



# **Well-being, Professional Identity, and the Ethics of Professional Civility in and out of Court**

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# How BarCare Works

- Benevolent Fund of the NSW Bar Association
- Stands independently
- Strictly confidential
- Funded by donations
- Annual reporting is of anonymous pooled data
- Individual information is not provided to the Association without the barrister's permission
- One-way flow of information



# Barristers' Benevolent Fund

Provides the following services:

- Access to health professional – GP's Psychiatrists, Psychologists, Grief Counseling, Social Worker initial consultation covered by the Fund
- Financial advice
- Financial support in times of crisis via grant or loans  
e.g. funerals, ill health
- Acts independently from the Association unless financial support is required

# Who accesses BarCare?

Source of Referral	2014-2015	2015-2016
Bar Association staff	13	11
Self	48	46
Colleague	7	13
Family	2	2
Clerk	4	2
Advice for Colleague	5	9
<b>Total</b>	<b>79</b>	<b>83</b>

# Presenting Problem

Primary Presenting Problem	2014-2015	2015-2016
Bereavement	4	2
Psychological	17	5
Depression	6	20
Stress/Anxiety	15	23
Relationship Difficulties	9	4
Alcohol	1	3
Physical Health	4	9
Financial	2	5
Advice and no further action	5	9
Siege	15	
Career Advice	1	3
Total	79	83



# Gender

	Male	Female
2014 - 2015	47	32
2015 - 2016	46	37

# Time Practising at the Bar

Years at Bar	< 5	6 - 15	16 - 25	26 - 35	>35	Unknown
2014-2015	22	26	13	7	2	9
2015-2016	25	19	10	11	1	17

# Age at the time of referral

< 34	35 - 44	45 - 54	55 - 64	> 65	Unknown
6	22	27	13	2	9
9	14	24	17	2	17

# Wellbeing Survey of the NSW Bar

**Presentation to the Public Defenders Conference**

**Taronga Zoo Conference Centre  
19 March 2017**

*Arthur Moses SC  
Senior Vice-President  
NSW Bar Association*

# NSW Bar Association 2014 Member Profile Report

- In 2014 the NSW Bar Association conducted a survey of its members as part of the membership renewal process. It was the first time that information was sought from the general membership.
- Urbis Pty Ltd was commissioned by the NSW Bar Association to undertake the review, analysis and reporting of the data collected.
- The NSW Bar Association collected 1,174 responses to the survey which was for the purpose of developing, supporting and justifying initiatives by the Association for its members.

# NSW Bar 2014 Survey Results

## Rates of Depression amongst the NSW Bar

- Depression: 37% of respondents reported suffering from depression while at the Bar. While most of these respondents were male (74%), a similar proportion of all females (35%) and male (37%) reported experiencing depression whilst at the Bar.
- Divorce: 21% of respondents reported experiencing divorce or separation while at the Bar.

# NSW Bar 2014 Survey Results

## Rates of Depression amongst the NSW Bar by date

Commencement	yes	Total respondents	Percentage
Before 1975	8	32	25%
1975 – 1985	70	170	41%
1986 – 1995	100	224	45%
1995 – 2005	111	333	33%
2005 – 2009	70	187	37%
After 2009	58	184	32%
Not stated	11	44	25%
<b>Total</b>	<b>428</b>	<b>1174</b>	<b>37%</b>

# NSW Bar 2014 Survey Results

## Rates of Depression amongst the NSW Bar by age

Age	yes	Total respondents	Percentage
Under 30	6	20	30%
30-40	68	198	34%
40-50	107	306	35%
50-60	137	354	39%
Over 60	100	253	40%
Not stated	10	43	23%
<b>Total</b>	<b>428</b>	<b>1174</b>	<b>37%</b>

# How does the Bar compare with the medical profession?

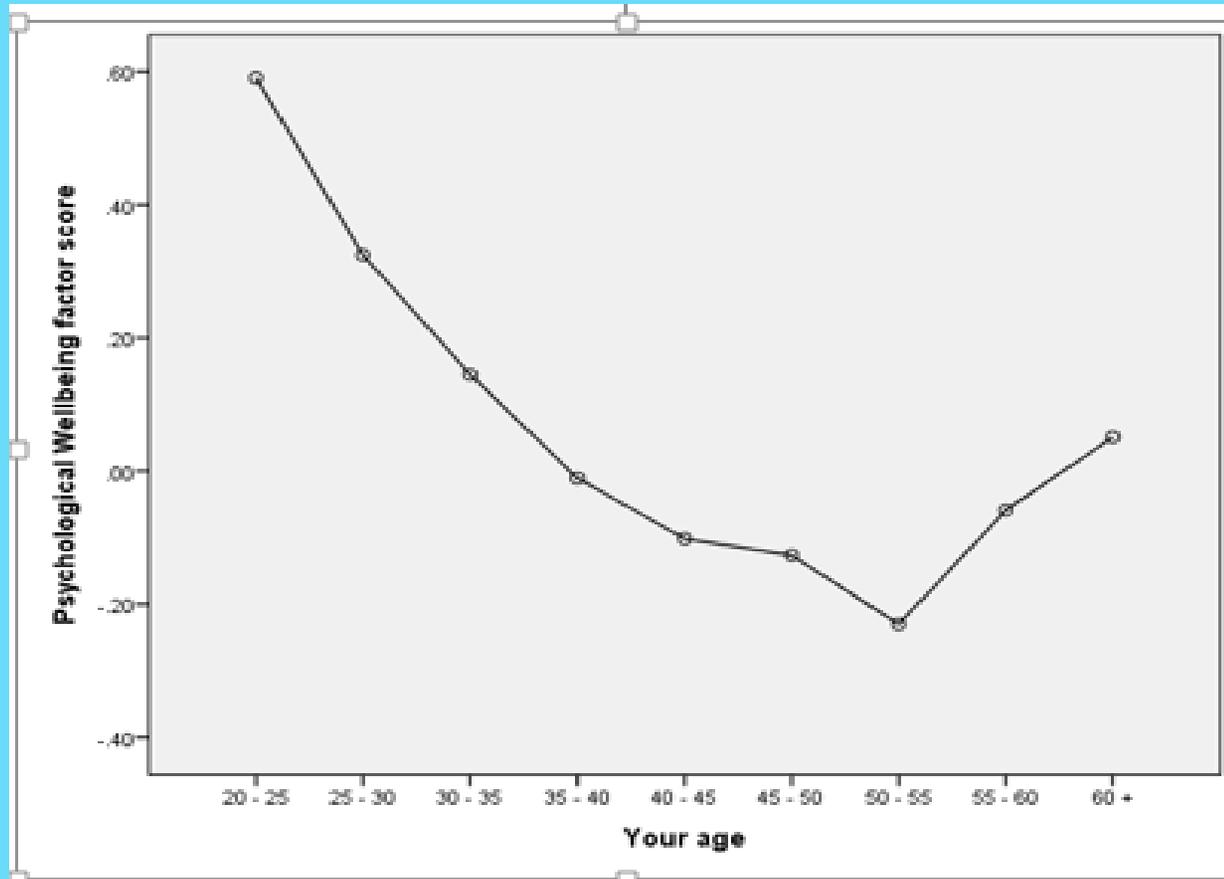
- In October 2013, a Beyond Blue Study of mental health issues amongst medical practitioners found that **20%** of the medical profession have been diagnosed with depression. **Source:** [https://www.beyondblue.org.au/docs/default-source/research-project-files/bl1132-report---nmhdmss-full-report\\_web](https://www.beyondblue.org.au/docs/default-source/research-project-files/bl1132-report---nmhdmss-full-report_web)
- In the Urbis survey NSW barristers were asked to indicate whether they **believed** they had suffered from depression at the Bar. This may explain the difference in the figures with the medical profession.

# UK Study

Project initiated 2014 - 2017 3 phases:

<p><b><u>Research</u></b> To identify risk factors that impact on a barrister's professional practice.</p> <p>(October 2014- April 2015)</p>	<p><b><u>Toolkits</u></b> To provide resources for individuals and those with a management role in Chambers to deal with risks and signpost in crisis</p> <p>(April 2016)</p>	<p><b><u>Develop resources</u></b> for ongoing support and resources. Education &amp; Training. KPI's for 3<sup>rd</sup> parties supplying support</p> <p>(December 2016)</p>
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# Findings from UK research



1 in 3 find it difficult to control/stop worrying

2 in 3 feel showing signs of stress equals weakness

1 in 6 feel low in spirits most of the time

59% demonstrate unhealthy levels of perfectionism

Psychological wellbeing within the profession is rarely spoken about

Those entering the profession are resilient & well but don't stay there during their professional careers.

# Aims & Objectives of WATB (Leadership Pledge)

- Provide members of the profession with the information and skills they need to practice & stay well;
- Support members of the profession as they deal with difficulties that arise in so far as they affect a barrister's professional life; and
- Provide assistance to those with responsibility (or taking on a supporting role) for those in difficulty or crisis.

# NSW Study

- Same Principal Researcher (Practicing Barrister & Academic)
- Identical methodology (Quality of Working Life – assess ‘individual’ and ‘environmental’ issues which impact working lives of those at the Bar = ‘snap shot’ of the profession.
- Provide thematic aspects of 5 core areas: Work Load Management, Perfectionism, Role Management, Physical Health, Work Environment. (Generic Data / Practice Area)

# NSW Leadership Plan

See the NSW Website Info <http://www.nswbar.asn.au/for-members/services/wellbeing-survey>

- The Wellbeing at the Bar Project aims to:
- gather evidence to identify the risks and challenges currently facing the New South Wales Bar;
- respond to the issues identified by providing members of the profession with the information and skills they need in order to stay well;
- address the challenges reported with leadership response at the appropriate levels seeking to influence culture change;
- support members of the profession through difficulties that affect a barrister's professional life; and
- provide assistance to those responsible for or who are supporting those in difficulty or crisis.

# Wellbeing Survey and the three phases

## Phase 1 - Research (March 2017)

### *What is involved*

A survey to identify the 'individual' and 'environmental' workplace risk factors that will impact on performance and directly support or impinge on a barrister's professional practice.

### *How you can help*

We will need responses from across the profession - promoting the survey in Chambers & encouraging sharing their experiences.

## **Phase 2 - Strategy (July-August 2017)**

### ***What is involved***

The Bar Council will review the report analysing the data of the survey and presenting the thematic issues affecting the current profession and provide a strategic review and response to safeguard the profession.

### ***How you can help***

Engage with the consultation process when the Bar Council Committees may request your assistance.

## **Phase 3 - Delivery Resources (February 2018)**

### *What is involved*

Bar Council and the Stakeholders to the project will seek to provide a positive approach to:

- Highlight the resources available to support the Profession;
- Seek to normalise the recognition of and investment in ‘psychological wellbeing’ as being central to sustaining performance as a barrister;
- Engage with education and training to improve the capacity and capability of barristers in managing their ethical responsibilities and performance;

- Advise government on the impact of policy, such as how inadequate Legal Aid funding can adversely affect the wellbeing of members;
- Consult with the judiciary in relation to courtrooms as workplaces.

### ***How you can help***

Provide strong leadership with expectation and encouragement of practitioners to take notice & attend CPD.



## ***Legal Profession Uniform Conduct (Barristers’) Rules 2015***

### **Rule 3 Objects**

The object of these Rules is to ensure that barristers:

(a) act in accordance with the general principles of professional conduct,

.....

### **Rule 4 Principles**

These Rules are made in the belief that:

.....

(c) barristers as specialist advocates in the administration of justice, must act honestly, fairly, skilfully, bravely and with competence and diligence,

(d) barristers owe duties to the courts, to their clients and to their barrister and solicitor colleagues,

### **Rule 8 General**

A barrister must not engage in conduct which is:

(a) dishonest or otherwise discreditable to a barrister,

### **Rule 123 Anti-discrimination and harassment**

A barrister must not in the course of practice, engage in conduct which constitutes:

(a) discrimination,

(b) sexual harassment, or

(c) workplace bullying.

### **Rule 125 Definitions**

*“workplace bullying”*

means unreasonable behaviour that could reasonably be expected to intimidate, degrade, humiliate, isolate, alienate, or cause serious offence to a person working in a workplace.

## ***Legal Profession Uniform Law (NSW) No 16a***

### **Part 5.4 Disciplinary matters**

#### **Division 1 Preliminary**

##### **s 296 Unsatisfactory professional conduct**

For the purposes of this Law, unsatisfactory professional conduct includes conduct of a lawyer occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer.

##### **s 297 Professional misconduct**

(1) For the purposes of this Law, professional misconduct includes—

(a) unsatisfactory professional conduct of a lawyer, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and

(b) conduct of a lawyer whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the lawyer is not a fit and proper person to engage in legal practice.

(2) For the purpose of deciding whether a lawyer is or is not a fit and proper person to engage in legal practice as referred to in subsection (1)(b), regard may be had to the matters that would be considered if the lawyer were an applicant for admission to the Australian legal profession or for the grant or renewal of an Australian practising certificate and any other relevant matters.

##### **s 298 Conduct capable of constituting unsatisfactory professional conduct or professional misconduct**

Without limitation, the following conduct is capable of constituting unsatisfactory professional conduct or professional misconduct—

.....

(b) conduct consisting of a contravention of the Uniform Rules;

(c) conduct involving contravention of the Legal Profession Uniform Law Act of this jurisdiction (other than this Law), whether or not the person has been convicted of an offence in relation to the contravention;...

You're sloppy, immature,  
overruled, a loser, and  
stop snivelling. Court is  
no place for  
hysterics

