



# Wellbeing work: A manifesto for law firms of the future

ORGANISATIONAL WELLBEING RELIES ON STRATEGY, PLANNING AND ETHICAL LEADERSHIP TO BENEFIT EMPLOYEES, EMPLOYERS AND SOCIETY.

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The use of modish language as social marketing tools is common in business. Words like “culture”, “wellbeing” and more recently “ESG” (environmental, social, governance) are found on law firm websites and in other businesses throughout Australia. But is it all well-meaning language or is it rooted in principle and deliberate practice? This article discusses the rapidly changing legislative, judicial and international legal shift that will require these words to translate into real actions in every Australian workplace.

The change in how the law deals with employee health and wellbeing is being mirrored in the obligations imposed in procurement and finance terms. Lawyers experience this daily, including through the panel tender requirements for

government. At the heart of the significant changes in the recognition of employees’ emotional, mental, social and environmental health is the need for ethical and thoughtful leadership, with most states and territories adopting, or planning to adopt, versions of the *Work Health and Safety (National Uniform Legislation) Amendment Regulations 2023* and codes of practice dealing with psychological hazards and requirement to use risk management processes to avoid injury or illness. The *Respect@Work* and *Secure Jobs Better Pay* legislation has also been enacted federally that, among other things, prohibits the psychological hazards of sexual harassment, discrimination and hostile work environment, casting a positive duty on employers.

The psychological hazards analysis in new legislation, codes and regulations focuses on how leaders behave in crafting the work design of their business and making decisions in a just, deliberate, fair and proper process based on skills, capabilities and an employee's state of health. More importantly, it creates governance requirements to prevent, monitor and manage hazards in a deliberate evidence-based way that is well resourced by the employer.

This is not just a legislative leap. In the recent decision of *Kozarov v State of Victoria*<sup>1</sup> the High Court recognised the need for employers to act on psychological hazards in high-risk environments before the risks of injury are observable. Like the emergent legislation, the High Court decision creates positive obligations on leaders as to how they prevent workplace harm, monitor (a duty under safety law) health and manage employee work design and health. But, as discussed below, wellbeing is broader than safety and injury prevention.

There is no doubt that legal businesses are pressurised. The nature of their workflow and practice means any risk-based analysis of psychological hazards would assess them as high risk environments. What does that mean for law firms? Before we deal with the interventions required for law firms to meet these new requirements it is best to demystify the language and create an objective understanding of key terms.

## The new regulations and code in Victoria on psychological hazards

Most firms have started to address flexibility and parental leave issues. Many firms have embraced the notion of wellbeing as a core and measurable part of their cultural structure and practice. The key to meeting the new code and regulations (which are expected to become law later in 2023) are as follows:

- undertake an evidence-based risk assessment of the common psychological hazards in law firm workplaces, for example:
  - the distribution of work based on skill, experience and capacity
  - the fair and just treatment of employees
  - transparent and meaningful reward and recognition approach
  - clarity of expectations and outcomes of employees
  - a coherent, clear, well understood and structured remote/flexible work system
  - strong and well understood boundaries around bullying and sexual harassment
- individualised understanding of what hazards employees are exposed to and sensible, simple controls to prevent those hazards leading to injury and illness
- solid policy and procedure with competency-based learning on psychological hazards
- leadership training for all supervisors and managers to reinforce the message of relationship building, awareness and fairness
- ensure the partners or other governance body of the firm receive evidence-based reports on psychological hazards that identify the controls and relevant resource allocation required by that body.

### SNAPSHOT

- Meeting the challenges of psychological hazards requires an understanding of wellbeing and how ethical leadership can deliver it.
- Measuring impact can help determine the priority needs in an organisation, report on the efficacy of initiatives and quantify the return on social investment and cost efficiency.
- Wellbeing is a business strategy built on a plan of change, identified outcomes and resources, and committed to by leaders in the firm and owned in everyday practice.

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## Understanding key concepts

The importance of ethical leadership to meet the challenges of today's disrupted, unstable and changing environment is recognised by government, business and stakeholders. Traditionally, organisations have viewed wellbeing as "nice to have" rather than a necessity.<sup>2</sup> That was partly because there was no sensible definition of wellbeing. Practically, workplace wellbeing is where an organisation identifies the social, emotional, cultural, environmental and psychological hazards within the environment, including those that people hold within themselves when they attend work (their life at home) and utilise its resources to eliminate, mitigate and manages those hazards so the employee is safe, healthy, happy and productive. Wellbeing has never been considered an employer's responsibility but rather an

individual's concern to be managed by the employee. Oddly, since the early 1970s, the obligation under safety law to do everything reasonably practicable to provide a safe workplace and monitor health requires just that. The pandemic has unearthed cracks in the woodwork and with it, the realisation that the status quo involving employee assistance, mental health first aid, building resilience and self-care strategies are not addressing the fundamental consideration for employee mental health – the role of work. The new code explains the hazards, the obligations of risk assessment and what are reasonably practicable controls.

## Is wellbeing part of your culture?

To answer this, one must understand what culture is. Culture is not the professed values publicly displayed in the foyer of an organisation or the exhibition of virtue on the website mission page. It is perhaps one of the most overused words in HR and almost always is used in a self-serving rather than evidentiary way. Culture is best understood by observing how people in an organisation behave when placed under stress. Are the leaders in an organisation mindful of others, ensuring collaboration and sharing work according to capability and need? What are the behaviours that define the workplace when financial or work pressures are present? How would people describe their principal, partner or supervisor at such times? Does this "culture" embrace wellbeing or is there a disconnect between the language of wellbeing deployed by the firm and the cultural reality? This is relevant as there is abundant evidence that businesses who do embrace and live cultural wellbeing are more productive, have better retention of skilled employees and are safer, happier and healthier workplaces. How critical is culture in terms of psychological hazards? Culture provides the temperature gauge informing whether an organisation is managing psychosocial hazards.

## Wellbeing and the future of your practice

Law firms are struggling to attract and retain talent. Technology, consultants, employee appetite for challenge and change, and the gradual internationalising of law are dramatically disrupting how lawyers practise and the future of their practices. We are presently at the bottom of that curve of change, a hair-trigger from imminent and rapid acceleration. The manifestations of this change can be seen in the post-COVID norm of flexible work, desire for work/life balance and growing disenchantment with the intrusive nature of legal practice causing more lawyers to leave private practice, all of which have compounded the issues in relation to talent retention and attraction.

Should firms be alarmed? First, there is truth and reality in the current state of disruption. Second, it suggests there needs to be an employer shift in focus to employee wellbeing if firms are going to be sustainable, let alone flourish. Third, that change can only be led through a deliberate commitment to wellbeing and modelling of those commitments by firm leaders. Finally, the nature of the emergent law means that employee wellbeing must be evidence-based and rooted in good governance. The tendrils of wellbeing are already intruding in most formal procurement processes and are well understood by potential candidates. That evidential demonstration of employee wellbeing will become a greater focus as clients seek to align reputationally with socially good suppliers and candidates voting with their feet for those who are not “good”. For anyone who has recently sought to recruit at senior associate level, it is immediately apparent at the interview that the firm is being interviewed by the candidate – a healthy but different dynamic to five years ago.

## How do we know it works?

The approach to establishing a culture of wellbeing must be integrated to ensure it traverses all domains and considers the spectrum of wellbeing. This includes protections that not only focus on addressing risk factors and compliance but that seek to promote positive wellbeing outcomes and provide support for employees with health conditions. This can be achieved by building wellbeing into work and the workplace and constructing a holistic and fully human experience for the entire workforce. To do this, firms must gather data to identify what matters most to its workforce, what causes stress and what drives purpose and meaning in their work.

Wellbeing hasn't been on the agenda due to factors often revolving around the ubiquity of the term and a lack of tangible applications for firms to qualify and quantify. There is also the reluctance to engage in measurement fuelled by concerns about the quality of data as a basis for decision making. But collecting data that is “good enough” may be better than not collecting data at all. Firms need to start somewhere with a view that the process should be longitudinal and iterative. Examples of readily available objective data include absenteeism/personal leave, performance management and conflict data in the HR system. This can be aided by carefully crafted but simple surveys that can be segmented into practice groups or teams.

Many organisations integrate social impact into their mission but, despite well-designed initiatives, few legal organisations actually measure its impact. The IBA *Mental Wellbeing in the Legal*

*Profession report*<sup>3</sup> indicated that while 73 per cent of law firms have wellbeing initiatives in place, only 29 per cent measure initiative impact and only 27 per cent collect wellbeing data.

Measuring impact can assist in determining the priority needs in an organisation, report on the efficacy of initiatives and quantify the return on a social investment and cost efficiency. Firms must first agree on the outcomes they are hoping to affect and how they plan to affect them. The key then lies in connecting the initiative or investment to a “theory of change” or, in simpler terms, how that initiative is going to change the lives of those benefitting from it. This includes considering not only the final outcome but how to get there and through what mechanism the initiative will change someone's life. Once an organisation understands its theory of change, it should test whether it holds up by measuring shifts in subjective wellbeing and shifts in capability and opportunity needs which will inform how the impact may be improved. This builds currency for more equitable indicators of progress and drives changes in actions, policies and practices in the organisation.

## What does good governance look like in a law firm?

Social responsibility (making where you work a better place) versus social impact (making the world a better place) has a much more tangible impact on the key levers of business resilience, profitability and the long-term success of a business which results in driving social impact. Social responsibility within a business, its supply chains and partnerships and client's supply chains are, therefore, “wellbeing capital”. Culture and purpose of an organisation has a direct impact on the resilience and success of an organisation and its people, which has a corresponding impact on the environments and communities in which an organisation operates.<sup>4</sup>

Developing social responsibility enables a business to build and measure social capital and then invest that capital for growth and social impact. Many businesses put wellbeing in their health and safety agenda due to the traditional emergence of wellbeing from risk, compliance and reputation. Health and safety was designed to prevent accidents. This is vastly different to the overall wellbeing of an organisation's employees which involves building resilience, culture and performance – not about preventing accidents. Health and safety is a set of inputs whereas wellbeing is an overarching output or result from a range of important inputs – not a subset of health and safety inputs. The problem in placing wellbeing in the health and safety agenda is that it fails to recognise the key components that make up an employee's feelings of subjective wellbeing and in turn leads to performance, satisfaction, loyalty and retention. By the time a reputational risk presents, it's often too late to prevent it. Something becomes a reputational risk because people care – often due to ethical reasons. This is why starting with impact and good governance rather than risk and compliance creates the mechanism to build wellbeing capital.

## What should we expect from our leaders in law firms?

Enlightened leaders now recognise that wellbeing and health are a core part of responsible business. A strong, supportive workplace with a shared sense of purpose, clear objectives, manageable workload and responsive leadership can help people thrive in their careers and positively impact a company's bottom line.

Legal organisations must prioritise the fundamental organisational and structural issues that make work good for people. The road towards ethical leadership will not only benefit workers, but also leaders who stand to reap the rewards of embracing this new reality.

Wellbeing is not just a word, it is a business strategy built on a plan of change with identified outcomes, resourced, led and committed to by the leaders in the firm and owned in everyday practice. Its contingency lies in building the investment into leadership roles and being deliberate in the goals and measurements to hone and improve the outcomes. The outcomes will come but the work must be done. It will be worth it in the long run. ■

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1. *Kozarov v State of Victoria* [2022] HCA 12.
2. Deloitte – Wellbeing: A new cornerstone for ESG strategy and reporting (Part One).
3. Mental Wellbeing in the Legal Profession: A Global Study, International Bar Association, 2021.
4. Jowitt, H, *Putting the wellbeing of employees into the "S" of your ESG strategy*, Mind Forward Alliance and City Mental Health Alliance.

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