide variety of strategies for dealing with psychological distress and mental illness in different local situations; and
- the researchers note that their findings 'suggest that legal educational and professional organizations should give priority to instituting changes to increase their members' awareness of issues of mental health and illness in the work place and in educational settings.'

(c) Report of Professor Maryam Omari, Edith Cowan University, Perth

In August 2010, Professor Maryam Omari from the Faculty of Business and Law at Edith Cowan University in Perth provided her report, *Towards Dignity and Respect at Work: An Exploration of Work Behaviours in a Professional Environment (the “Omari Report”)* to the Society for consideration.

The Omari Report was jointly funded by Edith Cowan University and the Society. Its aim was to:

- focus on workplace bullying in the legal profession in Western Australia; and
- gain an understanding of the nature, causes and consequences of workplace bullying.

Overall, the Omari Report found that:

- (a) In many cases there is a fine line between managerial prerogative, operational efficiency, performance driven culture, competitive work environments and workplace bullying;
- (b) The existence of anti-bullying policies has a significant and positive impact on the prevalence of workplace bullying;
- (c) 21% of respondents to the survey reported that they were bullied at their current place of employment;
- (d) 30% of victims were bullied on a weekly basis and 18% on a monthly basis;
- (e) 85% of bullying took place via verbal means;
- (f) 23% of those who reported that they were bullied made a workplace complaint;
- (g) some of the reasons for not complaining included:
 - (i) career repercussions and fear of being seen as a troublemaker;
 - (ii) everyone having high stress jobs;
 - (iii) no faith in the complaint process;
 - (iv) the boss was the bully;
 - (v) the bully being valuable to the organisation;
 - (vi) need to maintain relationship at work;
 - (vii) the firm would back the partners;
 - (viii) difficult to prove – having no power; and
 - (ix) fear of being labelled and not being hired by anyone if a complaint was made to the Legal Practice Board;
- (h) Consequences of bullying include:
 - (i) attempted suicide;
 - (ii) diagnosis of clinical depression;
 - (iii) stress, anxiety attacks, headaches and hair loss;
 - (iv) low confidence commitment;
 - (v) wanting to quit their job;
 - (vi) working long hours which led to burnout;
 - (vii) anger, frustration, hating to go to work, teary;
 - (viii) reverse bullying, complaint against the victim;
 - (ix) deep emotional impact;
 - (x) hating job and occupation.

Notably, some of the comments of those responding to the survey included:

- (a) Billing targets imposed unrealistic deadlines and unreasonable demands on lawyers, especially since much of their work can relate to non-billable work. A 6.5 hour billable target may result in a 12 hour working day; and
- (b) Success in law firms is largely measured by billable hours and as a result, lawyers and young lawyers alike are working very long hours, often sacrificing a balanced lifestyle to meet targets.

The Omari Report recommended that a strategic and integrated approach be taken to:

- (a) Raise the awareness of the prevalence, nature, causes and consequences of workplace bullying;
- (b) Lobby firms and partners to implement codes of conduct and values required of legal practitioners;
- (c) Encourage leadership and management training within firms;

- (d) Review workplace HR policies and practices including contracts, conditions of work and expectations;
- (e) Implement workshops to develop the supervisory and generic skills of those in power at firms; and
- (f) Monitor progress: for example, a repeat of the full unmodified version of the survey in 18-24 months time.

The Omari Report offered 6 recommendations aimed at targeting workplace bullying and the stress and anxiety caused by it:

Omari Recommendation 1: Raising awareness

A significant first step will require publicising the findings to the membership of the Law Society of WA to raise awareness of the prevalence, nature, causes and consequences of workplace bullying. Awareness may be raised through the dissemination of the findings of this study through presentations, articles in the Law Society publication/s, distribution of this Executive Summary and/or full report to the managing partners of law firms, and workshops with Human Resource managers of firms.

It is also suggested that the WorkSafe WA booklets on the Anti-bullying Code of Practice and the rights of employees and employers be distributed to all members and law firms. The electronic link to the publication can also be included in the Law Society publications. In addition, it may be beneficial to obtain relevant posters from WorkSafe and provide these to law firms for display in appropriate common areas.

Omari Recommendation 2: Call to action/Building support

Once the findings of the study are publicised within the Law Society and its membership, the Committee, through appropriate channels and forums may lobby firms and partners to commit to action to remedy the situation. For example, it is important to link bullying behaviour to the codes of conduct and values required of legal practitioners as members of the Law Society of W.A. Personal and professional integrity must not only be reserved for interactions with clients, it should be extended to the workplace (if not already done) to cover behaviour and conduct towards colleagues.

Bullying is not limited to work settings but can also occur off-site, in public or private locations, through communication media such as the telephone or email. Anti-bullying policies should therefore be integrated with broader organisational policies on communication outside the office.

Omari Recommendation 3: Developing leaders/Role modeling

Many individuals are placed in leadership or supervisory roles with little/no training or support. It is recommended that the Law Society source or recommend appropriate management and leadership training to its membership, and those in managerial positions. The Law Society can play a leadership role by also providing support structures to leaders and managers, and perhaps devising a network of mentors to assist in the development of a new generation of effective managers.

Omari Recommendation 4: Developing and reviewing policies and practices

The nature and environment of work can be antecedents for bullying. It is important for firms to review their strategies, policies and practices to ensure all staff conduct

themselves appropriately. A recurring theme in the findings was the sheer volume of work, and expectations that work would come first with an employees' personal life taking a back seat to the requirements of the firm.

The current workplace in most settings would include at least three generations. It is important to acknowledge that the values and expectations of the baby boomer generation would be different to Generation X and Y. Organisations who wish to attract the best and brightest talent would need to ensure a values match with the target group. This includes appropriate workplace policies and practices.

A tense work environment was seen to cause loss of control, leading to psychological disengagement, lower performance and greater turnover. The solutions to such complex interactions are never easy, but require a strategic and integrated approach to addressing the root causes of bullying.

Workplace (HR) policies and practices including contracts, conditions of work, expectations, etc. would need to be reviewed to ensure employees are treated with dignity and respect. For example, are clear organisational performance management systems in place? Have these been articulated to all employees? Are they applied consistently? Are employees with a history of poor performance made aware that they are under performing and managed with respect and dignity? Such questions must be addressed by HR practitioners, policy makers, line managers, and the leadership in the organisation in order to ameliorate bullying.

Omari Recommendation 5: The provision of training

Power is at the heart of workplace bullying scenarios. Most respondents reported bullying by supervisors. It is suggested that the Law Society consider a series of workshop (mandatory as part of membership or optional) to develop the supervisory and generic skills of those in positions of power. These workshops can include but are not limited to:

- *Managing conflict/Effective communication skills*
- *Provision of feedback/Managing staff performance*
- *Anger management/Stress management/Emotional regulation*
- *Diversity management*
- *The need for work/life balance*

Omari Recommendation 6: Monitoring progress

This study has provided an important benchmark. In the future, the rates and incidents of workplace bullying within the legal community in W.A. should be monitored to measure success. Comparisons can be made in different ways against this benchmark. For example, a repeat of the full or modified version of the survey in 18 - 24 months' time, and/or once the intervention strategies have been enacted, and sufficient time passing for a change to have taken place. Law firms may also monitor changes through the provision of a question on workplace bullying in staff satisfaction surveys or exit interviews.

(d) Report of the Chief Justice of Western Australia on Billable Hours

On 17 May 2010, in a speech delivered to the Perth Press Club, Chief Justice Wayne Martin expressed his concerns regarding the significant anxieties caused by hourly billing and billable targets.

In his speech, *Billable Hours – Past their Use By Date*, the Chief Justice called on the legal profession to move away from billable hour requirements. The speech is available on the Society's website at: <http://lawsocietywa.fortix.com.au/announcements/chief-justices-speech-to-launch-law-week>.

Notably, the Chief Justice highlighted the following negative effects of time billing on lawyers:

- (a) It discourages participation in professional development and education, community projects and professional organisations;
- (b) It discourages the active and detailed supervision of junior staff;
- (c) It discourages collegiality and mutual co-operation between colleagues;
- (d) It reduces quality of life and high levels of depression and substance abuse had been detected; and
- (e) Lawyers are required to work long hours and this alienates them from family members and from their community.

Chief Justice Martin further called on the profession to "...enthusiastically embrace the pressure for change, and generally adopt alternative methods of charging for services rendered". His Honour also called for further debate on this particular issue and highlighted his concerns in relation to anxiety and depression in the profession.

(e) Submission from the Law Society's Equal Opportunity Committee

The Ad Hoc Committee received a detailed submission from the Society's Equal Opportunity Committee in relation to the Chief Justice's speech on time billing, in which the EOC wrote as follows:

His Honour said he remained of the view which he expressed as a member of the Law Reform Commission in 1999 that the dominance of time billing as a method for assessing the price of legal services should be diminished. Importantly, his Honour also said:

This is not to say that time billing has no place in legal service charging, but rather that other methods which encourage efficiency and better allocate risk should be developed.

Before turning to the aspects of his Honour's comments dealing with the "alienating, and worse, impacts upon lawyers" that time billing may have, the EOC emphasises its understanding that his Honour's aim in making this speech was to stimulate interest and debate on this topic; further, that by making the call for change to time billing practices (which he acknowledged to have derived significant financial benefit himself from over many years), his Honour did not mean to disparage or criticise the legal profession.

Similarly, by making this submission, drawing attention to his Honour's comments on time billing, and endorsing his call for debate on this issue, the EOC does not intend to disparage or criticise any individuals or law firms who practice time billing and who may disagree with the thrust of his Honour's comments.

The sections of his Honour's address relating directly or indirectly to psychological distress and depression are as follows:

Time billing reduces quality of life

The literature is replete with complaints from young practitioners about the unsatisfying nature of legal work in a time billing environment. High levels of dissatisfaction are evident in surveys, computer blogs and in the high number of young lawyers who leave the profession. The emphasis upon the production of billable hours creates a working environment which, as I have noted, discourages professionalism and reduces work satisfaction to unacceptable levels. Clever young lawyers are leaving the profession in droves, or shifting to corporate, government and NGO roles where their motivation is provided, and their performance assessed by outcomes other than the production of billable hours. High levels of depression and substance abuse have also been detected amongst legal practitioners.

Time billing insulates lawyers from community and family

Time billing has resulted in lawyers being required to work very long hours to meet billable hour targets. This alienates them from family members and from their community

That time billing can impact upon mental health was also noted in the *Courting the Blues Report* where it was stated at p 47:

Another aspect of legal practice which is said to be a source of stress for legal practitioners is the constant preoccupation with short term billing (25). Again, as this practice seems to be widespread in the profession, it is not proposed here that an attempt be made to dismantle it. However, law firms which use such billing strategies must come to recognize that it may be a source of difficulty for its employees and start to develop occupational health and safety strategies to manage it, just as they would with any other major source of workplace stress. (Emphasis added)

Respondents to the *Survey on Dignity and Respect at Work* mentioned concerns about time billing and financial systems in the context of workplace bullying. One respondent said (quoted at paragraph 93 of the *Omari Report*):

The whole idea of billable hours results in practitioners ultimately becoming enslaved in an unhealthy work-life balance that is unavoidable. It is my sincere belief that any practitioner in private practice needs to work a 12 hours day in order to bill the required 6.5 - 7 hours per day. That is on the basis that you still have weekends, take the odd day sick leave go to the odd seminar and attend the required amount of marketing functions and keep up-to-date with the law.

Another respondent said (quoted at paragraph 86 of the Omari Report):

Financial systems in organisations create behavioural issues. Having come from one of the largest law firms in Australia in my view the behaviour was counterproductive. All forms of financial performance were monitored. People became individually focused and lack of trust was high. In a new firm where this doesn't happen, it is surprisingly refreshing. People enjoy coming to work and it achieves better results because of the commitment to each other. Interestingly, it is more profitable.

Time billing distorts performance assessment

Under time billing, production of billable hours is a key criterion of assessment of a practitioner's success, and results in advancement within the firm. Qualities such as customer service attitude, customer retention rates, creativity, and innovation, willingness to delegate, mentoring and teaching skills, and practice development activities are all diminished in value because of the emphasis placed upon production of billable hours.

The EOC considers that strategies devised to deal with psychological distress and depression in the WA legal profession will be incomplete if they do not include action on the use of billable hours as a tool for bullying in the workplace.

The academic article "Lawyer Dissatisfaction, Emotional Intelligence and Clinical Legal Education", by Colin James, Solicitor, University of Newcastle Legal Centre and Senior Lecturer, University of Newcastle School of Law, published in Legal Education Review (2008, vol 18), reported on research at the University of Newcastle in 2006. That research sought to identify the major causes of stress and dissatisfaction and to correlate that information with measures of lawyers' mental wellbeing, emotional intelligence, and the type of legal education and practical legal training they had received. The author concluded (p 136):

This pilot project confirmed the high levels of stress among lawyers found by earlier research. However, it found that this high stress is likely related more to the conditions of employment than the nature of legal work itself. According to this research, most lawyers' stress is related to management issues, specifically high billing requirements, the associated long hours at work and the absence of poor quality of mentoring and supervision in the first few years of practice. Several respondents were definite in their interviews that the system of billing targets used in commercial legal practice was the cause of their dissatisfaction as a lawyer. (Emphasis added)

In his address, Chief Justice Martin also mentioned some of the alternatives to time billing. There is an ample body of academic research on alternatives to time billing, as well as consultants within Australia, and possibly Western Australia, who have the necessary skills and experience to inform the debate recommended by the Chief Justice and, if appropriate, assist law firms who may request such assistance to implement alternative billing systems.

It is noted that at least one commercial law firm in Western Australia has already moved in the direction away from billable hours (see Legal Affairs section of The Australian, Friday August 20 2010, p 33-34).

Conclusion

In conclusion, the EOC fully supports the establishment of a program of awareness raising, education, training and support recommended by Dr Omari and the Courting the Blues Report.

Further the EOC supports the call by Martin CJ for the profession to give active consideration to the alternatives to time-based methods of billing in light of the quality of life and other issues raised by his Honour. The EOC considers that the Law Society can assist this consideration through the provision of CPD seminars and organising other forums in which informed debate on this issue may be conducted.

(f) The Tristan Jepson Memorial Foundation and DAWG

The Tristan Jepson Memorial Foundation (the “**Foundation**”) was established in 2008. The Foundation's objective is to decrease distress, disability and the causes of depression and anxiety in the legal profession. See: <http://www.tjmf.org.au/>

Since the Foundation's inception in August 2008, the organisation has strived to create greater awareness of depression and anxiety amongst the legal fraternity.

The Foundation has established itself as a reference point and facilitator of information in the area of depression and anxiety in the legal profession.

The Foundation aims to raise awareness, improve education and build effective models of support which focus on mental health and wellbeing within the legal education system and the legal profession.

In 2008, the first Tristan Jepson Memorial Lecture was the catalyst for the creation of a Depression and Anxiety Working Group (“**DAWG**”).

DAWG was formed in early 2009. It is a collaboration of the managing partners, chief executive partners and directors of human resources of five of the country's leading national firms: Allens Arthur Robinson, Blake Dawson, Clayton Utz, Freehills and Mallesons; together with representatives from university law faculties and the College of Law.

In March 2010, DAWG launched two initiatives as part of their Resilience@Law program:

1. A short DVD documentary about mental health in the profession, entitled: “Resilience@Law”; and
2. Collaboration with the College of Law in which graduates are required to complete, as part of their practical legal training, a component focusing on mental health and resilience.

The Resilience@Law program was designed to achieve four objectives:

1. Promote awareness and education;
2. Remove the stigma attached to mental health;
3. Encourage self-help strategies; and
4. Support and resources.

The Ad Hoc Committee appreciated the opportunity to view the Resilience@Law DVD and the invitation by DAWG representatives to include the DVD as a resource on the Society's website with relevant links to the DAWG and supporting information.

(g) Submission from the Young Lawyers Committee (WA)

The Ad Hoc Committee also received a very useful and detailed submission from the Society's Young Lawyers Committee, who wrote to the Committee as follows:

In the YLC's view:

- (1) *whilst the resilience@law program is an important starting point in actively helping to raise awareness and understanding of psychological issues, it does not address the "causes" which lead to mental illness and other issues (including bullying);*
- (2) *the mental health awareness initiatives implemented by the major law firms focus on the lifestyle of the employees (i.e. physical activity, diet) and do not address the culture of the workplace which demands long working hours at the expense of a balanced lifestyle;*
- (3) *it is important that any initiatives include the involvement of employers, friends and families. Changes in behaviour (including withdrawing from family, friends and workmates; poor sleeping and eating patterns; deterioration in performance; difficulty concentrating, following conversation or remembering things; and marked changes in mood) is often an early sign that someone is suffering from mental illness;*
- (4) *employers should be made aware that some graduates are entering into the profession with pre-existing psychological issues. They should be encouraged to implement monitoring and support systems for young lawyers who are particularly at risk of developing serious mental illnesses;*
- (5) *long working hours, billable targets and unrealistic supervisor and client expectations appear to be significant causes of psychological symptoms, placing undue stress on lawyers;*
- (6) *it is important to acknowledge the individual reports which have been received by the YLC from young lawyers, which have been that they:*
 - (a) *are subject to poor management of supervising solicitors and partners. It is frequently reported that young lawyers are left waiting for work to be settled or are given instructions to complete tasks after the supervising partner/solicitor has known about the task for hours or days (or even weeks). Young lawyers are then required to complete the task in an unrealistic timeframe at unreasonable times of the day;*
 - (b) *have significant expectations with regard to non-billable requirements. In addition to daily billable targets, lawyers are required to undertake non-billable tasks related to marketing, business development, administration, training and education; and*
 - (c) *have a crippling lack of control over the level of work they perform. In particular, it is reported that young lawyers do not know when they will finish work on a daily basis or if they will have to work on the weekend, It is common*

for a young lawyer to receive urgent instructions at 4pm or 5pm and are required to work late; and

(d) have no ability to plan social/personal events due to the lack of control over work; and

(7) in relation to lawyers in the community and public sector:

(a) while removed from the pressures of billable hours, timesheets or extra-curricular workplace pressures that affect young lawyers in private practice, it is worthwhile to reference the personal and professional pressures faced by young lawyers working in the community and public sector, which have been reported to the YLC, including in community legal centres, indigenous and pro-bono legal organizations and Legal Aid/government roles;

(b) these lawyers increasingly grapple with the very real challenge of training, supervisory and resourcing limitations, which in turn affect their service delivery and practice. They are often required to adequately take instructions from the most underprivileged and underrepresented of clients within highly unrealistic time and policy constraints and operate at the mercy of fluctuating government or independent funding; and

(c) the resulting emotional exhaustion and moral burden of the nature of the work performed and the realistic but unfulfilling outcomes they are able to achieve also breed a sense of dissatisfaction and disappointment. This takes a significant toll on such lawyers, who work in pursuit of clear ideals with little practical expectation of their goals and less financial reward than their private practice contemporaries. A consequence, which anecdotally mirrors the position of many junior members to the legal profession, is the increased levels of "self-medication" or use of drugs and alcohol as a coping mechanism to combat depression.

3. Mental Health Initiatives of Law Societies Across Australia (Excluding Western Australia)

It is beyond the scope of this Report to outline in detail how the law societies in each state address issues of anxiety and depression and related matters. Nonetheless, a general overview of the types of services offered and their objectives is useful in determining how the Law Society of Western Australia might best assist its members.

The Ad Hoc Committee is very grateful for the generous time, information sharing and advice that was provided by all law societies and Law Council of Australia in compiling this information. We also note the very useful information provided in the Law Council of Australia's Report, *Depression in the Legal Profession*, May 2010.

(a) Queensland Law Society

The Queensland Law Society ("QLS") has 8,300 members and provides a comprehensive range of initiatives dealing with mental health issues.

In discussing their initiatives with Mr John Poulsen from the Ad Hoc Committee, QLS representatives noted that QLS seeks to take a holistic approach to their initiatives by:

- looking at preventative measures;
- identifying people at risk; and
- ensuring that treatment options are made available

QLS targets its programs to:

- practice leaders;
- supervisors; and
- individuals.

i. QLS Education Programs

QLS's main approach is to offer education programs on resilience, wellbeing and depression including incorporating learnings on these areas and their linkages to complaints, claims and supervision in related educational offerings. In the 2009/10 financial year, there were approximately 25 seminars for members addressing these issues either directly or incorporating related content. Some seminars are offered on a complimentary basis and others comprise part of the QLS' main educational program.

In addition:

- all of the 'practice management issues' seminars delivered by the QLS, such as risk management, cash flow management and the like, aim to address issues of resilience, wellbeing and depression;
- the Practice Management Course, which Qld practitioners are required to take before obtaining their Principal Practising Certificates, addresses these issues;
- the QLS equivalent of Law Mutual (Lexon Insurance):
 - provides on-site firm workshops that address resilience, wellbeing and depression; and
 - offers an 8% discount on insurance premiums if a practice 'signs up' for a systematic file review process, which can identify practices at risk and the causes of those risks; and
- there are articles in each edition of the QLS *Proctor Magazine* which deal with stress management, wellbeing and related issues.

ii. LawCare Service

QLS's role in providing treatment is provided via LawCare, with a short term counselling service provided by 'Assure Programs' to assist QLS members and their support staff and the immediate family of QLS members.

The QLS LawCare service is widely recognised as comprehensive and successful at identifying those at risk and ensuring that services are available to assist them.

Relevantly, QLS has developed and widely disseminated the *LawCare – Taking Positive Action, Leader Guide* targeted at practice leaders. This publication:

- introduces LawCare;
- deals with the 'leaders' role in referring employees to LawCare;
- refers leaders to the 'Manager Support Program' (which provides leaders with an avenue to obtain timely support in managing personal and interpersonal work issues related to employees);
- assists leaders with dealing with 'critical incidents'; and
- provides handouts and checklists to leaders to help them manage and assist employees under stress.

QLS advised that approximately 3% to 4% of the profession in Queensland use LawCare on a regular basis. QLS recently undertook a survey of its members to ascertain potential obstacles to greater use of the service. Feedback received included the preference by some practitioners to go to an 'independent' psychologist or psychiatrist, particularly where longer term counselling may be involved. A referral would then be sought from a GP to a psychologist or psychiatrist who would provide for a Medicare rebate to be applied to the cost of those services.

iii. Complaints and PI claims made against legal practitioners

QLS representatives noted that complaints and PI claims made against legal practitioners often relate to delay, or failure to deal with a difficult issue with a client and these can stem from potential mental health issues affecting the practitioner. QLS, unlike the Law Society of WA, is also the regulator of the legal profession in QLD. Because it performs this dual function, the QLS is able to identify practitioners at risk through the complaints process.

QLS advised John Poulsen from the Ad Hoc Committee that the individual in charge of prosecutions of practitioners in QLD also assists with the identification of mental health issues and looks at 'public interest' issues in prosecutions. If he thinks that a complaint and subsequent prosecution has its grounds in a mental health issue, he will discuss this with the practitioner with a view to getting counselling and a voluntary suspension, rather than continuing with the prosecution.

iv. Funding

The vast majority of the funding for these initiatives is provided by the Department of the Attorney General in QLD – approximately \$80,000 to \$90,000 per annum. This funding is 'topped up' to the extent of \$5,000 to \$ 10,000 per annum from the profits of a previous QLD insurance fund and to a further \$5,000 to \$10,000 by QLS itself. Total funding per annum is in the region of \$110,000.

(b) Law Society of New South Wales

The Law Society of New South Wales (“**LSNSW**”) has approximately 20,000 members.

In discussing initiatives undertaken by the Law Society of New South Wales (“**LSNSW**”) in this area, LSNSW advised that in establishing mental health strategies, it had ‘...investigated the strategies employed generally in the legal profession in New South Wales, particularly the many other organisations (including beyondblue, Black Dog Institute, the Law Council, Law Cover and the Bar Association) which are actively involved in tackling depression. LSNSW resolved to focus its attention on those areas where it is uniquely placed to make a difference and where it complements, rather than duplicates, the work of others.’

LSNSW further advised that since 2007 their charter in relation to mental health has focused on two streams of activity:

1. The development of effective “triaging” of practitioners who seek assistance with mental health and substance abuse problems, so that they are assessed in a timely manner and linked in to appropriate support services. Effective “triaging” involves the Society’s long-standing Lawyers Assistance Program and LawCare. LSNSW will shortly be launching a Member Assistance Program operated by an independent agency.

The Member Assistance Program: in addition to providing an assessment and referral model which provides quality services on a national basis using high calibre professional staff who have significant experience and expertise in psychological issues, the Member Assistance triage service will ensure 24 hour /7/365 coverage through a single national 1300 number for ease of contact. While this service is to be launched in the near future, LSNSW anticipates that under this service members will receive a maximum of two telephone sessions each, at which time a professional counsellor will assess the person’s needs and make appropriate referrals to specialists (eg financial planning, psychologists, psychiatrists, etc.). Where solicitors need additional assistance, it will not be refused.

LawCare: established in 1991 as a self-referral counselling service for practitioners and their immediate family members. It allows access to confidential advice on personal or emotional issues. The service has been delivered by Dr Ian Cheung since 1992.

Lawyers Assistance Program (LAP): offers a confidential pathway for practitioners to discuss problems, primarily issues which relate to the practice of law, with a legal assistance co-ordinator. The co-ordinator is able to refer the practitioner to an appropriate support service and/or provide emergency support (such as funding for living expenses, practising certificate fees etc) where this is warranted.

2. A Mental Health Information and Advisory Program which involves the Law Society working with subject experts to source and disseminate advice to practitioners on recognising and managing mental health problems. LSNSW advises that the key elements of this “prevention-oriented communication approach” include:
 - partnership with beyondblue to enable access and use of their education and information materials on recognising and managing depression.
 - reconfiguration of the LSNSW’s website to include a webpage which provides easily accessible resources in relation to mental health.
 - articles published from time to time in the Law Society Journal to raise awareness of the issues and what is being done to address them.
- an ongoing free MCLE seminar program provided by an expert consultant employed by the Law Society. The LSNSW’s consultant was tasked with writing and delivering a program including a “toolkit of resources” which would help solicitors understand and address the issues they face in day-to-day practice. The program includes strategies to strengthen their wellbeing and to identify clear boundaries between themselves, their clients and colleagues. It also addresses drug and alcohol abuse, the indicators for a variety of mental diseases and the impact of vicarious trauma for solicitors.

- This is a recent initiative which was piloted in 2009 to several regions including the CBD to overwhelming positive response. The ongoing program continues to be well-supported by practitioners with seminars being held in 16 regions including Sydney in 2010. Over 1,200 solicitors have attended presentations to date. This program is ongoing and the first seminars planned for 2011 will be held in March.
- The LSNSW consultant is regularly invited to speak to the Regional Presidents and encourage them to hold a seminar in their area, subject to identification of 30 practitioners who will attend and also speaks at the annual Rural Issues Conference in October to garner further interest from rural practitioners.
- a free MCLE financial planning seminar program presented by specialists from the Financial Planning Association of Australia.

Additionally LSNSW provides services including:

1. Senior Solicitors Scheme: confidential assistance from a panel of experienced solicitors to solicitors who are the subject of a complaint with the Legal Services Commissioner.
2. Mentoring Program: proactive preventative initiative managed by the Law Society of NSW Young Lawyers.
3. Solicitors Benevolent Association: aimed at relieving financial distress suffered by a solicitor or former solicitor, their surviving family or any surviving spouse or dependent. Relief is usually given through a grant or interest free loan.¹²
4. Member Connexions Alliances: targeted commercial alliances which assist practitioners to maintain optimum health and wellbeing giving savings on health checks, gyms, private health insurance, alliances with resort operators and Qantas, and spa treatments
5. Mental Health Links for Lawyers: the Law Society provides a link to this website which is a central online information source of mental health services in NSW.
6. McArthur Management Services: specialises in the placement of early childhood personnel and in home carers. Members pay for the use of the service themselves.
7. Families at Work: a leading work/life consultancy that helps people balance their work and personal commitments by providing individually tailored information and resources. Consultation fee is \$200/ hour billed in 15 minute blocks. Members pay for this service.
8. Work2 Suit: an initiative of the Law Society of NSW and the Women Lawyers Association of NSW. It is an information and support network for lawyers who are

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² Although not addressed in this Report, the Ad Hoc Committee notes that in Western Australia the Barristers' Benevolent Association was established by the Western Australian Bar Association (WABA) in the early 1990's for the purpose of maintaining a fund from which financial assistance may be given, in deserving cases, to members or past members, and their families. A proposal to restructure the Barristers' Benevolent Association is currently being considered by the WABA's Bar Council. Updated information will be placed on the website once Bar Council has concluded its review of the proposal.

working, or seeking to work, flexibly. Regular forums are held to share information and network, hear presentations, communicate about issues and identify opportunities to influence policy and decision makers.

(c) Law Institute of Victoria

The Law Institute of Victoria (“LIV”) provides the following services to its approximately 14,900 members:

1. LawCare. This telephone counselling service is provided by an independent external consultancy to help members deal with personal and professional problems that interfere with their work performance and personal life. LawCare assists members and their families. The service is headed by a psychologist with a legal practice background. LIV pays for one consultancy session.
2. Small Practice Support Section. This Practice Section is open to both lawyers and non-lawyers with an interest in effective practice management, including accessing the right information, resources and support. The section produces a range of practice support resources for members and members are also able to join the Practice Section.
3. LIV conducts a workshop course called “Mindfulness Based Stress Management” which offers a stress management perspective and a proactive approach to the issue of depression. LIV conducts two different types of Mindfulness courses: a series conducted once a week for 6 weeks (maximum attendees 8) and an abridged version in a half day format (this course will be run for the first time in February 2011).

Additionally, LIV runs programs which can assist in the development of skills and practice which may impact on a practitioner’s mental health and wellbeing including ‘Time Mastery for Lawyers’, and ‘Problem Solving and Creative Thinking for Lawyers’. Seminars are offered at a member/non-member pricing and attract CPD points.

4. Mentoring Program: established in August 2009 is available to LIV members and provides an opportunity to confidentially discuss practical legal and ethical issues with an LIV trained mentor. This program aims to link experienced legal practitioners with those seeking professional development, support or guidance. It is an opportunity for experienced mentors to share advice, knowledge and experiences with their mentees.
5. Lawyers with Disabilities Working Group was established in 2010 for lawyers with a range of disabilities including employment strategies for lawyers and law graduates with disabilities. This includes lawyers facing mental health issues. The Group is currently preparing a Disability Action Plan and has been looking internationally for more ideas for this group (in particular, initiatives in the United Kingdom, the United States and Canada).
6. Members Advocate Service. This is a confidential referral service to an experienced senior practitioner with expertise in professional conduct issues. The members’ advocate can provide advice on how to deal with complex situations, such as complaints received against individuals or practices, disciplinary matters and complex client relationship issues. There is no capping of hours/fees for each member practitioner. The service is discussed in detail below in this Report 5(b)(iv).

7. The LIV has also developed a range of fact sheets to provide information on workplace and personal stress, depression and alcohol and drug abuse. It is available on the Human Resources section of their website. The LIV website also provides information and links to the beyondblue website.

(d) ACT Law Society

The ACT Law Society, with approximately 1500 members, provides the following services to its members:

1. Senior Counsellors Panel: can be contacted by practitioners to discuss either business or personal problems confidentially.
2. The ACT Law Society contracts Relationships Australia to provide confidential external counselling services to solicitors or immediate family members. The ACT Law Society pays for up to three counselling sessions.
3. Sole Practitioners Forum: a recent initiative which gives sole practitioners an opportunity to discuss matters of mutual interest.
4. Assistance available via ACT Law Society. The Society regularly assists practitioners as far as possible with any issues of concern. Queries are generally directed to the Professional Standards Director, Executive Director, Complaints Committee Secretary and Accountant and may include concerns about professional standards, ethics, privilege and professional conduct.
5. Mentoring: the Young Lawyers Committee organises a mentoring scheme for solicitors in private practice. The Society has recently established the Government Lawyers Mentoring Program which currently has 15 registered mentors and 22 registered mentees. The Program was created by the Society's Government Lawyers' Committee and they will be reviewing the Program in a few months.

(e) Law Society of Tasmania

The Law Society of Tasmania ("**LS Tas**") provides the following services to its members:

1. LS Tas engages an independent Tasmanian-based confidential counselling service with 24 hour access to provide a LawCare counselling service to members. LS Tas pays for up to three consultations.
2. Mediation service for conflicts within the workplace.
3. Senior Counsel List: Senior Counsel can be contacted if there are any issues a practitioner is worried about or for mentoring purposes.
4. Member Advisory Service: if a solicitor has had a complaint lodged against them they can seek assistance from this Service – a panel of 3 member advisors comprising two barristers and a senior solicitor (litigator), all with experience in disciplinary matters. . LS Tas will pay for up to three hours of advice.
5. Education on mental health: the Young Lawyers Committee addresses these issues in their seminar series, although there is no formal component of wellbeing/stress education in this program.

(f) Northern Territory Law Society

The Northern Territory Law Society (“**NTLS**”) provides the following services:

1. LawCare Counselling Service: confidential, free service available to members and their immediate families.
2. Mentoring: the Society's mentoring program was established as an indigenous law student mentoring program but as there were more mentors than mentees it was recently expanded to include non-indigenous law students.
3. CPD: addresses stress management/wellbeing issues but this not a formal component of the program. In 2009 there was one seminar on this issue but NTLS notes that it was not well received. More seminars are planned with increased efforts to ensure that any future seminars are more relevant.
4. Sole Practitioners: the Small Firms Group (Committee) holds meetings and functions where issues of interest to sole practitioners and members of small firms are considered. It also arranges CPD programs designed specifically for sole practitioners.

(g) Law Society of South Australia

The Law Society of South Australia provides the following services:

1. LawCare: The Society pays the first \$250 per hour of professional fees incurred by the practitioner or family member (where no rebate is available or a gap payment is required). The service is provided by a GP practising in the CBD and is available from 8am-8pm, 7 days a week. The provider does not provide health/wellbeing training.
2. Personal and Professional Assistance Panel: practitioners can seek advice from an experienced colleague about specific fields of professional practice, general professional problems, personal problems, professional standards, conduct problems, legal practice advice, legal costs matters and the Courts. The PAPA Panel is a voluntary service provided by 45 members of the profession.
3. Small Practice Committee (SPC) and Sole Practitioner Group (SPG): SPC (for legal practices with 4 practitioners or less) and SPG aim to address legal, technological and risk management strategies, social and education needs as well as provide practical assistance and the opportunity to network. *Flying Solo* is the official newsletter for sole practitioners, published twice a year.
4. Mentoring Scheme: This scheme pairs up experienced practitioners with new admittees for 1-2 years to provide young practitioners with a senior contact, guide and confidante. The Law Society also organises a mentoring scheme for aboriginal law students.
5. Mental Health Seminars: The Society and Law Claims/Risk Management Section have run and funded one seminar a year on depression. Additionally, Law Claims/Risk Management also sponsored two in-house sessions conducted at large firms in Adelaide.

4. Current mental health initiatives provided by the Law Society of Western Australia

In the Society's 2009 Membership Survey most members thought it was essential for the Society to address mental health issues among lawyers, including depression and anxiety. There was also high support for addressing issues of gender equality, bullying and sexual harassment. Responding to this feedback, the Society, pursuant to its Strategic Plan 2010-2013, Key Result Area 1, Strategy 3, is tasked with fostering more supportive and healthier workplaces across the profession through support of profession-wide initiatives to create healthier workplaces both psychologically and physically.

The measures and targets of these key outcomes include the increase in awareness and satisfaction with the LawCare (WA) program, the Senior Advisors Panel and the Mentoring Program. The existing programs in this area are discussed below.

(a) LawCare (WA)

LawCare (WA) was established in October 2004 as a call-in counselling service for Society members. It was intended to be an independent confidential counselling service for legal practitioners, and for their families, friends and colleagues (the latter where they are concerned about a practitioner).

The Society's webpage currently provides the following information on the service:

LawCare

LawCare is a confidential counselling service designed to assist legal practitioners who are facing professional and/or personal challenges. Any legal practitioner can contact the LawCare service for assistance with personal or psychological problems affecting their professional function.

A legal practitioner's family, friends or colleagues can also access LawCare if they are concerned about a practitioner.

Simply call (08) 9480 9200 for assistance 24 hours a day, seven days a week.

Important Information about LawCare

Why was LawCare Established?

The professional role of a legal practitioner is to deal with other people's problems. The demands of this role and the long hours worked generally mean that legal practitioners are likely to neglect their own problems. These problems may be stress, burnout, depression, a family crisis, matrimonial difficulties, substance abuse or impaired health.

How does LawCare Work?

All you need do is telephone (08) 9480 9200 for assistance or just to talk 24 hours a day, seven days a week.

The call centre will contact a general medical practitioner who will respond to your call during normal surgery hours. The Law Society of Western Australia has appointed a panel of general medical practitioners, all of whom have broad experience in social and psychological problems. These general medical practitioners have direct referral access to selected psychiatrists and psychologists.

Confidentiality

Confidentiality is paramount. LawCare operates independently of the Law Society of Western Australia. No details whatsoever are provided to the Society.

What is the Cost of using LawCare?

There is no cost to use the telephone referral system; this is funded by the Society.

Once a face-to-face consultation with a medical practitioner is established, normal fee structures apply.

Urgent Assistance

The general medical practitioner may not be able to respond to your call immediately, therefore if urgent attention is required (especially after-hours) please contact your nearest hospital.

Legal practitioners, their family, friends and colleagues can all access LawCare 24 hours a day, seven days a week, on (08) 9480 9200

Useful Links:

- Beyond Blue*

The LawCare service was intended to be accessible via a local Perth number and to be available 24 hours, seven days a week free of charge to Society members.

The phone number provided to members is directed through a call centre which is responsible for facilitating contact with a general medical practitioner. The call centre telephonists are not, however, counsellors or in any way connected to the general practitioners to whom phone calls are referred.

When LawCare was established it was envisaged that there would be a panel of general medical practitioners who had experience with social and psychological issues. These practitioners would take calls as they were referred to them and consult with those in need as required. On consultation with these general medical practitioners, it was further envisaged that a referral could be facilitated for the individual to access further counselling support through an external psychologist or other relevant professional, with any further support at the expense of the individual.

Under the current LawCare model, once a caller has been registered with the call centre they will only be contacted by the general medical practitioner during normal surgery hours.

In the event that an individual requires urgent assistance they are directed to contact their local hospital.

The basic LawCare service is provided at a relatively low cost – approximately \$300 per annum for the corporate call service facility and approximately \$20 per mobile message contact (approximately 18 calls per annum) ie approximately \$700 per annum.

Unfortunately, it appears that in recent years LawCare has not proven as successful as initially hoped for. Specifically, it has proven difficult to maintain and co-ordinate the panel of medical practitioners and it appears that of late no one individual has been charged with maintaining the service and ensuring that it is meeting its objectives.

The current program has also failed to grow and adapt to the changing face and needs of the legal profession. The service is not currently available out of hours, or to Society staff, it is poorly marketed, does not offer training programs, information sessions or online resources

for practitioners individually or for law firms wanting to address issues of anxiety and depression in-house. Generally, it does not offer the type of information and assistance needed in light of what is now known about issues of depression and anxiety in the profession.

(b) Senior Advisors Panel

The Senior Advisors Panel is intended to provide legal practitioners direct access to experienced colleagues who are senior lawyers who agree to be available to discuss legal practice and business issues, professional conduct and ethical issues.

All discussions are to be conducted on a confidential basis. Advice given by members of the Senior Advisors Panel does not constitute legal advice. There is no lawyer/client relationship unless specifically agreed to between the practitioner seeking assistance and the panel member.

Members of the Senior Advisors Panel can be contacted directly. Alternatively, practitioners seeking assistance can telephone the Society for a referral to a panel member with relevant expertise.

The Senior Advisors Panel service was further reviewed following discussions by the Society's Ethics Committee and considered by Council at its meeting on 7 December 2009 where it was resolved that the Society support a joint initiative of the Society and the Western Australian Bar Association for a referral service to senior counsel for assistance with ethical issues. It was agreed that this referral service should be available to both members and non-members.

Members of the Ad Hoc Committee researching current Society initiatives in the area of psychological distress and depression in the legal profession contacted members of the current Senior Advisors Panel to determine the utilisation of the service, whether that utilisation was by a cross-section of the profession and whether it was an effective forum for assisting professionals who may suffer anxiety/profession.

The number of calls to the Senior Advisors Panel who responded indicates a varying level of use of the service. Some Panel members had up to 10 contacts, while others had considerably less. Some reported no contacts made. Of those calls, the practice experience of the practitioner seemed to vary from very junior to more experienced. Matters discussed predominantly involved ethical and some procedural and 'relationship with principal' issues. Those Panel members responding noted that the matters discussed did not directly relate to anxiety and depression.

The overall impression is that the service is under-utilised generally and that when it is used it is best suited to the discussion of specific ethical and legal issues rather than as a forum to seek help or advice in relation to anxiety or depression. It is noted that while this was not the objective of the Panel, this forum is currently one of the few options available for the profession to discuss difficult matters with senior members of the profession

The Ad Hoc Committee also noted that a number of practitioners have expressed concern that the senior practitioners are not able to provide assistance in relation to legal practice complaints or disciplinary matters – an issue of considerable concern and the cause of considerable stress and anxiety to those the subject of complaints.

There is clearly a need for practitioners to have 'an experienced sounding board' to deal with difficult mental health issues and varied legal issues or complaints relevant to legal practice.

The Seniors Advisory Panel was not intended to cover these areas, with its focus being more on ethical matters.

The Panel appears to be fulfilling the role for which it was designed. Unfortunately, many practitioners are not aware of its existence. The Panel's existence and role needs to be better promoted to increase awareness amongst the profession. Another issue is that members of the Senior Advisory Panel often cannot help a practitioner if the issue is more than 'an ethical issue' as they are not necessarily equipped to identify 'stress' or deal with a 'stressed practitioner' and do not currently assist with complaint issues facing practitioners.

(c) Mentoring Program

The Law Society's Mentoring Program is a formal program supervised by a mentoring consultant and offered to junior practitioners. The Mentoring Program was initially conducted for 3-4 years in the early 2000's and was then re-established in 2008 when funding became available from members of the Corporate Law Firms Association of Perth (CLAP). CLAP has generously sponsored the Mentoring Program with member firms providing \$1000 each for 3 years. The funding is provided to pay the facilitator (approximately \$6000 per annum) and also to cover the administrative requirements for the Program which, while initially involving a Junior Practitioner Program, is also anticipated to cover an Aboriginal Law Students program to be established in 2011.³

The Mentoring Program involves pairing senior members of the profession (mentors) with junior members of the profession (mentees), in order to set up a mentoring relationship between the two practitioners concerned.

In order to be eligible for the program, junior practitioners need to have been admitted for less than 5 years as at the present year, be a financial Ordinary Member of the Society and be available to participate in the program between June of the present year and March of the following year. Articled Clerks/Graduate Lawyers are not included in the program due to the assumed mentoring role of their principals.

Expressions of interest are sought from senior members of the profession and the judiciary to act as mentors. Junior practitioners are also asked to register their interest to be a mentee. All EOIs are advertised through Friday Facts (the Society's weekly e-newsletter to members), as well as on the Society's website. Both mentors and mentees are required to fill out a registration form with details of their particular areas and type of practice.

Both mentors and mentees are required to attend training sessions to be trained in the skill of maintaining a mentoring relationship. Relevantly, however, these training sessions do not appear to cover issues of mental health, stress managements and general wellbeing.

The Committee was advised that in 2008 and 2009, following the training sessions, the mentors and the mentees were 'matched based on personalities observed' and the 'wants' listed by mentees at the training session. The mentees were then contacted to discuss their proposed matching prior to any contact being made with the mentor to ensure that successful matches were made. In the mentoring arrangement, the mentor and the mentee arrange to meet approximately each fortnight. After this, the mentoring consultant maintains regular contact with both the mentor and mentee to monitor progress of the mentoring relationship and objectives.

³ Women Lawyers (WA) also conducts a mentoring program for all female practitioners but this Report will not address that program.

Below are summaries of some of the information compiled from the 2008 and 2009 mentoring programs:

2008 Program: Expressions of interest were received from 11 prospective mentees. Subsequently, 11 mentors were chosen (10 originally applied and a member of the judiciary stepped in to assist). The mentors came from a diverse range of practice areas and some were members of the judiciary. The 11 mentees comprised of 9 women and 2 men.

The Committee is advised that some of the mentoring relationships were deemed to be so beneficial that the parties decided to continue their mentoring relationship beyond the 12 month period allocated.

2009 Program: Expressions of interest were received from 15 prospective mentees. A subsequent number of mentors were then chosen. Of the mentees, 11 were women and 4 were men. The mentees came from the following practice areas:

- Large law practices (3)
- Small law practices (7)
- Government (3)
- Community legal centres (3).

Four mentees were unable to participate due to personal reasons, but indicated that they hoped to participate in the following year's program.

Participants were asked to complete a feedback form. Based on feedback received it appears that the program was very successful, with positive feedback about the beneficial assistance that the mentoring relationship provided. The 2010/2011 program currently has 13 mentee/mentors participating.

It is anticipated that the members of CLAP will provide funding for a further year. Funding for the Program beyond that time is not certain. There are clearly benefits for those participating in the Program and much support for it to continue being offered, particularly to those junior practitioners not able to access formal mentoring programs within their own firms or organisations. Given the demonstrated benefits it is important to provide certainty for the Program's future and funding sources (be that private or public) should be investigated to provide certainty for ongoing mentoring programs for both Young Lawyers and should it be appropriate (following feedback from its first intake year) the Aboriginal Students' program.

(d) Graduate Telephone Advisory Service

The telephone advisory service was established in 2008. Expressions of interest were sought from members of the profession to provide advice on issues of concern to graduates/articled clerks. All discussions are conducted by telephone on a confidential basis and advice given by panel members does not constitute legal advice.

There is no lawyer/client relationship unless specifically agreed between the graduate and the Panel member. The service is promoted under the Profession/Young Lawyers tab on the Society's website. Panel members give their time free of charge. As such, the service requires limited resourcing from the Society.

Enquiries were made with a number of practitioners on the current Panel as to their experience on whether or not the service was being well utilised. All of the practitioners noted that they had received only a handful of calls during the time they had been part of the

program. One practitioner said that he hadn't received a single call in the time he had been a member of the Panel.

In terms of the callers themselves, most of the panel members advised that calls received had been predominantly from articulated clerks. One panel member had received a call from a law student. Of concern, some of the articulated clerks were described as being extremely distressed and were seeking advice on how best to extricate themselves from their present employment situation.

The panel members advised that they were surprised by how few calls they had received and questioned whether this was due to a lack of knowledge about the existence of the service. Others felt they were poorly equipped to deal with distressed callers. Relevantly, none of the panel members appear to have received any training or provided information sessions or information generally on mental health issues and the resources available to those in crisis.

(e) Member Privilege Services

Society members are provided discounts on a range of personal and professional products and services through a member privileges program. Members are given a membership card which entitles them to certain discounts for services ranging from therapeutic massage services, health club memberships and a personal concierge service. All membership benefits and services are promoted in a booklet to new and renewing members and on the Society's website with existing and new products and services profiled weekly via Friday Facts.

Acknowledging the importance of product offerings in the area, the Society's member privileges specifically contain a 'wellbeing' category of products and services and include:

- Ascend Physiotherapy, which offers a 10% discount on its physiotherapy/massage services;
- Cove Health Spa, which offers discounts in memberships (four members accessed the offer);
- CBD Health Spa, which also offers discounted membership fees (two members accessed the offer);
- Finer Details – offers 10% discount off service fees and includes personal concierge/errand services from booking tradespeople, researching holidays through to organising and de-cluttering;
- Accommodation and Travel service discounts are also available.

The Society, in conjunction with the Women Lawyers (WA), is also currently investigating a joint initiative Privilege for the provision of emergency and non-urgent child care and elder care, for members. This initiative is to be encouraged.

Each Society Privilege Provider is audited annually by the Society to ascertain member take-up of the product or service. Audit outcomes indicate that few wellbeing privilege provider discounts currently available are widely used with minimal health club membership take-up and approximately 10 members accessing the Ascend physiotherapy/massages last financial year.

There was some suggestion by Ad Hoc Committee members that the Society investigate a health insurance package for members that incorporate regular general health and wellbeing check-ups (eg an Executive 'physical' assessment) coupled with other wellbeing incentives.

(f) Continuing Professional Development

The *Legal Profession Act 2008*, along with the *Legal Profession Rules 2009* and the *Legal Profession Regulations 2009*, came into effect on 1 March 2009. Practising Certificate holders in Western Australia are now required to comply with the *Legal Profession Rules 2009* relating to continuing professional development.

The CPD year commences on 1 April and ends on 31 March the following year. In each year a minimum of 10 CPD points must be completed in order for a practitioner to renew their Practising Certificate. It is required of each practitioner to complete these 10 points from the following Competency Areas:

- Competency Area 1: Legal Skills or Practice
- Competency Area 2: Ethics or Professional Responsibility
- Competency Area 3: Substantive Law

Dependent upon their level of post-admission experience, practitioners CPD requirements may vary, as follows:

Less than five years practising (as at the commencement of CPD period)			
Competency Area 1	Legal Skills or Practice	Minimum 4	CPD points
Competency Area 2	Ethics or Professional Responsibility	Minimum 4	CPD points
At least five year practising (as at the commencement of CPD period)			
Competency Area 1	Legal Skills or Practice	Minimum 2	CPD points
Competency Area 2	Ethics or Professional Responsibility	Minimum 2	CPD points

The Society is widely regarded as the leading CPD provider in the state and the current CPD committee structure and Society CPD team is very strong.

The importance of a preventative approach aimed at raising awareness of psychological distress, anxiety and depression within the profession is clear. A well-crafted and focused educational program is a key element in this approach. If further incentives for attendance can be provided through appropriately developed seminars and workshops that meet the requirements of the prescribed competency areas and attract CPD points, this is to be encouraged.

In recent years, however, it appears that very few, if any, of the Society's CPD seminars have specifically addressed issues of mental health and wellbeing. The Law Office Management Committee did offer a seminar on Bullying and its impact in the workplace. Unfortunately, this seminar was cancelled due to lack of registrations.

Over the past two years the YLC has conducted a Winter Wellness seminar which is sponsored and provided free of charge.

Unfortunately, attendance at the seminar has been low, with only 12 participants in 2010. There is some doubt as to whether this seminar will be continued in 2011.

While not an educational program per se, the YLC also offers sporting events throughout the year including netball, volleyball, touch football and boot camps, acknowledging the importance of physical activity generally including its important relationship to good mental health and wellbeing.

The Ad Hoc Committee received feedback that practitioners are reluctant to pay for a seminar that does not address a “core” practice area or where there is a perception that their attendance indicates a ‘problem’ (eg in relation to bullying or depression).

Others indicated that these issues are better addressed by Law Mutual as part of their annual Risk Management seminar series that all insured lawyers must attend. This is discussed in more detail below in relation to future seminar options and recommendations.

(g) Law Mutual – Risk Management Seminars

Under the *Legal Profession Act 2008* the Society is required to make professional indemnity insurance arrangements for practitioners and former practitioners. Under the *Legal Profession Regulations 2009*, the Society is required to enter into arrangements with one or more insurers for professional indemnity insurance for practitioners and former practitioners.

Law Mutual (WA) is a registered business name and is operated by the Law Society of Western Australia. Law Mutual (WA) administers the compulsory professional indemnity scheme to legal practitioners (**the “Scheme”**).

The Society is not licensed under the *Corporations Act 2001* in relation to the operation of the Scheme, and the Scheme is not regulated under the *Insurance Act 1973*.

The three major functions of Law Mutual (WA) are to:

1. Obtain competitively priced insurance coverage for Western Australian law firms;
2. Implement risk management strategies to reduce the instances of claims; and
3. Establish an efficient claims management service.

Law Mutual runs compulsory annual Risk Management Seminars for practitioners registered through the professional indemnity insurance arrangements.

To date, it does not appear that many of the risk management seminars have covered issues related to mental health and wellbeing. In 2004/2005, the risk management seminar topic was ‘The Stressful Life of Us’ and focused entirely on identifying stress, strategies and work practices that could lead to stress and anxiety. More recently, the seminars have touched on these areas. For example, this financial year’s topic ‘Supervision’ included the identification of stress as part of supervision which did promote some discussion on mental health.

The Ad Hoc Committee notes that this perceived lack of focus or assistance in this area was of concern to some practitioners given the quite evident links between poor mental health and the types of work practices that frequently result in insurance claims against practitioners trying to cope with poor mental health or stressful personal or professional circumstance.

While some Law Mutual seminars have addressed the types of issues that cause stress and anxiety, like dealing with complaints to the Legal Profession Complaints Committee there is generally support for more seminars of this type. It is noted, however, that this alone will not address the types of underlying mental issues affecting practitioners that often result in complaints to the LPCC.

Given Law Mutual's appreciation of the types of matters and circumstance leading to claims and complaints they are well positioned to build on the important content of their Risk Management seminars. This is discussed in more detail below, as are recommendations for future seminars.

(h) Brief Journal

Brief is the Society's key resource for informing the profession. With 11 issues published annually, Brief is widely recognised as an important tool for members to keep up to date with important developments on state, national and international legal matters and related matters of interest to the profession including practice management and wellbeing.

All articles are written by prominent figures within the profession and articles are intended to focus on topics of importance to the profession generally. Brief also contains details of upcoming events and CPD seminars

During the past 10 years, the following articles relevant to issues of mental health and wellbeing have appeared in Brief:

- December 2007: 'Depression and the Legal Profession' (Professor Geoff Gallop)
- June 2007: 'Depression among Australian Professionals' (LawCare)
- October 2004: 'Copying with the Costs of Success' (Jennifer Wright -- Clinical Psychologist)
- October 2004: 'Recognising Depression' (Dr Geoff Riley -- Associate Professor of Psychiatry)
- October 2004: 'Depression in Lawyers' (Melanie Naylor)
- June 2004: 'Stop Stressing' (Maria Saraceni)

Relevantly, it has been some time since the last mental health focused 'feature edition' of Brief in October 2004 and since a related single article was published in December 2007 on mental health issues. There do not appear to be any regular contributions or specialist sections on issues of mental health and wellbeing.

A number of the other societies throughout Australia incorporate regular sections or features on mental health and wellbeing. It has been suggested that a similar initiative involving quarterly articles be included in Brief and that a special feature edition of Brief be compiled to profile Council approved outcomes and initiatives flowing from this Report.

5. Discussion

(a) The Courting the Blues Report: what it requires

In determining whether the programs currently provided by the Society sufficiently address the findings of the *Courting the Blues Report*, it is worth reminding ourselves of the main findings of that Report:

1. *Assisting legal students and professionals with psychological distress is a task for legal and educational communities. It is not a problem only for the individuals with mental illnesses or psychological distress;*
2. *All legal training institutions and legal employers must take on the mental wellbeing of their members as a central institutional concern;*
3. *Members of legal institutions with an interest in mental health and psychological distress amongst their members should form special interest groups to promote the mental health goals of their institutions;*
4. *People working to reduce the level of psychological distress in the educational or work setting must maintain a focus on the known risk factors for psychological distress in their setting;*
5. *Mental health problems and psychological distress must be seen as legitimate health problems for which students and legal professionals can seek special consideration and support.*
6. *Education and information dissemination to all staff of legal institutions and training bodies is critical to the development of appropriate mental health practices.*
7. *The occupational health and safety implications of mental health and psychological distress in the workplace need to be widely recognised by teachers and management staff.*
8. *Law students and legal professionals need to be made aware of, and prepared for, normal forms of stress in the normal workplace.*
9. *Law students and legal professionals need to be made aware of the importance of developing different skills for managing workplace issues and personal issues.*
10. *While adopting styles of vigorous competition or high levels of caution in a particular workplace or educational setting may be appropriate, such styles of behaviour are not likely to have satisfactory outcomes in everyday life, or in a situation in which a person is struggling with psychological distress or mental illness.*
11. *Services aimed directly at assisting legal professionals or students with psychological distress or mental illnesses need to be reviewed, expanded and made more accessible.*
12. *The profession as a whole needs to identify those members who are isolated or poorly supported and offer them additional education, support and services.*

13. *The diversity of educational and practice settings will generate a wide variety of strategies for dealing with psychological distress and mental illness in different local situations.*

(b) A Systemic Approach for the Future

The *Omari Report* points out that a strategic, integrated and systemic approach is necessary to address the problem of workplace bullying and move towards dignity and respect for all employees at work. Suffice it to say, this applies to issues of depression and anxiety and mental health generally in the legal profession.

It is clear that the Society has long committed itself to addressing issues of mental health affecting its members. A review of existing strategies reveals, however, that more can be done and that the Society is committed to doing so.

No one strategy will address all issues of concern and there is no 'quick fix' solution to any shortcomings in the Society's current initiatives. However, progress can be made and recommendations aimed at 'getting things started' are discussed below.

It is envisaged that to ensure the important matters of mental health and wellbeing in the profession have a continuing and sustained focus and input, the Ad Hoc Committee will need to move from its ad hoc status to being a more permanent standing Society committee, tasked with assisting the Society implement and monitor any recommendations and any other ideas that will, inevitably, surface in the years ahead.

i. Suggestions for Change from the Young Lawyers Committee, the Ad Hoc Committee on Bullying and Law Mutual

Young Lawyers Committee

In reviewing current practices and examining ways to improve on what already exists, the Ad Hoc Committee took particular note of the submissions received from the YLC, the Society's Ad Hoc Committee on Bullying (**The "Bullying Committee"**) and Law Mutual.

The YLC suggests a three stage strategy as follows:

Initiatives/Action

It is submitted that the Ad Hoc Committee focus its resources, attention and any recommendations to the Council of the Law Society on three (3) main areas:

(1) Focus on "causes" (Stage 1)

- (a) There should be a focus on prevention and the "causes" of mental illness. In other words, a proactive and preventative approach rather than a reactive approach to mental illness should be adopted.*
- (b) It is acknowledged that this requires focus on the culture of law firms, which unavoidably will be a controversial topic. Careful consideration of the inherent sensitivities will be required.*
- (c) Suggested initiatives are:*

- (i) *endorse the Chief Justice's call to debate the topic of time billing (and alternatives to time billing) and facilitate, drive and lead such debate;*
- (ii) *lobbying the Department of Commerce (WA) and Workplace Ombudsman (Cth) for a campaign investigation into the compliance of employers of lawyers and law graduates with industrial laws (and in particular, working hours);*
- (iii) *calling on law firms to outline the initiatives being implemented (similar to the Mental Health Awareness Initiatives) to address the long working hours of lawyers, which is evident from the various surveys and studies;*
- (iv) *Executive of the Law Society work with leaders of the profession to move towards creating best practice work practices that set an example in the legal employment market in relation to working conditions and positive recognition and support for depression and psychological distress in the work place; and*
- (v) *expansion of the Law Society's Quality Practice Standard (QPS) program to include quality working conditions and workplace culture (including training and access to support) in relation to depression and psychological distress.*

(2) *Ongoing education (transition from Stage 2 to Stage 3)*

- (a) *Education is crucial in reducing the levels of anxiety and depression in the legal profession. Also, the Law Society is uniquely positioned in terms of access to legal professionals, communicating through diverse means, including via email (Friday Facts, for example) and in print (Brief).*
- (b) *Education should be aimed at:*
 - (i) *law students*
 - (ii) *lawyers;*
 - (iii) *employers (human resources and managers in the workplace); and*
 - (iv) *friends and family.*
- (c) *The focus of the education should reflect the aims of the resilience@law production and the areas identified in the Courting the Blues Report, being to:*
 - (i) *raise awareness and understanding of the impact of stress, depression and anxiety within the legal profession, including discussing factual issues about mental illness;*
 - (ii) *discuss the issues regarding the beliefs and behaviours of others toward people with mental health problems;*
 - (iii) *remove the stigma associated with mental illness;*
 - (iv) *encourage people to seek help where necessary; and discuss issues relating to institutional policies and practices regarding mental health of members; and*
 - (v) *advertise available services, networks and self-help strategies (including those provided by the Law Society and the employer).*

- (d) *Other avenues of communication should be explored, for example, 'sms', Facebook and Twitter.*
 - (e) *The YLC supports the strategic and integrated approach of awareness raising and training recommended by Dr Omari in her report dated August 2010*
- (3) *Provision of help (Stage 3)*

The Law Society should explore the provision, possibly through the expansion of its existing LawCare programme, of a free and confidential counselling service for members, similar to Employee Assistance Programmes (EAP) currently used extensively throughout the public sector, some NGOs and a number of the larger law firms. Such a service should be well marketed and promoted to members and the entire profession, along with other related available services.

The Bullying Committee

The Bullying Committee in turn wrote as follows:

In order to implement Dr Omari's recommendations and deal appropriately with psychological distress and depression, the Bullying Committee supports a carefully planned and structured program of awareness raising and training. Ideally, such training should be made available to not only legal practitioners working within law firms, companies, NGOs and government agencies, but also barristers (i.e. members of the WA Bar Association), judges, magistrates and state and federal tribunal decision-makers.

The need for judges and magistrates to be included in anti-bullying initiatives has been raised by a member of the Law Society Council at the Council meeting attended by the Convenor of the Bullying Committee – the Bullying Committee would support such a move.

In order to ensure that the bullying, depression and psychological distress awareness raising and training reaches members of the legal profession who may not be members of the Law Society or who may not normally engage in continuing professional development training organized by the Law Society, such as officials of the Legal Practice Board, members of the Bar Association of Western Australia, the judiciary, and tribunal decision-makers, the Bullying Committee suggest that the Law Society liaises through the appropriate communication channels with the leadership of those organisations to ensure that the training is made available to the relevant persons.

Such training could be delivered to segments of the legal profession variously through the compulsory Law Mutual risk seminars, the Law Summer School 2011 (a joint effort between the Law Society of Western Australia and the University of Western Australia's Law School), CPD seminars conducted by the Law Society, the Legal Assistants Training course run by the Law Society, educational seminars conducted by the WA Bar Association for its members such as the annual Bar Readers course and CPD Seminars, and judges' conferences. The College of Law should also be approached regarding the delivery of training to students undertaking practical legal training.

A policy against bullying, harassment and discrimination

Dr Omari reported two main statistically significant findings (paragraph 77 of the Omari Report):

- *Organisations with anti-bullying policies had significantly lower reported incidents of workplace bullying.*
- *Bullying is more prevalent in organizational climates where there is a low organizational 'structure' (i.e. poorly defined tasks, roles and responsibilities).*

The Bullying Committee is currently in the process of developing a model policy against bullying, harassment and discrimination for legal practitioners. It is hoped that that policy once finalized will be placed on the Law Society website in order to assist small firms that do not have such policies in place to develop their own policies.

The Bullying Committee also considers that it would be desirable for the Law Society to have a designated contact officer among its employees with expertise in developing anti-bullying policies in order to assist small firms that do not have the resources to employ HR professionals to develop such policies. Such a contact officer could also assist firms to develop workplace structures in order to better define the task, roles and responsibilities to avoid low organizational structure.

Professional Courtesy

The Bullying Committee understands that the Ethics Committee of the Law Society has been developing ethical and practical guidelines which, inter alia, deal with professional etiquette. The Bullying Committee considers that any revised set of professional etiquette guidelines published by the Law Society should include a requirement that professional courtesy must be extended by practitioners to other practitioners within the same firms as well as externally.

Professional Conduct Rules

The Bullying Committee understands the adoption of new professional conduct rules has been under discussion by the Legal Practice Board and the Law Society. Whether the WA profession adopts a locally drafted set of rules or a national set of rules, the Bullying Committee considers it essential that those rules expressly proscribe bullying, harassment, and discrimination by legal practitioners.

Excessive billable hours targets – impact on psychological health

The Bullying Committee considers that imposing excessive billable hours targets upon employees and adopting an unhealthy focus on billable hours in measuring employee performance may in some circumstances constitute bullying and/or cause depression or other psychological distress and depression.

Conclusion

The Bullying Committee would like to ensure that the initiatives of the Ad Hoc Committee include, as far as possible, a program of awareness raising and training as recommended by Dr Omari.

In order for the Bullying Committee to develop and co-ordinate strategies to implement Dr Omari's recommendations, should they receive approval from the Council of the Law Society, the Bullying Committee considers that one or more full-time staff

members of the Law Society with the appropriate skills and knowledge should be appointed to the Bullying Committee.

The Bullying Committee considers that it is beyond the capacity of its voluntary members to make the necessary administrative arrangements to implement Dr Omari's recommendations in a timely and effective manner. It may be that the PDD Committee either already has, or will similarly require, such support. In that event, a common support person(s) would be desirable to ensure that the initiatives of both committees do not overlap.

Law Mutual

Ms Anne Durack (Executive Manager Claims & Risk and Member of the Ad Hoc Committee) in a submission to the Ad Hoc Committee wrote as follows:

It is my view Law Society should be focusing on strategies to assist practitioners identifying stress early in themselves, staff or colleagues and to give guidance to practitioners as to options to resolve issues early.

From a practical perspective, lots of issues arise from too much work, inability to say no, dealing with difficult clients, dealing with difficult colleagues, the nature of adversarial legal work, time pressures and dealing with legal practice complaints. Some of the measures that could be taken to assist practitioners could be:

Availability of locums who could assist when excessively busy or wanting leave. There are many experienced practitioners who may not be working full time who may be able to be interested in working as locums. Practitioners, especially sole practitioners, tell me they can't take time off work because there isn't anyone that can look after their practice. Whilst the Law Society does have a sort of locum list, it is not kept up to date or advertised widely amongst members for names to be included.

There is a need for practitioners to have "a sounding board" to deal with difficult issues. The Seniors Advisory Panel was originally intended to fill this gap, with ethical issues. To some extent it appears to be fulfilling that role. The difficulty seems to be that many practitioners are not aware of its existence. Its existence and role needs to be advertised more frequently to increase awareness amongst the profession of its role. Another issue is that members of the Senior Advisory Panel often cannot help a practitioner if the issue is more than "an ethical issue" as they are not necessarily equipped to identify "stress" or deal with a "stressed practitioner".

In many Law Societies in Australia and overseas, the Law Society has a staff member who is a legal practitioner who can provide some practice management assistance. Law Mutual does this for insured practitioners when notified of the circumstances that give rise to a claim.

Practice Assessments: There is no assistance available for practitioners and most do not know where to look. In other states, there are organisations that can be utilised to provide practice assessments and recommendations. Law Mutual is looking at providing some assistance in this area for "at risk" firms but the programme could be made broader.

Resilience Training — Legal practice involves dealing with difficult situations, whether it is from clients or the nature of work. Lawyers on the whole are not trained in this area. Some lawyers are good at it, others are not. I suspect many practitioners would be interested in some training in this area and the Law Society could give consideration to running some resilience training courses at a reduced fee or advising practitioners where to go for such courses.

Assistance with dealing with complaints — Many practitioners need assistance when a complaint is made against them and many have no idea where to turn. In 2008 Law Mutual (WA) ran risk management seminars on "how to handle complaints". It provoked a lot of anger from the participants as to how complaints are handled by the Committee [Legal Profession Complaints Committee] and this seems to be continuing. Discussions could be held by the Society with the Board regarding some of the processes adopted by the Committee and processes set up that may alleviate some of these issues without destroying the integrity of the Committee's role.

Training in identifying stress — In 2005 Law Mutual ran seminars on identifying stress in practitioners and clients and provided some strategies to deal with these situations. The feedback was very good and it certainly increased awareness amongst practitioners. The recent Resilience@Law DVD that has been produced also raises awareness and consideration should be given to show it to the profession at large.

Articles in Brief — Many societies overseas include regular articles on this topic. I would suggest that a regular article be included in each edition, starting with the solicitors that are provided and continuing with tips for dealing with different scenarios. Law Mutual has some material that could be of use but I would suggest a professional in this area be asked to provide some input.

Following a request to provide further information on practice assessments – what the process potentially involved and how they might be utilised – Ms Durack provided the following:

The aim of these is to assist practices in practice management, identify area of risks and suggest strategies to reduce the risk. Stress is often exacerbated or caused by inefficient or out of date work habits. If these causes can be alleviated it may assist in reducing levels of stress in WA practitioners.

The assessor looks at the way the firm operates, the systems for taking on matters, file management and staff supervision (if appropriate) and the process used in handling matters and dealing with complaints. In Queensland the insurer has done such an assessment on all firms in Queensland. South Australia offers the service for firms and has independent contractors who are former claim solicitors at law claims doing them. I am attending a meeting of all risk managers in Australia in the first week in February and will be seeking more information as to the process and cost of these assessments.

We get many enquiries from practitioners when they first set up as to how to start and such an assessment may be a good tool. When practitioners are floundering this assessment may assist to get them back "on track".

Law Cover in New South Wales does practice assessments for firms at risk which have been identified from claims histories. It is designed to assist such practices to remedy "bad habits" so their claims history can improve in the future. Law Mutual in conjunction with our Underwriters are looking at doing these types of assessments for some of our "at risk" firms in 2011 but the process has not been finalised as yet nor the person who will be doing them been appointed.

ii. Reforming LawCare (WA): Working with PPC Worldwide

In November 2010, the Convenor of the Ad Hoc Committee and the Executive Director met with WA-based medical practitioners to determine how best to re-invigorate LawCare. It was

ultimately agreed that, for a number of reasons not canvassed here, the current call centre/GP panel system was not working and would be very difficult to reform in the current climate. It was noted that the current model is quite narrow in its focus and is not able to provide a broader approach incorporating preventative measures to psychological distress and depression – the existing model having more of a role once a problem has arisen or a person is already in crisis.

Having investigated those organisations that could potentially provide the broader ‘front-end and back-end services’ for a LawCare program the Convenor then met with national service providers who provide employee assistance program models involving broad-based education and awareness strategies, mental health assistance and counselling services to legal and non-legal firms and organisations similar in size and mandate to the Society and its membership.

Of those service providers canvassed, the Convenor was most impressed with the overall strategy and experience in the sector demonstrated by PPC Worldwide (“PPC”).

The Convenor worked with PPC to develop a proposal best suited to the Society’s objectives, its members and staff.

PPC has been providing Employee Assistance Programs and associated organisational development and consulting services since July 1993. It has grown to become one of the largest, national providers of EAP and organisational development support to a diverse range of over public and private clients across Australia. These include the Community Legal Centres WA, Federation of Community Legal Centres (Victoria) Legal Aid WA, Legal Aid Vic, Commonwealth Director of Public Prosecutions, Aboriginal Legal Service (WA and NSW) Department of Attorney General WA, and, as well as a number of mid-tier and large national firms.

PPC was asked to provide the Society with a comprehensive proposal outlining the services it could provide to improve the current LawCare program and meet the objectives of providing a broad-based approach to the program offering.

Relevant sections of PPC’s Proposal are highlighted below.

The Benefits for the Society of Using PPC

Relevantly, the benefits of the PPC proposal can be summarised as follows:

- Service will cover a broad range of issues including work, family, marital, and personal matters;
- 24/7/365 access to a live call handler to respond to enquiries, book appointments or facilitate emergency support;
- Access to three (3) sessions of counselling support (paid for by the Society), with referral to external providers as need is identified;
- Services to be deliverable via face-to-face, telephone, Skype and online modalities;
- Services accessible across both metropolitan and regional areas;

- Ensuring continuity of counsellor for individuals attending for multiple sessions;
- Adherence to high levels of confidentiality;
- Access to PPC Online, providing allied information and interactive support programs;
- Delivery of targeted debriefing strategies for individual's experiencing vicarious trauma or simply overwhelmed by their work. This can take the form of preventative screening and support to minimise the accumulative impact of an individual's work;
- Supporting the Society's education and awareness strategies, whether this be via face-to-face briefings, or through such opportunities as articles to be written in the Society's magazine and seminar presentation to members;
- A 'Manager Hotline' counselling, support and advisory service for people managers/leaders/human resources to assist them in implementing timely and effective people management practices; and
- Regular reports delivering de-identified data on utilisation of the program that will assist the Society in its ongoing support of its members and employees.
- Services to be available to all Society members and Society staff.

PPC's Method of Referral

PPC offers a comprehensive self-referral Employee Assistance Program ("EAP"). In programs of this sort, individuals voluntarily refer themselves for counselling or may be encouraged to seek counselling by a manager, supervisor, peer or family member.

Self-referral to the EAP can be accessed through two mediums. Via PPC's dedicated 1300 number, Society members and staff would be able to schedule general counselling sessions via face-to-face and telephone mediums, or access short-term crisis intervention.

Alternatively, members and staff will be able to access web based self-help via PPC Online. Through PPC Online, Society members and staff will have access to an information e-library, make general enquiries (Email@ssist), make enquiries with a counsellor (Ask the Psychologist) and participate in personal development programs (Health Steps Online).

Access to general counselling can also occur via referral in some circumstances from peers or family members. In all such cases PPC would still require the consent of the individual accessing support. Further, members can be referred into the EAP's general counselling service via identification by a counsellor or consultant during the delivery of any other associated PPC service.

How are appointments made for non-urgent calls?

PPC ensures that EAP counselling is accessible by calling PPC's toll-free 1300 number. PPC will provide appointments within 2-3 business days where appropriate or as agreed upon between the parties.

During normal business hours, 7.00am to 7.00pm EST, all calls are answered by a Service Representative who identifies the needs of the caller, collects contact information and books an appointment at a PPC office or contact a local Associate to facilitate an appointment.

Appointments are typically of one (1) hour duration and can be face-to-face or via telephone, with telephone based emergency/triage counselling services available 24 hours/365 days per year.

Urgent calls

Where crisis intervention is required PPC is committed to ensuring contact is made with a counsellor **on the same day**. Service Representatives are sensitive to clients in distress and will organise a counsellor to respond immediately or as soon as possible depending upon the nature of the call and the issue(s) presented.

After Hours Calls

Outside normal operating hours PPC uses the services of trained health industry operators from a national answering service in partnership with a roster of PPC counselling staff, thus supporting a **24 hour, 7 days a week emergency counselling service**. If an after-hours call is identified as 'urgent' the caller is transferred immediately to an on-call counsellor. PPC does not use answering machines to support this service. If the call is not 'urgent' a Service Representative will respond to the call on the next business day.

Confidentiality

PPC's commitment to maintaining client and organisational confidentiality starts with the first contact with PPC, based on a clear Privacy Policy that complies with legislative requirements. Confidentiality is vital for the EAP's integrity and success and PPC has long established procedures to ensure its practices and systems are rigorously applied.

All appointments are made directly with PPC and not through a third party, and individual information obtained during counselling sessions is strictly confidential. Only with the written consent of the member or employee will information be released to the any other third party.

External Referral Services

PPC counsellors are experienced in recognising when a client will require a referral for ongoing or specialist treatment. PPC counsellors will facilitate appropriate referrals to other professionals or agencies where necessary, and will support the client until the referral process is successfully completed.

PPC has established a comprehensive database regarding treatment and support agencies and professionals available in local communities. The counsellor will assess the appropriate service for the individual and support them through the transition into the most suitable community based service, taking into account the capacity of the individual to access privately or government funded services and support them until the service is available.

PPC counsellors have developed an extensive network of specialist providers and other services to meet client needs. Referral to other service providers would be free for Society members and staff. The costs of the service after referral are expected to be carried by the individual client.

External referrals are made in the following circumstances:

- The client is assessed to require specialised assistance: e.g. psychiatric support, alcohol/drug detox;
- In situations where the client has a need to undergo longer-term therapy;

- When there is a requirement for specific assessment: e.g. Neuro-psychological concerns;
- Where clients require information and group support from others experiencing similar difficulties: e.g. Cancer Council;
- PPC also refers to selected psychiatrists and clinical psychologists according to the need, the health insurance status of the client and the specialist skills of the practitioner.

Manager Support/Manager Hotline

At the Ad Hoc Committee's request, PPC has suggested offering those Society members and members of Society staff who are supervisors, managers and team leaders access to PPC's Manager Hotline facility, a telephone-based 'helpline' for brief support and advice on people related issues -- both clinical and other. The hotline is accessible 24 hours, 7 days week and is a highly effective and valuable component of the EAP offering.

The breadth of advice and support sought is extensive and the service comprehensive. It is designed to provide a "sounding board" and support to managers seeking reassurance in relation to a managerial decision or conversely assisting in understanding the problem and then in consultation formulating a solution.

PPC notes that in their experience, one of the key outcomes of this Hotline is that it assists callers in understanding a situation's risk factor(s) and severity. (Manager Hotline is not designed to provide industrial relations information and discussion is always referred back to organisational procedures, protocols and HR.)

Exec@ssist

Due to the increasing demand for online services PPC has available a specialised capability for managers and executives: Exec@ssist. Similar to the Manager Hotline, Exec@ssist provides managers and team leaders the opportunity to seek specialised advice and support through a dedicated and confidential online facility. This facility is managed by PPC's National Director Clinical Services who will either respond directly or field the response to the most appropriate PPC manager in the region from which the question came.

Information Packs

PPC will provide the Society with an online information pack for leaders, providing them a practical guide to the EAP which will address such areas as key program information on the services available, the EAP as a manager support tool, recognising when there may a problem, identifying the problem, approaching the employee and making referrals to the EAP. PPC offers the Society the opportunity to consult on the manager pack to tailor the information provided in line with any organisational specific policies and procedures.

Trauma Response Services

Trauma Response Services relates to any sudden and unexpected critical incident which has the potential to significantly impact on an individual or group's physical, emotional or psychological wellbeing and sense of safety. In addition to issues such as physical threats and assaults, PPC notes that it can include a wider range of issues such as terminal illness, death or suicide of an employee.

PPC responds to an organisation’s critical incident support request immediately, ensuring that PPC intervention is tailored to align with trauma response, protocols and needs. On-site attendance is guaranteed within two (2) hours in the metropolitan area, and as soon as practicable in regional areas (within 24 hours, subject to distance and travel times). These services would be made available to access by members but given the variability of service needs that may be required, access to the service would be at the member’s cost.

PPC Online Services

PPC will offer all members the services available via PPC Online – a comprehensive and interactive e-library, Q&A and information resource.

This service would provide members and employees with a highly professional, confidential, up-to-date and well-researched self-help tool and ‘entry-point’ to the EAP. There are those individuals who would not immediately consider the EAP or counselling as their first or preferred option for solving a problem or getting assistance. PPC Online and the services offered through this ‘enabler’ will offer an alternative to those people.

Marketing and Education

PPC has gained extensive experience in the marketing and promotion of mental health related services and the EAP services as part of its core business. In that regard, PPC has established a national in-house marketing function in conjunction with an external marketing company, developing marketing strategies to meet client needs and delivering contemporary and effective promotional materials for distribution to EAP users.

The Society explained to PPC that the Society wished to continue to manage the creation and distribution of marketing materials to its members and employees utilising the LawCare (WA) branding for the program. PPC has advised that they are able to work with the Society’s key stakeholders to assist them tailoring Society developed materials with PPC assisted content to meet the evolving need of the program, its members and staff. This would include discussions regarding the effectiveness of existing communication channels and promotional activities implemented, in addition to the sharing of successful strategies implemented by PPC with other like organisations. Education and awareness strategies will be monitored throughout the life of the program to ensure their continued effectiveness.

Fee Schedule

PPC has proposed the following fees (based on Society membership numbers of approximately 3,000 and employee numbers of 30).

EMPLOYEE ASSISTANCE SERVICES			
Annual Management Fee with Fee for Service Delivery			
	Cost Per Hour (excluding GST)	Annual Charge (excluding GST)	Comments/Notes for other charges
Fee for Service	\$145 metro area, \$160 regional WA and other states	\$4 per head covered. Waived for the Society	per hour

Annual Management Fee	–	Not requested	per annum
<p><u>Service offering under fee for service hourly rate</u> EAP counselling services for employees, eligible immediate family and friends, with a 3 session allocation per individual per annum, which includes the following:</p> <ul style="list-style-type: none"> • Off-site short term face to face counselling • Telephonic • Online inclusive of Email@ssist, Exec@ssist, Finance@ssist, Mortgage@ssist, Ask The Psychologist, Ask the Carer and Skype Counselling • Online Cognitive Behavioural Therapy Program – “Health Steps Online” <p>Access to Manager Hotline Corporate Reporting which includes quarterly (3) and annual (1) reports (with updates as and when required). Unlimited Account Management (services including; unlimited access to your Client Account Manager, report preparations, EAP updates, electronic flyers, articles, issue resolution and other client account management activities) Crisis and grief counselling management (Trauma Response Services) Access to twenty four (24) hour global emergency and grief counselling infrastructure to ensure prompt and efficient management of Critical Incident Response and emergency at risk situations. Service delivery hours to be charged. PPC Worldwide branded promotional materials to cover all staff and members 2 x one hour briefings and awareness sessions for employees and members (metropolitan area) Health & Wellbeing</p> <ul style="list-style-type: none"> • Access to e-library and resource service • Access to Health Risk Assessment (HRA) survey through PPC Online 			

A supplementary fee schedule clarifying services additional to counselling sessions and costing related to training and information services was subsequently provided commercial in confidence to the Society on 20 January 2011.

The breadth and depth of the services outlined through this type of model appear well suited to the LawCare objectives expressed through stakeholder submissions and the general feedback that the Ad Hoc Committee has received during this review period.

Many of the other law societies also use similar models and express satisfaction with the type of service that the model delivers for members as part of their overall program of initiatives in the area of mental health and wellbeing.

A number of the other societies also use a model of providing up to three society funded counselling sessions and the recommendation to the Society is that we also undertake a similar number of funded sessions as this allows a very reasonable level of assistance where required.

Additionally, the preventative and awareness-raising resources available through the proposed provider enable a more holistic approach to the LawCare offering. The on-line mechanisms are potentially a real value-add for the profession. The Society can work productively with PPC -- whose core expertise is in this area -- to deliver relevant information and educational strategies.

iii. Legal Practice Complaints

Throughout its review the Ad Hoc Committee received considerable feedback regarding the experiences of practitioners facing legal practice complaints from the Legal Profession Complaints Committee (the “LPCC”).

It is the reality of depression, anxiety and stress generally that work and one’s obligations to clients can suffer when mental health issues are not managed and addressed. In addition to wanting meaningful programs and assistance aimed at tackling mental health issues before a complaint arises, Society members have expressed frustration at what they perceived to be a lack of support from the LPCC and the profession generally in dealing with legal practice complaints.

In 2008 Law Mutual (WA) ran risk management seminars on ‘how to handle complaints’. The Ad Hoc Committee was advised that the seminars provoked considerable concern from participants as how complaints are handled by the LPCC and the lack of support available to those suffering from anxiety and stress.

It is clear that many practitioners know little about the LPCC and what it is and is not mandated to do. What, for example, can the LPCC do to assist practitioners avoid complaints and assist them once a complaint had been received? How does it juggle the at times competing demands of lawyers and those clients who make complaints? What systems does it have in place to assist practitioners struggling under the strain of depression and other mental health related issues?

The Convenor and members of the Ad Hoc Committee Convenor met with representatives from the LPCC in November 2010. It is clear from that meeting that the LPCC is keen to assist the Society formulate approaches aimed at tackling these concerns. While the LPCC would very much like to offer education-type seminar aimed at helping practitioners avoid complaints and address complaints once made, the LPCC simply does not have the budgetary capacity to do so. It does not have a permanent education or research officer, although, clearly, one would be both used and quite beneficial.

It may well be that this is one area the Society can assist with, perhaps through a joint initiative with the Legal Practice Board/LPCC to run information sessions on relevant topics, with the Society undertaking relevant organisation and registration for the seminars and the Legal Practice Board/LPCC supplying topics and speakers

In terms of the speed with which complaints are dealt with, the Ad Hoc Committee notes that the LPCC has recently established a Rapid Resolution Team (‘RRT’) aimed at streamlining the process for dealing with some complaints.

Information on the RRT was outlined in the November 2010 edition of Brief. The Ad Hoc Committee is advised that the RRT is now in place and dealing with appropriate complaints.

The LPCC describes the rapid resolution of complaints process as follows:

The Legal Profession Complaints Committee has for some time been concerned to try and reduce the length of time it takes to deal with complaints and make the system simpler and less time consuming for practitioners and complainants alike. In an endeavour to achieve this it has recently established a Rapid Resolution Team (the RRT). The aim of the RRT is to provide a faster and more effective determination of the more straightforward service type complaints and those of a lower level of possible concern. The role of the team is to seek to assist the parties to achieve a resolution of these complaints in the first instance.

How will it work?

The RRT is seeking to improve the Committee's service to practitioners and complainants. Where possible, matters will be dealt with primarily by telephone contact and conciliation. As soon as a complaint is received by the RRT a legal officer will attempt to call the complainant and practitioner to introduce themselves and explain what the RRT does. If a complaint appears capable of resolution in any respect the legal officer will start that process immediately. If the legal officer is of the view that resolution of the matter may be assisted by the practitioner clarifying an issue, this might be approached in a number of ways, for example, by discussing the matter with the practitioner, by looking at the practitioner's file (possibly with the practitioner being available to answer any queries the legal officer may have) or by the practitioner providing a brief letter of explanation.

A practitioner will always be given a copy of the complaint as soon as possible after receipt. However, the RRT will try to keep its written correspondence to a minimum as this inevitably extends the time it takes to deal with a complaint. Where appropriate, the RRT will use email and facsimile in order to save time. The object of this new process is to reduce, as much as possible, the volume of correspondence between all parties (e.g. lengthy letters of explanation from practitioners).

The RRT will be attempting to resolve more matters by conciliation. Where appropriate, conciliation will be conducted over the telephone. If a face to face meeting is more likely to assist in the resolution of the complaint then the RRT will try to accommodate this.

Formal mediations may also be helpful in some matters (as opposed to conciliation). The Committee employs a number of highly skilled, qualified mediators who may be called upon, if needed, to conduct mediation in order to achieve a satisfactory outcome.

There will also be situations where the RRT is not able to resolve a complaint satisfactorily, for example, where the matter is not within the jurisdiction of the Committee, is without substance or is misconceived. In these situations the RRT will give the complainant a written or oral explanation which may lead to the complainant accepting that their complaint cannot be dealt with by the Committee. The legal officer may also ask the complainant whether they are prepared to withdraw their complaint to avoid the need for a formal dismissal of the complaint.

If the complaint is ultimately incapable of being resolved by the RRT by conciliation, mediation or withdrawal the complainant will be advised of their right to have the matter formally determined. These determinations will be made pursuant to a delegated power from the Committee to the Law Complaints Officer and other senior staff rather than by way of formal referral to the Committee (unless there are special reasons which warrant that course).

It is anticipated that many, if not most, matters referred to the RRT, will be dealt with by agreement, summary dismissal or other dismissal under sections 415(1), (2)(b) and (c) and 424(1)(a) and 425(a) of the Act. However, it is possible during the RRT process that a more serious conduct issue may be identified in which case that conduct issue will be referred to the Investigation Team for a full investigation. Also, if the initial complaint contains some matters which are appropriate to be dealt with by the RRT as well as other conduct issues, at the end of the RRT process those other conduct issues will be referred to the Investigation Team.

The success of the Rapid Resolution process will require the goodwill of the profession. The Committee is implementing the Rapid Resolution process immediately and asks the profession for its co-operation and patience while it does so.

When contacted by a team member, practitioners are encouraged, where possible, to be open and amenable to the process with a view to resolving the complaint or concern at an early stage.

This is a very positive initiative and one that will undoubtedly address some of the concerns raised by practitioners to date. It is clear, however, that other strategies are also needed and that the Society has a role to play in that regard.

iv. Legal Profession Complaints Committee: Legal Advice Service for Members in Relation to Complaints

In relation to practitioners seeking assistance once a complaint is received, it is evident to the Ad Hoc Committee that many are not seeking help and that the type of help (often legal advice) they do need is not necessarily made available through the Society. This often increases already elevated anxiety and stress levels and makes resolution of the complaint difficult.

In other states, the relevant law societies have attempted to assist practitioners in this regard via the formation of various 'legal advice services' for members the subject of a complaint.

The Ad Hoc Committee received a detailed summary of these services and related costings from the Society's President, Mr Hylton Quail, in a memo dated 6 October 2010. The President's submission provided suggested recommendations and a request that the Ad Hoc Committee consider as part of its work the viability of establishing a service for its members the subject of a complaint.

Mr Quail's summarised findings and suggestions for reform are as follows:

Complaint Services Offered in other States and Territories

ACT Law Society (1,500 members)

The ACT Law Society runs a Member's Adviser Scheme. It entitles members to 3 hours of free legal advice from a member of a Panel of Advisers.

Key elements of the scheme are:

- Advisers' charge the Society \$180 per hour.
- The Advisers can help by providing legal advice and drafting assistance in responding to the complaint, advising the member as to how to resolve the complaint, provide general counselling and support, and advise how to avoid complaints in the future.
- An Adviser does not act as the member's advocate or appear in any court proceedings or before the Professional Conduct Board. If members require this type of assistance they must retain another solicitor at their own expense.
- A member's Adviser terminates the retainer when:

- The complaint is dismissed or referred to the Disciplinary Tribunal or Supreme Court;
 - An investigator is appointed;
 - An application for extension of the service is rejected;
 - Council of the Society directs that a conference be convened or makes any other decision regarding the complaint (the Council appears to have a role in complaints but the nature of the role is not clear from the material);
 - The member has not heeded the advice of the Adviser or the Adviser believes the retainer should be terminated in accordance with usual solicitor/client rules; or
 - Three hours of assistance have been provided (unless an application for an extension is being considered).
- The rules of confidentiality that apply to an ordinary solicitor/client relationship apply under the Scheme.
 - Once the retainer has been completed, the members' Adviser will provide a notation to the Law Society for the purposes of costing, containing the member's name, the hours of service provided and a general account detailing the nature of the activities undertaken.
 - If the three allocated hours have expired and the member requires further assistance, the member can write to the Executive Director of the Society to apply for an extension, stating why the service should be continued. The Society will then consider this application and may grant three further hours of assistance.
 - If the member requires further assistance after the retainer has been terminated, the member must retain a solicitor at their own expense.
 - Advisers must have an unrestricted practising certificate, at least 10 years' experience in private practice, have a good working knowledge of the relevant legislation and rules, be able to accept instructions at short notice and not already be a panel solicitor. Advisers are required to submit an Expression of Interest to the Members' Advocacy Sub-Committee which determines whether an applicant is appointed or not. There are currently 5 advisers.

In 2008/2009 the Scheme was used once at a cost to the Society of \$540.00 (3 hours advice). In the 2009/10 financial year the Scheme cost \$3,150 and was used approximately 7 times.

Queensland Law Society (QLS) (8,300 members)

The QLS offers a free legal advice service for members who have received an official notification requesting that they provide information to the Legal Services Commissioner or the QLS as a result of a complaint investigation or trust account matter.

Key elements of the service are:

- Panel members charge the QLS \$375.00 per hour excluding GST.
- Members may seek up to three hours advice from an experienced solicitor with knowledge of professional standards issues.

- QLS will pay the fees for the first three hours of advice.
- The Panel member is retained by the practitioner seeking the advice so the usual duties of confidentiality apply.
- Panel member are all very experienced solicitors with more than 20 years' experience.

The cost of the service has been as follows:

- 12 months to 30/06/08: \$62,445 (70 members used service).
- 12 months to 30/06/09: \$54, 577 (62 members used service).
- 12 months to 30/06/10: \$71,001.23 (68 members used service).

QLS also offers a service whereby members can make an enquiry to the Ethics Guidance Solicitors in Ethics Support at QLS who can assist practitioners to resolve ethical dilemmas and follow a course of action which is likely to withstand an allegation that the solicitor acted in an unprofessional manner. This is not legal advice.

Law Institute of Victoria (15,600 members)

LIV provides a Members Advocate Service.

The service commenced in 1996 and is for LIV members only. Callers are not connected directly to the Members' Advocate (who is not a LIV staff member). The Members' Advocate is contacted by Member Services staff; the Members Advocate then contacts the member. The Members Advocate charges his time out at \$192.50/hr ex GST.

This is a confidential referral service to an experienced senior practitioner with expertise in professional conduct issues. LIV has one advocate who is a practising solicitor and former president of LIV and because of his long relationship with LIV he is trusted to do whatever is required for the member and bills the LIV accordingly, without question of his account.

The members advocate can provide advice on how to deal with situations such as complaints received against individuals and practices, disciplinary matters, discrimination and complex client relationship issues. The relationship between the member and the Advocate is confidential. The Advocate does not report anything to LIV about the matter. He submits an anonymous monthly account to LIV, which does not identify the name of the member; only the number of hours worked.

The service is promoted alongside the other LIV Personal Support Programs.

There are approximately 40 members referred to the Members' Advocate each year and this has been consistent over the past 4 years. Unlike the Queensland scheme there is no limit on the number of hours a member may access the service for. The annual cost is approx. \$30K-\$35K. This is all funded by the LIV.

Law Society of NSW (21,000 members)

In NSW, the Senior Solicitors Scheme provides confidential assistance to solicitors who are the subject of a complaint with the Legal Services Commissioner.

Panel solicitors are available to offer assistance in the preparation of a written response, confidential support during the complaint process, guidance on potential professional

conduct problems and a free initial consultation (payment is required for subsequent interviews and out of pocket expenses).

Peter Leggo, the Practice Legal Information Officer, has advised that there are few referrals under the Scheme and statistics are not kept. The Law Society of NSW was also not able to provide any financial information.

Law Society of South Australia (3,262 members)

The South Australian Law Society maintains the Personal and Professional Assistance (PAPA) Panel. Practitioners can seek advice from an experienced colleague in relation to many issues including professional standards and conduct issues.

This is a completely confidential service run as an adjunct to LawCare

The PAPA Panel is similar to the WA Law Society's Senior Advisors Panel.

Northern Territory Law Society

No comparable program.

Law Society of Tasmania

The Ad Hoc Committee was recently advised that the Law Society of Tasmania has a Member Advisory Service comprising two barristers and one senior solicitor (litigation practitioner). All have experience in disciplinary matters. Members of Law Society of Tasmania are eligible for up to 3 paid hours of advice. The Advisors' rate is \$220 per hour plus GST.

Law Society of Western Australia (LSWA) (approx 3000 members)

Currently, the Law Society only offers members Senior Advisors Panel which provides practitioners with access to experienced colleagues. All silks in Western Australia are members of the Senior Advisors Panel (except those who are members of the Legal Profession Complaints Committee, to avoid possible conflict at a later date). Members of the Senior Advisors Panel have indicated their willingness to be available to discuss professional conduct and ethical issues, which might include complaints, on a voluntary basis. All discussions are conducted on a confidential basis.

Guidance given by members of the Senior Advisors Panel does not constitute legal advice. There is no lawyer/client relationship unless specifically agreed between the practitioner seeking assistance and the member of the Senior Advisors Panel. The practitioner is at liberty to engage the services of the Panel member if that is agreeable to both parties but does so at his or her own cost.

Proposed Members Advice Service for the Law Society of Western Australia

There are two models (the Victorian Model and the ACT/ Queensland Model) which appear to have the best "fit" with the Society.

Victorian Model: Members' Advocate

This model is best summarised as follows:

- A confidential referral service to one experienced senior practitioner with expertise in professional conduct issues. The LIV has appointed an Advocate who is a practicing solicitor and former president of LIV with a long standing relationship with LIV.
- LIV's Advocate is trusted to do whatever is required for the member and to bill the LIV accordingly without question of his account.
- The Advocate provides advice on how to deal with situations such as complaints received against individuals and practices, disciplinary matters, discrimination and complex client relationship issues.
- The relationship between the member and the Advocate is confidential and the Advocate does not report any details about the matter to LIV.
- The Advocate submits an anonymous monthly account to LIV, which does not identify the name of the member; only the number of hours worked.

ACT/ Queensland Model: Panel

This model has been summarised as follows:

- The basic structure of the service remains the same as for the LIV Model but there is a Panel of Members' Advisers appointed, rather than a single Advocate.
- The QLS offers the service to members who have received an official notification requesting that they provide information to the Legal Services Commissioner or the QLS as the result of a complaint investigation or trust account matter.
- Under the ACT service the Advisers can help by providing legal advice and drafting assistance in responding to the complaint, advising the member as to how to resolve the complaint, provide general counselling and support, and advise how to avoid complaints in the future.
- QLS Panel members charge \$375 per hour excluding GST, and ACT Panel members charge \$180.00 per hour excluding GST.
- Under both services' members may seek up to three hours advice which the law society pays for.
- Under both services the Panel member is retained by the member seeking the advice so the usual duties of confidentiality apply.
- Under the ACT Scheme an Adviser does not act as the member's advocate or appear in any court proceedings or before the Professional Conduct Board. If members require this type of assistance they must retain another solicitor at their own expense,
- Under the ACT Scheme a member's Adviser terminates the retainer when:

- a) the complaint is dismissed or referred to the Disciplinary Tribunal or Supreme Court;
 - b) an investigator is appointed; or an application for extension of the service is rejected; Council of the Society directs that a conference be convened or makes any other decision regarding the complaint;
 - c) the member has not heeded the advice of the Adviser or the Adviser believes the retainer should be terminated in accordance with usual solicitor/ client rules; or
 - d) three hours of assistance have been provided (unless an application for an extension is being considered).
- Under the ACT Scheme, once the retainer has been completed, the members' Adviser will provide a notation to the Law Society for the purposes of costing, containing the member's name, the hours of service provided and a general account detailing the nature of the activities undertaken. If the three hours have expired and the member requires further assistance, the member can write to the Executive Director of the Society to apply for an extension, stating why the service should be continued, and the Society will consider this application and may grant three further hours of assistance.
 - Under the ACT Scheme if the member requires further assistance after the retainer has been terminated, the member must retain a solicitor at their own expense.

The model used in Tasmania also appears very similar to that utilised in the ACT with 3 panel members and funding of up to 3 hours advice paid for by the Society. This service is anonymous unless the practitioner wants to advise LS Tas. LS Tas note a number of practitioners do advise the Society in respect of a conduct complaint.

Who to appoint as the Advocate or to the new Panel?

Queensland/ ACT Model

To be appointed to the QLS Panel solicitors are required to have more than 20 years' experience; to be appointed to the ACT Panel solicitors must have more than 10 years' experience. The ACT also requires Advisers to:

- a) have an unrestricted practising certificate;
- b) have a good working knowledge of the relevant legislation and rules; and
- c) be able to accept instructions at short notice.

The ACT and the QLS both require applicants to submit an Expression of interest to, in the case of the ACT, the Members' Advocacy Sub-Committee and in the case of QLS, the Council or a sub-committee specifically established to consider applications, which determine whether an applicant is appointed or not.

The LS Tas also specifically notes that they have Advisory Service members that are experienced in disciplinary matters.

Panel members of any Society Member Advice Service could be required to fulfill the same criteria as the ACT Panel/Tasmanian members.

LIV Model

LIV has appointed an Advocate who is a practicing solicitor and former president of LIV with a long standing relationship with LIV. If the LSWA were to follow this Model, such a person with a long standing relationship with the LSWA would need to be identified.

Number of Complaints in Western Australia

The 2008/9 Annual Report of the Legal Profession Complaints Committee states that during the reporting period:

- 455 written complaints were received, 10% more than the previous year;
- The Committee considered 322 complaints conducted investigations, and it determined to dismiss or not take further 199 matters;
- The Committee determined to file 59 matters in the State Administrative Tribunal, and 38 Applications were filed in the reporting period;
- The total number of practitioners receiving one or more written complaints was 356, up from 309 the previous year, which represents 7.6% of the 4,673 certificated or deemed certificated practitioners in Western Australia;
- 5 practitioners had their practice certificate cancelled or suspended by the SAT and 2 practitioners were struck from the Roll by the Supreme Court;
- The areas of law attracting the most complaints were family law (23%), civil litigation (22%) and criminal law (9%);
- Sole practitioners were the largest category of practitioners complained of (28%) followed by practitioners in incorporated practice (26%, including sole practitioners with an incorporated structure).

Complaints about Law Society Members

It is not possible to determine the number of Law Society members the subject of a complaint in any particular year.

One way of estimating it is that if complaints are made about 7.6% of certificated and deemed certificated practitioners in Western Australia, then one could assume that complaints are made about 7.6% of Society members.

The Society had 2,821 members at the beginning of September 2010, 7.6% of which is 214 members.

Cost of Service

It is difficult to estimate the cost of the service if it was introduced at LSWA.

Budgeting for all members the subject of a complaint (214) to utilise the service, assuming Panel Members were paid \$180p/h and each Member utilised the full three hours free advice this would cost the Society approximately \$115,560 per year.

However it would seem from the experience in Queensland and Victoria that it is very unlikely that anywhere near this number of members would utilise the Service. In Queensland they find that approximately 60-70 Members utilise the Service per annum. In that case, if 70 Members utilised the Service for the full 3 hours and the Panel were paid \$180p/h, the cost would be approximately \$37,800.00.

In Victoria they find that approximately 40 Members utilise the Service per annum. In that case, if 40 Members utilised the Service for say 3 hours and the Member Advocate was paid \$192.50p/h GST ex, the cost would be approximately \$23,100.00.

QLS has approximately 8,300 members, whereas the LSWA has approximately 3000 members, which is approximately 1/3 the number of QLS's members. Based on the LSWA membership number which is approximately 1/3 of that of QLS, it could be assumed that also the 60-70 members of QLS that access their service could be divided by 1/3 to provide an indication of the likely take up of a similar service by LSWA members, i.e. approximately 25. If 25 Members utilised the Service for the full 3 hours and the Panel were paid \$180p/h, the cost would be approximately \$13,500.00.

LIV has approximately 15,600 members, whereas the LSWA has approximately 3000 members, which is approximately 1/5th the number of LIV's membership. If the LSWA service was used by 1/5 the number of members who utilise the LIV service that would equate to 8 people per year. If 8 Members utilised the Service for 3 hours and the Panel were paid \$192.50p/h, the cost would be approximately \$4,620.00.

It is unlikely that a charge out rate as low as \$180p/h or \$192.50 could be obtained from the Advocate/ Panel. The table below sets out the cost of the Service at three different charge out rates for different numbers of members,

Table Estimating cost of Service

No of members	\$180/hr (3 hours)	\$250/hr (3 hours)	\$375/hr (3 hours)
10	5400	10800	11250
20	10800	21600	22,500
30	16200	32400	33750
40	21600	43200	45000
50	27000	64000	56,250
60	32400	68800	67,500
214	115,560	160,500	241,875

Expected Outcomes

The Service could expect the following expected outcomes:

- complaints could often be resolved more promptly;
- members may learn some skills that may enable them to avoid being the subject of future complaints;
- the service may provide some psychological and emotional support to members suffering stress and anxiety as a result of being the subject of a complaint; and
- the number of complaints lodged in Western Australia annually may be reduced.

How to measure Success?

After 6 months it would be appropriate to interview the Advocate or Panel Members in order to determine the following information. This would assist in determining whether the service could be considered a success or not:

- How many members they had advised and whether they had advised any members in relation to more than one complaint;
- Whether the complaint had been able to be withdrawn or resolved promptly;
- Whether they had advised the member on ways to avoid complaints in future; and
- Their views on whether the service had been generally helpful to the member.

The Ad Hoc Committee is most appreciative of the information and analysis contained in the President's memo. The analysis and associated costings greatly assisted the Ad Hoc Committee in endorsing the findings and recommendation of the President in this respect. A service – with the suggested title of Members' Advice Service – would provide a much needed and valued benefit to Law Society members and, as previously noted, being able to access experienced and confidential assistance – without initial fee – would potentially result in reduced stress and anxiety experienced by practitioners in these circumstances.

As the President notes in his memo, it is difficult to determine the level of access needed for a service like this. However, the demonstrated use of similar services in other jurisdictions is very useful. Additionally, with the introduction of the LPCC's Rapid Response Team initiative in addressing more straightforward and low level complaints it is reasonable to assume that there will be some reduction in potential complaints and that this will impact on the number of members who will access the service. This should be balanced however with an appreciation that the fees of panel members are likely to be higher than the ACT model of \$180 plus GST so a requisite budget figure for the proposed service needs to balance this.

The Ad Hoc Committee recommends the establishment of a Members' Advice Service and that a budgetary allocation of \$10,000 be sought from 2011/2012 Society Budget. The service should be monitored and a formal feedback process with Service panel members, together with a de-identified survey, should be conducted after 9 months to determine if the service is meeting objectives.

It is envisaged that the Service be administratively supported as required by the proposed Society resource to be recruited to assist in implementing recommendations of the Ad Hoc Committees.

v. Awareness Raising/Educational Initiatives – CPD, Law Mutual Seminars and Third Party providers

Most of the Society's current health and wellbeing programs tend to be reactive, rather than proactive. For instance, programs such as the Graduates Telephone Advisory service and the Senior Advisors Panel are aimed at assisting practitioners who are already at the stage of not coping with issues affecting them at work. This is, it goes without saying, positive and programs of this sort will always be required.

However, other awareness raising and educational initiatives must to be formulated to educate and assist practitioners and law firms and organisations within the profession generally on how best to prevent staff from developing the types of mental health problems discussed by Dr Omari and others above.

The Law Society should be focusing on strategies to assist practitioners identifying stress, psychological distress and depression early on – in themselves, staff and/or colleagues -- and to give guidance to practitioners in relation to how best to seek assistance and resolve issues early, where possible.

The PPC Worldwide Supplementary Proposal dated 20 January 2011 provides for cost competitive training in this area and can be provided at \$200-\$300 per hour including customisation, travel time and setup time. Topics include:

- Resilience (understanding and developing it),
- Managing boundaries (professional and personal);
- Ethical Decision Making;
- Dealing with depression (recognising it in yourself and others);
- Dealing with People who are not like me (clients/colleagues that challenge you);and
- Managing people with mental health concerns.

Legal practice involves dealing with difficult and stressful situations. Lawyers on the whole are not well trained to deal with aggression, difficult clients and high stress situations. The Ad Hoc Committee heard from many lawyers who asked the Society to consider running resilience training courses at a reduced fee or advising practitioners as to where they might go to access such courses.

As detailed above, the Ad Hoc Committee is supportive of many of the submissions received from stakeholders and the approaches taken by societies in other jurisdictions to focus on a broad approach to mental health and wellbeing of the profession. Preventative and informative strategies through education and information is fundamental to any meaningful program in this area and a much-needed complement to a well-functioning and accessible counselling and crisis service.

To this end, the Ad Hoc Committee recommends that educational and information strategies be planned and provided via a combination of the Society's CPD program – in conjunction with third party providers (in particular PPC Worldwide). It is also suggested that Law Mutual also be tasked with investigating and identifying opportunities to fund this type of training to practitioners, in addition to their standard Risk Management seminars.

It is anticipated that coordination of these strategies be done in conjunction with the work of the Ad Hoc Committees on Bullying and Psychological Distress and Depression (and the suggested merged standing Committee) and any Society recruited resources.

Additionally, the Society's communications via its website, Brief, Friday Facts (and, if relevant any social media platforms) be utilised to provide resources and information on mental health and wellbeing information and access available via the Society and through third party providers (eg Lifeline, beyondblue and the Tristan Jepson Memorial Foundation).

Law firms generally should also be encouraged to develop their own procedures for handling stress and anxiety issues. Indeed, many are already doing so by integrating work/life balance practices into their workplace policies – policies that in recent years have shifted an at times historical emphasis from ‘alcohol fuelled’ social events (an all too easy fall back for many lawyers, as the Courting the Blues Report reveals) to other services like:

- In-house massage therapist services;
- First aid rooms for employees who, due to necessity at times may need to work extremely long hours (and may need a rest break);
- Access to an employee funded counselling services;
- Seminars on stress management;
- Meditation classes;
- Yoga and Pilates classes; and
- Flexible working arrangements that allow employees to fit exercise and other personal activities into their working day.

Law firms should also be encouraged, where funds permit, to contract an on-site organisational psychologists to provide services such as mediating staff issues such as bullying and stress, as well as assisting practitioners who may be having problems outside of work and don't necessarily have the time to fit in psychologists appointments around work time.

Such services would complement the recommended initiatives of the Society's LawCare programs.

Additional Health and Wellbeing initiatives

The importance of wellbeing initiatives has been discussed above and suggested recommendations made in relation to those, eg Health Insurance incorporating wellbeing packages. The Ad Hoc Committee would also encourage the Society to investigate delivery of general wellbeing initiatives eg yoga or meditation classes or the Mindfulness workshop (as delivered by LIV) together with other relevant wellbeing workshops.

Additionally, the Society should provide promotion of third party initiatives in the area where it is appropriate to do so. For example, a proposed Lawyers Retreat has been initially discussed with some members of the Ad Hoc Committee. While this Report is unable to make any comment about this particular initiative, it does provide an excellent example of some possible third party initiatives to deal with wellbeing of practitioners.

As noted above, PPC Worldwide proposes offering a broad range of educational programs and strategies for both members and Society employees. The Society should work with PPC to develop a range of educational seminars aimed at tackling issues of depression and anxiety and good health and wellbeing generally. Other third party providers (where relevant and able to offer appropriate workshops/programs in this area; for example, Lifeline, Mental Health First Aid and Brain Ambulance) should also be contacted to discuss possible programs and seminars.

In relation to the issue of billable hours, the Ad Hoc Committee notes the suggestions of the Chairperson of the Society's Bullying Committee (Mr David Blades) in a letter to the Committee dated 9 December 2010, which read as follows:

Billable Hours

I think concerns about billable hours in the context of mental health are best addressed by dissemination of information about alternatives to hourly billing in a variety of ways, including articles published in 'Brief, debates (like the debate that was held in relation to the Human Rights Act), and panel forums or seminars involving senior partners of law firms, employed solicitors at all levels, barristers, the judiciary, and costs experts like David Garnsworthy.

Further, I would like to suggest that the Society use the Depression and Anxiety Small Firm Working Group (DAWG) as an established pathway of discussion to deal squarely with the recommendations of Dr Omari, the Courting the Blues Report and the Chief Justice (see letter from College of Law to Mr Hylton Quail dated 14/9/10). Given that 5 top tier law firms have already signalled their commitment to mental health through their involvement with DAWG, that group provides an established avenue of discussion for the Executive of the Law Society to talk to those firms about creating best practice work practices that set an example in relation to the employment market (see para. 3.4(1)(c)(iv) of the YLC submission). A difficulty from a WA perspective is that the top firms are largely managed from the Eastern States, and in order for real changes to things like billable hours to occur, it will be necessary to engage with the managing partners based in Sydney or Melbourne. I think a long-term strategic approach should be considered in this regard. For example, the Presidents of the Law Society in each state (each of whom I assume received a letter from the College of Law about DAWG) who want to see discussion on alternatives to billable hours could make a combined approach to DAWG in the expectation that beneficial changes to work practices will emerge in the long term out of that discussion. In the short term, I suspect that only WA-based firms may be in a position to change the way they use billable hours.

While it is beyond the scope of this Report to formulate specific seminars, the Ad Hoc Committee supports the importance of dialogue in issues affecting the profession, clearly in keeping with the Society being the 'voice of the legal profession in Western Australia'. To this end, the Ad Hoc Committee strongly encourages the Society to provide practitioners with the opportunity, perhaps via a Society-held forum, to discuss and debate matters such as billable hours.

It is clear that the Society needs to take a systemic approach to mental health education, ensuring that as many Society initiatives as possible address what is clearly a growing professional need.

6. Conclusion and Recommendations

The aim of this Report has been to review the Society's current programs and strategies for tackling mental health and wellbeing in light of the findings of the Courting the Blues Report published in 2009 and, where appropriate, suggest improvements or additional strategies and their related financial and resourcing implications.

In that regard, the Ad Hoc Committee notes the subject matter of bullying and its potential to impact on mental health and wellbeing and acknowledges the importance of working with the Bullying Committee in taking these initiatives forward.

Overall, it is evident that the Society takes very seriously the findings of the Courting the Blues Report and is committed to addressing what is clearly a very serious issue in need of ongoing attention. As previously noted the Society's clear commitment is also outlined in its Strategic Plan 2010-2013, Key Result Area 1, Strategy 3, which tasks the Society with fostering more supportive and healthier workplaces across the profession through support of profession-wide initiatives to create healthier workplaces both psychologically and physically.

The measures and targets of these key outcomes include an increase in awareness and satisfaction with the LawCare (WA) program, the Senior Advisors Panel and the Mentoring Program.

While no one recommendation will address every issues detailed in this Report, what is apparent to the Ad Hoc Committee is the importance of taking a holistic approach to caring for the profession's mental health and wellbeing. Accordingly, the recommendations that follow involve the Society taking a broad approach encompassing a range of recommendations from a preventative/awareness raising perspective combined with a counselling/treatment focus.

New ideas will continue to emerge and it is evident that the Society's desire to tackle depression and psychological distress in the profession will require ongoing analysis and discussion.

What follows are those recommendations which, in the opinion of the Ad Hoc Committee, are feasible. It is hoped they will, in turn, result in future reform initiative and critical analysis.

Recommendation 1

The Society's Ad Hoc Committee on Psychological Distress and Depression in the Legal Profession and the Ad Hoc Committee on Bullying be combined and given permanence as a standing committee and re-branded as the Mental Health and Wellbeing Committee with expressions of interest sought from existing and new members for Committee membership. A Terms of Reference for the Committee is to be developed by the Society and approved by Council, prior to the establishment of the Committee.

Recommendation 2

The Society provides adequate funding to ensure the Mental Health and Wellbeing Committee has human and other resourcing available to facilitate the implementation, monitoring and reporting of the Report's recommendations and co-ordinate ongoing programs and initiatives and relationships with internal and external stakeholders and service providers in the area of mental health and wellbeing strategies until 30 June 2013. The funding for any future resourcing is to be considered as part of the 2013/2014 Budget and should be jointly considered by the Society and Law Mutual.

Recommendation 3

The Society appoint PPC Worldwide International to provide an integrated 'member/employee assistance service model' comprising both awareness raising/preventative initiatives and counselling/crisis treatment as outlined in PPC proposal to the Society dated 22 December 2010 and supplementary proposal information dated 20 January 2011. All services should be made available to Law Society members and staff as part of an up to 3 sessions funded by the Society model, with the exception of Health Steps Online, Trauma Response and Well Being Check – which will be available to the member or staff at their cost. An appointment should be made for a term to 30 June 2013 and the

Mental Health and Wellbeing Committee are to establish a monitoring regime to be approved by the Society's Executive. Funding for this service should initially be included in the 2010/2011 Mid-Year Budget review.

Recommendation 4

The Society is to prioritise the development and delivery of educational and information strategies aimed at addressing mental health and wellbeing issues in the profession. Strategies should be planned and provided as part of an expanded Law Mutual Risk Management program, with Law Mutual funding the Law Society to deliver these strategies commencing 2011/12 and utilising the services offered by third party providers (in particular PPC Worldwide).

Recommendation 5

Law Mutual, via the Professional Indemnity Insurance Management Committee, be requested to investigate and identify opportunities to provide funding for the type of training envisaged in Recommendation 4 above to practitioners, in addition to their standard Risk Management seminars.

Recommendation 6

Where appropriate, all mental health related seminars should be promoted to law students and graduates via all WA law schools and the Practical Legal Training Providers, with complimentary or special reduced pricing being applied.

Recommendation 7

The Society establish a Members Advice Service to assist with LPCC complaints with an initial annual budgetary allocation of \$10,000 sought from the 2011/2012 Society Budget. To enable the service to be established prior to the 2011/12 Budget, a budget allocation of \$3000 should be included in the 2010/2011 Mid-Year Budget review. The Member Advice Service should be similar in format and panel composition to those services currently offered in Queensland, the ACT and Tasmania with up to 3 hours of advice to Members funded by the Society. The Service's scope should be similarly guided by the ACT and Tasmanian models and developed by the Mental Health and Wellbeing Committee and approved by the Society's Executive.

Recommendation 8

The new Members Advice Service should be regularly monitored. The Mental Health and Wellbeing Committee be requested to establish a monitoring regime to be approved by the Society's Executive.

Recommendation 9

The new Members Advice Service should be administratively supported as required.

Recommendation 10

In order to ensure sufficient awareness of mental health issues on the part of those lawyers retained as part of the proposed Members' Advice Service, the lawyers for the Service will be required to participate in a mental health awareness training seminar to be run by the Society and conducted by a relevant service provider as chosen by the Society in conjunction with the Mental Health and Wellbeing Committee.

Recommendation 11

Senior Advisors Panel members, Graduate Telephone Advisory Service Panel members and Mentoring Program Mentors should be offered the opportunity to participate in the mental health awareness training seminar proposed in recommendation 4 above. In relation to these volunteer practitioners, this training should be paid for by the Society.

Recommendation 12

The existence and role of the Senior Advisors Panel and Graduate Telephone Advisory Service should be better profiled and promoted by the Society.

Recommendation 13

Sustainable funding sources (private and public) be investigated to ensure ongoing mentoring programs for both Young Lawyers and Aboriginal students.

Recommendation 14

The Society Executive and representatives of the Professional Indemnity Insurance Management Committee be requested to meet regularly with representatives of the LPCC to determine what the Society can do to assist the LPCC in implementing a broad strategy aimed at educating the profession about LPCC procedures in relation to legal practice complaints and in assisting the LPCC address any concerns in relation to mental health issues and the legal complaints process.

Recommendation 15

The Society/Law Mutual be requested to investigate joint initiatives with the Legal Practice Complaints Committee to run information sessions/seminars on topics relevant to complaints and process (eg 'Dealing with Legal Practice Complaints').

Recommendation 16

The Professional Indemnity Insurance Management Committee be requested to consider the proposed practice assessments scheme and how the scheme might function in the future and advise the proposed Mental Health & Wellbeing Committee and the Society's Executive.

Recommendation 17

The Quality Practice Standards Committee be requested to investigate the applicability of incorporating initiatives promoting law firm employee health and wellbeing as part of current QPS process requirements.

Recommendation 18

The Brief Editorial Committee be requested to liaise with the Legal Practice Complaints Committee for the purposes of writing and publishing articles on the legal complaints process, how best to handle legal complaints and issues of mental health in relation to legal practice complaints generally.

Recommendation 19

The Brief Editorial Committee be requested to set aside a feature edition of Brief in 2011 dedicated to issues of mental health and wellbeing and, where appropriate, practice management assistance tools. Thereafter, the Brief Committee be requested to implement a quarterly section on issues of mental health and wellbeing in the legal profession.

Recommendation 20

As part of Law Week 2011, the Society be requested to hold a seminar discussion in relation to the occupational health and safety aspects of time billing and billable targets as per the Chief Justice's request for further discussion of this issue. This should be a 'free for members' event.

Recommendation 21

The Society be requested to review and expand its member privilege offerings to include more health and wellbeing related services. In particular, the Society be requested to investigate health insurance initiatives incorporating regular medical assessment and wellbeing products, services and related activities.

Recommendation 22

The Society to prioritise a review of its current marketing and communication strategies in relation to its (existing and new) mental health and wellbeing initiatives – particularly in respect of branding of LawCare programs – to ensure there is sufficient profile and awareness in the profession of the Society's programs and seminars and incorporate this review as part of its Marketing & Communications Plan 2010-2012.

Recommendation 23

The Society be requested to investigate how best to revive and profile the Society's 'Locum Register' whereby sole and small firm practitioners requiring temporary work relief or assistance can be given access to a list of available practitioners and their practice areas provided and maintained by the Society.

Recommendation 24

The Society be requested to create a separate web page of resources with links to Mental Health and Wellbeing initiatives and organisations, allowing access to members of the profession generally and with further secure links for member-only programs. This page should include access to the Resilience@Law DVD and related resources on mental health in the legal profession. It is suggested that this resources page be grouped under LawCare or webtab 'Need Assistance' (or a similar link) under the 'Profession' section of the Society's website.

Recommendation 25

The Executive be requested to meet with members of the Australian Medical Association to discuss mental health issues within the legal community and determine how best to educate the medical community generally about the particular work-related issues facing legal practitioners and how best to develop education strategies that aim to tackle these issues within the legal community.

Recommendation 26

Given the significant interest by sole and small firm practitioners in this initiative generally and feedback on benefits of networking generally with peers with similar practice environments and challenges, the Society be requested to investigate re-establishing a Sole/Small Firm Practitioners Committee to meet on an ad hoc basis.

Recommendation 27

The Society's Executive be requested to liaise with relevant members of the Judiciary to determine if there are ways to assist the judiciary with anti-bullying and mental health related initiatives.

Recommendation 28

The Mental Health and Wellbeing Committee be requested to undertake a review in 2015 to determine the relevance and effectiveness of the implemented strategies of this Report.

Recommendation 29

The Report (exclusive of all Appendices) is to be launched as part of Law Week 2011.