

Preliminary findings from a large-scale national study measuring judicial officers' psychological reactions to their work and workplace

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Preliminary findings from a large-scale national study measuring judicial officers' psychological reactions to their work and workplace¹

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The ways in which institutional and workplace pressures and stressors intersect to deplete judicial wellbeing and capacity are not well understood. This article reports on stage one of a national multidisciplinary project which surveyed over 600 current and former judicial officers' perceptions and experiences from all Australian State and territory courts.

A key finding is that the respondents indicate they derive considerable satisfaction from the contributions they can make to society in applying the law and in making complex legal decisions, even when this work exposes them to distress and to the trauma of others. A second key finding is that, for over 30% of respondents who completed the survey's Secondary Traumatic Stress Scale (STSS) questions, a formal assessment of post-traumatic symptoms is clinically warranted. This is a high figure and supports the view that judicial work entails dealing privately with a combination of stressors in a way that may be encountered by few in other professions. While these stressors can be countered by the satisfaction inherent in the role and may not translate into harm for the judicial officer, they potentially have adverse consequences for individuals and for the administration of justice.

Introduction

Legal philosopher Jerome Frank, a pioneer of the legal realism movement, was an early convert to psychology's capacity to inform legal processes. He challenged the notion that judges mechanically apply law. Frank's 1931 two-part essay, "Are judges human?"² explored the role of the judge using the then-controversial framework that a judge works in an environment where legal rules are replete with uncertainty.

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Preliminary findings from a large-scale national study measuring judicial officers' psychological reactions to their work and workplace

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The provocative sub-heading to the first part of his article referred to “the assumption that judges behave like human beings”. Frank observed that in “most judicial decisions of ‘contested’ cases, the unknowable, incommunicable, ‘private’ elements of the judge’s thinking play an incalculable part” because daily he (as all judges were in Frank’s time) deals with “uncertainties, contingencies, imponderables, unpredictables”.³

No longer unmentionable?

Frank’s then controversial stance is now considered mainstream, such that the human qualities of the judicial officer are investigated for their impact on decision-making⁴ and they are considered in terms of the pressures of the workplace on judicial wellbeing. While the topic of judicial wellbeing remained controversial in 1995, at least when former Justice Kirby AC CMG first wrote about it,⁵ since then, others like former Magistrate Heilpern⁶ in 2017 have acknowledged the pressing and often invisible threats to psychological wellbeing of the judicial workplace.

More recently, leaders in the judiciary have acknowledged the challenges facing judicial officers. In his opening address for the 2024 Law Term,⁷ NSW Chief Justice, the Honourable Andrew Bell, spoke out on this topic, framing his observations as a health issue (“in terms of the working conditions of the magistracy, including the stress that that workload invariably generates”); as affecting “the provision of justice for litigants”; and as a resourcing matter where court-based adjudication is “an essential service that must be properly and meaningfully valued as such”.⁸ Bell CJ referred to the potentially fatal consequences of such psychological pressures, noting that “[o]ur judges and magistrates can only be stretched so far” and that “[t]he pool of their undoubted goodwill and physical and emotional capacity is not infinitely deep”.⁹ While speaking of the judiciary broadly, his Honour identified the “incredibly hard-working” magistracy’s particular pressures, referring to the “unsustainable” daily lists they face.¹⁰ Similarly, Victorian Chief Justice the Honourable Anne Ferguson, has acknowledged the impact of judicial stress on judicial work, advocating interdisciplinary perspectives from management theory and that health and psychological sciences be applied to the judicial workplace because judges are not “immune from the difficulties that plague the rest of the profession”.¹¹ In Queensland, the Chief Justice, the Honourable Helen Bowskill, has written that the cumulative stress and trauma judicial officers are exposed to is an “important topic”.¹² Her Honour commented:¹³

Contrary to the popular belief that judicial officers enjoy a leisurely existence in ivory towers, courts are daily exposed to the very worst of human behaviour. We spend a lot of our professional life in the murky depths of the gutter, rather than the lofty heights of any tower. We have regular contact with distressing subject matter and distressed people.

Bowskill CJ noted that judicial officers can experience a “high level of personal and professional satisfaction” in their role, however that “may not always be enough to balance out the negative impacts of cumulative trauma and stress, but it is an important part of the other side of the equation”.¹⁴ Referring to Schrever’s research, Bowskill CJ recognised that the “organisational, structural and cultural sources of stress” in the judicial working environment, resulted in “the importance of the leaders of our courts taking a proactive approach” and judicial officers “speaking up when we need assistance”.¹⁵

The chief justices’ observations, made across different courts, States and times, are supported by three Australian studies and international research.¹⁶ These studies reported that the Australian judiciary has a work-related stress problem. In Australia, Roach Anleu and Mack pioneered socio-legal understanding of judicial work, with particular focus on magistrates’ heavy workloads and high levels of stress. They examined judicial officers’ emotional labour, work-related stress and wellbeing in general, as well as job satisfaction.¹⁷ Schrever et al undertook the first Australian psychological study focusing on judicial work applying psychometric measures regarding the impact of stress and trauma.¹⁸ This study found that magistrates reported significantly higher levels of stress, exhaustion, distress and anxiety, and lower levels of autonomy and relatedness than higher court judicial officers.¹⁹ In NSW, O’Sullivan et al,²⁰ also identified high scores on psychometric measures of psychological distress. The NSW study linked these findings to judicial work and secondary traumatic stress, threats to the person and vilification.

The purpose of this new national study entitled “Judges’ work, place and psychological health”²¹ is to determine where, how and why judicial work is satisfying, and where, how and why it is not manageable, by drawing on judicial officers’ views and experiences. The research team comprises law academics, clinical and research psychologists and socio-legal scholars. Through this study, they aim to create a targeted, robust foundation for enhancing the judicial decision-making environment by unpacking what the NSW Chief Justice refers to as the “stretching” of judicial officers, and to determine in what ways their emotional capacity is not “infinitely deep”.

A national picture

This article describes preliminary findings of the first stage of this study — an online survey. The survey, conducted in mid to late-2023, sought judicial officers’ views, attitudes and perceptions regarding work-related factors contributing to their satisfaction and to stress in terms of:

- the impact of work on judicial officers’ psychological wellbeing
- what psychologists describe as risk and protective factors, that is, the aspects of judicial work that lead to either, and
- how the institutional environment of the court supports, or fails to support, judicial work.

The survey findings establish baselines for several psychological factors and provide the foundation for semi-structured interviews that will follow later in 2024. As the findings and the other studies reveal, all judicial officers are not affected in the same way. For some, their work is extremely satisfying, and any points of stress are manageable. For others, the chronic demands and time pressure overwhelm access to experiences of satisfaction.

The survey

The project researchers worked with Judicial Advisory Panels in each State and territory to garner guidance on the content of the surveys and their administration. They were assisted by the Judicial Commission of NSW and the Judicial College of Victoria. The survey used a mix of robust psychological instruments:

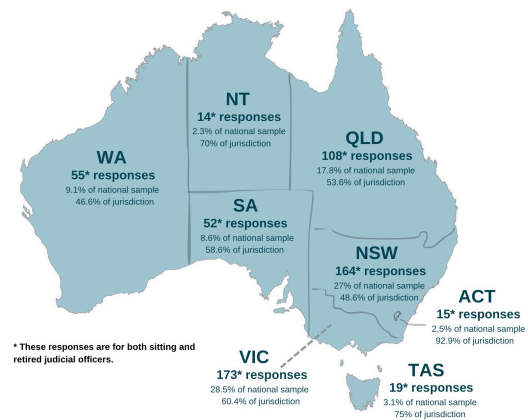
- the Satisfaction with Life Scale (SWLS)²²
- the [Secondary Traumatic Stress Scale \(STSS\)](#)²³
- the Kessler Psychological Distress Scale (K-10)²⁴
- Judicial Attitudes to Work (JAWS) Scale, a newly developed scale relating to sources of satisfaction and stress within the usual or typical work of a judicial officer
- items extracted from the Psychosocial Safety Climate Survey (PSCS),²⁵ and
- the Household, Income and Labour Dynamics in Australia (HILDA) survey.²⁶

Across all Australian States and territories, 602 judicial officers participated in the voluntary, anonymous online survey. Some respondents did not answer all the questions, so the number of respondents on which statistical analyses are performed varies slightly for different variables and different analyses. The total number represents a national response rate of 49.6% of all sitting judicial officers in Australia,²⁷ and, along with the detailed comments provided by respondents, indicates that they considered the survey topics relevant and important.

Respondent demographics

Of the 602 survey respondents, 31 were retired and 33 were reserve or acting judicial officers. Just over 20% presided in Supreme Courts, with almost 26% in District or County Courts,²⁸ and just over 44% in Magistrates’ or Local Courts (with the remaining 10% preferring not to say). The data showed a good spread of responses across various demographic categories. Men accounted for 49.8% of responses and women for 47.9%, with women responding at a higher rate proportional to their numbers in courts.²⁹ Two age groups accounted for the vast majority of the sample: 50–59 years (38%) and 60–69 years (39%). Those under 50 years made up around 12% and those over 70 years made up 10%. Responses in categories such as level of court, years of experience as a judicial officer, location of the court (metropolitan, regional, remote) and jurisdiction were well distributed across the sample.

Figure 1. Survey respondents and distribution by State and territory



The percentages “of national sample” refer to the proportion of the 602 total survey respondents that came from each State and territory.³⁰ The percentages “of jurisdiction” refer to the response rates for each State and territory — ie the proportion of the population of sitting judicial officers in each State and territory³¹ who completed the survey. For example, 55 total responses were received in WA, comprising 9.1% of the total 602 responses, and representing 46.6% of currently sitting judicial officers in WA. To ensure that findings specific to a jurisdiction are not lost by amalgamating data nationwide, finer, granular analysis will be conducted to explore whether responses from relatively smaller jurisdictions are similar to, or different from, responses from the three States with the largest populations.

Measuring satisfaction

Satisfaction is a multidimensional psychological construct referring to how an individual feels and thinks about their circumstances and experiences. This survey measured two forms of satisfaction: generic and specific. When asked to choose the sources of work-related satisfaction that were of greatest importance for them, judicial officer respondents most commonly chose options that reflected their desire to improve people’s lives, engaging with their colleagues and the satisfaction they obtain from the intellectual challenges intrinsic to judicial work. Their top five choices were:

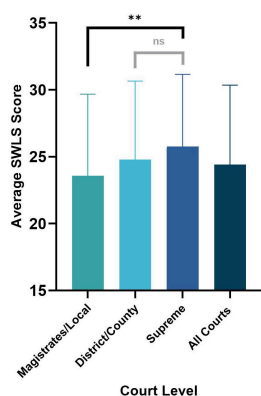
- the ability to make a positive contribution to society through work
- the impact of my decisions on people’s lives
- making complex decisions
- formulating reasons and/or writing judgments, and
- camaraderie among colleagues.³²

The generic SWLS is widely used internationally by psychologists as a measure of overall wellbeing and contentment. The survey also measured specific judicial job satisfaction with the JAWS which asks about the stress and satisfaction judicial officers ascribe to different aspects of their work and working environments. While in general it is expected that satisfaction and stress will

be negatively correlated, they are distinct psychological constructs. Accordingly, it is possible for satisfaction and stress to co-exist, particularly in the context of highly demanding but meaningful work.

The SWLS presents five statements in the survey regarding one's life, and respondents answer on a scale of 1 (strongly disagree) to 7 (strongly agree). These responses are then totalled so that an individual's total score ranges from 5 to 35. These total scores fall within one of seven categorical ranges from extremely dissatisfied (5-9) to extremely satisfied (31-35). Some 39.2% of respondents fell into the satisfied category (26-30); an additional 19.7% were extremely satisfied (31-35) and 22.4% were slightly satisfied (21-25). The category of extremely dissatisfied (5-9) comprised 1.5% of respondents.

Figure 2. Judicial officers' average satisfaction with life scale (SWLS) scores by court level³³



Comparing the average SWLS scores among the three court levels, only judicial officers in the Supreme Courts and the Magistrates' Courts showed a statistically significant difference between responses, with the Supreme Court judicial officers measuring higher satisfaction scores (Supreme Courts average score = 25.8; Magistrates' Courts average score = 23.6). A statistical difference of this kind indicates that the difference does not occur randomly, nor as a result of measurement error, but can reliably be attributed to the level of court. This holds true even when the scores appear on the surface to be similar.

Measuring stress

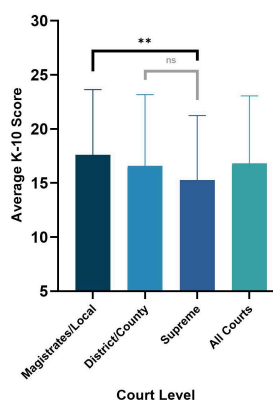
There is no single definition of "stress" in psychological or medical research. The working definition adopted for this project is that stress comprises a range of physiological, cognitive and affective responses to events in the world. It is experienced as the subjectively negative psychological and/or behavioural changes one experiences in response to the demands and pressures that one encounters. The survey measured three forms of stress.

Stress scales

Non-specific psychological distress: The Kessler-10 (K-10) scale³⁴

The K-10 scale is a widely-used measure of general psychological distress. It comprises 10 questions about how the respondent has been feeling in the previous four weeks. Answers are on a scale of 1 (none of the time) to 5 (all of the time). A score below 15 indicates low psychological distress, whereas scores above 30 translate to very high psychological stress. In a normative Australian population study with over 10,000 participants, Andrews and Slade (2001) found that almost 68% of respondents scored below 15, and only 2.2% scored above 30.³⁵ In contrast, among the judicial officer respondents in the present study there were around two and a half times the rate of very high scores (5.6%). Far fewer respondents (56%) scored below 15 compared to the general population. The remaining 38.4% fell between moderate and high psychological distress. These results indicate that judicial officers experience higher levels of non-specific psychological distress than the general population.

Figure 3. Judicial officers' average psychological distress (K-10) scores by court level³⁶

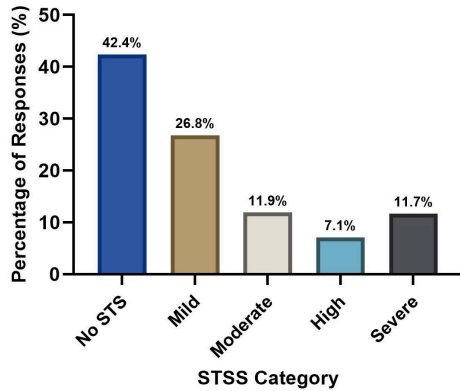


Comparing average scores across jurisdictions, respondents in the Magistrates'/Local Courts reported significantly higher levels of psychological distress than respondents in the Supreme Courts. The average K-10 score across all courts was 16.8, which was higher than the estimated Australian population average of 14.2.³⁷

Secondary traumatic stress scale (STSS) scores

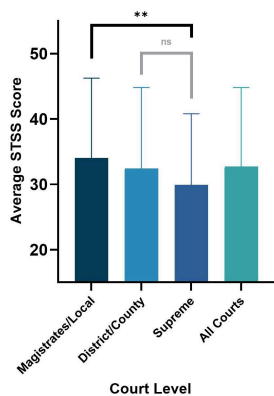
The STSS lists 21 experiences (emotional, cognitive, and behavioural) reported by people affected by their work with traumatised clients. In this scale, the respondent is asked how often they have experienced each phenomenon in the previous seven days using a scale of 1 (never) to 5 (very often). Total scores are allocated to five categories of severe (49+), high (44-48), moderate (38-43), mild (28-37) or no (27 or less) secondary traumatic stress.

Figure 4. Distribution of secondary traumatic stress in Australian judicial officers



Just over 42% of survey respondents who completed the STSS questionnaire showed no signs of secondary traumatic stress. However, concerning, 30.7% of respondents fall into the moderate, high and severe categories with an STSS score of 38 or above. While these elevated scores do not amount to a diagnosis of post-traumatic stress disorder (PTSD), they do indicate that a formal assessment should be conducted. These scores are alarmingly high and indicate that this is a matter of high concern for judicial officers as the population prevalence rate of diagnosed PTSD in Australia from 2020–2022 was 5.7%.³⁸ Significantly, it replicates the findings of two major peer-reviewed studies examining traumatic stress among Australian judicial officers. Schrever et al³⁹ reported 30.4% of judicial officers scored at or above 38 on the STSS. O’Sullivan et al⁴⁰ used a different validated measure of traumatic stress⁴¹ and reported 30.3% of judicial officers scored in the range suggestive of probable PTSD.

Figure 5. Judicial officers’ secondary traumatic stress scores across courts⁴²



As with the distribution of K-10 scores (see Fig 3), comparing STSS scores across courts, we found a statistically significant difference between the average STSS score from the Supreme Courts and that from the Magistrates/Local Courts. This indicates that there is

something in the nature of magistrates’ work that gives rise to more severe experiences of secondary traumatic stress.

Further, comparing STSS scores across gender, we found that the scores of female judicial officers were significantly higher than male judicial officers. This difference occurs regardless of court level.

Stress specific to judicial work — the JAWS scale

The JAWS scale is an extensive questionnaire that explores both the sources of satisfaction (discussed above) and stress in judicial work. The survey asked judicial officers to rank the top five sources of stress in their work. Judicial officers who responded, most commonly chose:

- workload
- the pace of work
- self-represented litigants
- formulating reasons and/or writing judgments, and
- the availability and/or adequacy of rehabilitation programs or referral pathways for offenders.

Interestingly, “formulating reasons and/or writing judgments” features as a frequently endorsed source of satisfaction as well as a source of stress. The study collected a considerable amount of data from the JAWS scale that is currently being analysed.

Coping

Respondents reported several coping strategies they use to help manage stress. Two of the top three involved support from others, whether family and friends (85%) or judicial colleagues (77%). In addition, exercise was nominated as a key strategy for 80% of respondents. Almost one quarter (24%) identified meditation and 35% selected alcohol consumption as coping mechanisms.

Conclusion

The most striking findings from this current study are that over 30% of those judicial officers who completed the STSS scored in the range warranting formal clinical assessment for PTSD; female judicial officers score significantly higher on the STSS scale, regardless of court level; and judicial officers in the Magistrates/Local Courts score significantly higher on both the STSS and the K-10 scales.

Typically, public debate about judicial officers’ work does not receive attention until there is a perceived crisis: complaints about judicial performance, controversy surrounding sentencing decisions and, in extreme cases, judicial suicides. When such incidents occur, there is a tendency to focus on the individual, rather than broader institutional and workplace issues. Instead, perceived individual deficits frame the debate, removing from attention issues such as workload, institutional support and the complexity of judicial work.⁴³ This project turns national attention to these matters. In doing so, it notes that judicial wellbeing is now an item on the agenda in a

way that it was not 30 years ago when former High Court Justice Michael Kirby's paper⁴⁴ was greeted with horror in some quarters. Studies, such as this one, provide evidence that it should not be ignored. As Chief Justice Ferguson has observed, the courtroom is a workplace, as are judicial chambers, and their occupants deserve the same attention to their wellbeing as do others.⁴⁵

Despite its length, many judicial officers engaged with the survey closely, taking the time to expand their responses with additional commentary. The Judicial Advisory Panels from each State and territory encouraged participation in the survey and their feedback strengthened the survey immeasurably. These results confirm what 30 years of studies have consistently found: judicial work entails a particular set of stressors, some of which may be met and countered by the inherent satisfactions of the role and do not necessarily translate into harm. But we ignore high rates of stress at our peril, both for the destructive consequences stress may have for the individual, and for the social consequences it may have for the administration of justice.

Collecting data, however compelling, is only a part of the picture. One respondent urged the project team not to be "academics talking to academics"⁴⁶ and hoped that practical consequences would flow from this work. The research team has no control over such practical consequences, or policy changes. If the project team cannot itself implement practical strategies to support judicial wellbeing, it can at least provide a catalyst for change where judicial officers have indicated the potential need for that change.

Next steps — watch this space

The analysis of survey data from over 600 respondents, and of hundreds of comments, is a work in progress and further papers will examine the results in greater detail. In the second part of this national project, up to 90 face-to-face or online semi-structured interviews will be undertaken later in 2024. These seek current and former judicial officers' perceptions of those factors that cause stress and those that provide job satisfaction and potentially protect judicial officers from the effects of stress. The interview protocol and guiding questions will be the same across Australia.

Endnotes

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♣ B Psych (Hons 1); LLB (Hons 1) (UNSW).

1 The authors acknowledge funding from the Australian Research Council through the Discovery Project grant DP220100585, "Judges' work, place & psychological health — a national view".

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- 28 Note that Tasmania, the Northern Territory and the ACT do not have this mid-level court.
- 29 Where percentages do not total 100%, this is due to missing responses and responses such as "Prefer not to say".
- 30 Note: this figure does not include data from 2 responses where no jurisdiction was identified.
- 31 Based on the AJA, *Judicial Gender Statistics, 2023*, above, n 27.
- 32 JAWS Scale, discussed below.
- 33 Solid bars represent average Satisfaction with Life Scale (SWLS) scores of each court level and the overall average for all courts. Fine vertical lines represent the variation of individual scores around the average (one standard deviation from the mean). The black bar and ** indicates a statistically significant difference in scores between court levels. The grey bar (ns) indicates no statistically significant difference.
- 34 Kessler et al, 2003. See also <https://www.beyondblue.org.au/mental-health/check-your-mental-health/k10>.
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- 36 Solid bars represent average K-10 scores of each court level and the overall average for all courts. Fine vertical lines represent the variation of individual scores around the average (one standard deviation from the mean). The black bar and ** indicates a statistically significant difference in scores between court levels. The grey bar (ns) indicates no statistically significant difference.
- 37 Andrews and Slade "Interpreting scores on the Kessler psychological distress scale (K10)", above n 35.
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- 42 Solid bars represent average STSS scores of each court level and the overall average for all courts. Fine vertical lines represent the variation of individual scores around the average (one standard deviation from the mean). The black bar and ** indicates a statistically significant difference in scores between court levels. The grey bar (ns) indicates no statistically significant difference.
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- 46 Open-ended survey comment.

His Honour Judge Michael Allen sworn in as Chief Magistrate of the NSW Local Court

His Honour Judge Michael Allen has been sworn in as the State's new Chief Magistrate following the retirement of his Honour Judge Peter Johnstone.

His Honour Judge Michael Allen is well qualified to assume the role as head of jurisdiction to the State's busiest court.

His Honour was appointed a magistrate in 2009 after a successful career as a solicitor and barrister first in private practice and then with the Office of the Director of Public Prosecutions and Legal Aid NSW. He was appointed a Deputy Chief Magistrate in 2018 and an Acting District Court judge in 2022. In February 2023 he was appointed a permanent District Court judge.

In his capacity as head of jurisdiction, his Honour becomes a member of the Judicial Commission. The Commission congratulates his Honour on his appointment.

Acknowledgement

The Commission acknowledges and thanks former Chief Commissioner of the Industrial Relations Commission Nichola Constant for her service as a member of the Judicial Commission from 2 March 2020–30 June 2024.