

Overview and summary of the Workplace Culture Check 2010

Part 1

Overview of findings from the Workplace Culture Check 2010

Introduction

This document provides a brief overview of the findings of the workplace culture check 2009. The survey results are discussed in more detail in Christine Parker and Lyn Aitken, *The Queensland³ Workplace Culture Check²: Learning from Reflection on Ethics Inside Law Firms*, 24 *Georgetown Journal of Legal Ethics* (2011) forthcoming (as at December 2010).

The Workplace Culture Check survey is one of several online surveys that the Legal Services Commission makes available to firms to enable them to check the ethical culture of their workplaces and think about how well their culture supports good conduct. For further information, go to <http://www.lsc.qld.gov.au/539.htm>.

Running and analysing the survey

In 2009, 15 law firms participated by invitation in the Legal Services Commission's (LSC) Workplace Culture Check Survey and findings and discussion from the survey were reported on the LSC website (see <http://www.lsc.qld.gov.au/561.htm> where results are presented in summary, cross-tabulation and by firm code. The page also includes an analysis and discussion of the results for all).

In 2009/2010 a further analysis of the findings was undertaken in collaboration with researchers from Griffith University and the University of Melbourne. This section provides a brief overview of the survey findings from that further analysis. A more comprehensive summary detailing results is also available – see Part 2 Summary of findings from the Queensland Workplace Culture Check.

Who answered the survey? Demographics

The first sets of results published on the LSC website in 2009 are based on an analysis of all the participants' responses, with or without practising certificates. The further analysis overviewed in this document is based only on the people who have practising certificates.

Of the 15 firms, we have information about the size of the firm for 12 of those firms (see Table 1). Seven were firms with over 50 practising certificate holders (pc), 2 with 20-49 pc, 2 with 10-19 pc and 1 had 5-9 pc. This tells us that half of the larger firms in Queensland (over 50 practising certificates) and less than one tenth of the medium sized firms answered the survey. Only 1 of the 155 small firms in

Queensland answered the survey. The firms of unknown size are either the larger medium or large firms and this tells us we have an extremely good representation of large firms in Queensland responding to our survey, and a reasonable number of medium firms.

We asked about position in the firm and gender. The largest group are first to third year lawyers, and they make up over a third of the people answering the survey. The second largest group, one fifth of people answering the survey, are partners/directors. Nearly half of the women answering the survey are first to third year lawyers, and over a third of the men answering the survey are partners. We keep in mind those differences because one of the things we are interested in looking at and making available to firms to consider is the difference in perceptions about the firm's culture and supports for good conduct between junior and senior staff. We see that there are differences in answers between female and male staff, and senior and junior staff, but on a finer grained analysis, the main differences in responses are based on seniority and not on gender (although there are more women who are junior and more men who are senior, answering the survey).

We also asked about primary area of practice, and nearly one third of people answered that their firm's primary area of practice is in personal injuries, with over a quarter from commercial/business and nearly one fifth from litigation. Five percent nominated general practice, which includes conveyancing, family/de facto law, immigration law, wills, estates and trusts, all more typically the province of smaller firms.

Lawyers' perceptions of ethical supports in their firms

A number of questions focused on a firm's resources for providing ethics support – such as whether the firm had a person or group designated to deal with ethics issues arising; whether it provided ethics training; had means of raising ethics issues and the firm's approach to discipline for ethics breaches. The majority of people said there were staff whose roles included dealing with ethics issues. Over three quarters said there was in-house training, and just over a third said that induction training included a substantial focus on ethics issues that may arise. Over half the people responding were aware of someone having been disciplined for unethical conduct in the last 5 years.

Evaluating a lawyer's work

The majority of people said that their firm evaluated staff performance by the amount billed by the fee earner, by the fee-earner's levels of diligence and competence and by client feedback. A small majority said by the amount of supervisory work undertaken. Less than a quarter of people answering the survey said that staff performance was evaluated by the number of pro bono hours worked, and less than a fifth, by the ethical reputation of the fee-earner.

People answering the question could make several choices, and analysis showed that over three quarters chose "amount billed by fee earner" plus at least one other

indicator. Only 5% chose indicators that did not include “amount billed by fee earner” and 6% chose only “amount billed by fee earner”.

Raising ethical issues, and support for raising ethical issues

On a personal level, small majorities of participants said that they always,

- are able to discuss ethically complex issues with senior staff;
- are able to talk with others in the firm about the ethical bases of decisions made;
- are able to raise ethical issues in confidence
- believe that when they raise concerns, they are given consideration
- are treated with respect and courtesy;
- know where to turn to for ethical advice;
- know who can make a decision on the best course of action if ethical issues arise;
- know that when a conflict arises they will not be put under pressure to favour the firm’s interests ahead of the clients.

These questions put the focus on the person acting in the face of ethical issues and how the firm responds.

Again on a personal level, less than 50% of people say that they always

- are treated fairly, in a consistent and predictable fashion;
- are able to express honest opinions on issues that may have serious consequences if others disagree;
- are able to openly discuss pay and conditions and are helped to recognize when ethical dilemmas emerge.

These questions more closely focus on the firm’s interaction with the staff member.

Partners and directors gave far higher majority answers to all questions than did first to third year lawyers.

Scenarios

People answering the survey are presented with 7 scenarios of ethical issues arising for mythical firms and are asked to indicate whether certain courses of action in response to the issues arising are 1) what a lawyer in such a situation should do, 2) what their firm’s culture would support 3) what they would do. Choices include such actions as raising the issue with a supervisor. There are in all scenarios either small or large majorities indicating particular courses of action to be taken.

A fuller description of results with some accompanying free text comments from people who responded to the survey is available in the next section - Part 2 Summary of findings from the Queensland Workplace Culture *Check*

Part 2

Summary of findings from the Queensland Workplace Culture Check

This section summarizes a more detailed analysis of the results of the Workplace Culture Check survey - see Christine Parker and Lyn Aitken, *The Queensland Workplace Culture Check?: Learning from Reflection on Ethics Inside Law Firms*, 24 *Georgetown Journal of Legal Ethics* (2011) forthcoming (as at December 2010).

INTRODUCTION

The Queensland Legal Services Commission (LSC) is responsible under the *Legal Profession Act 2007* for dealing with complaints about lawyers and for conducting compliance audits of the management of the provision of legal services by incorporated legal practices and initiating disciplinary or other enforcement action as appropriate. The LSC takes a proactive and ‘ethical capacity building’ approach wherever possible and has developed a series of ethic checks accordingly to help lawyers and law firms reduce the risk that things will go wrong and to respond more appropriately when they do.

The ethics checks are intended to engage practitioners, as they work through the online surveys, in reflecting on practices that are critical to encouraging good conduct. The ethics checks also engage law practices in identifying changes they could make to maintain or ensure good conduct within their organizations. The workplace culture check is the first of the LSC’s ethics checks for law firms.

In 2009 15 law firms participated in the Workplace Culture Check survey. Further information about the survey is available on the Queensland Legal Services Commission’s website at <http://www.lsc.qld.gov.au/241.htm> Further details about the statistics reported here are available from the Queensland Legal Services Commission upon request.

This document contains a summary of some of the key statistics from the Workplace Culture Check Survey relating to lawyers only.¹ The intention of this summary is purely to inform lawyers and law firms who participated in the survey and provide other interested parties with further information about key patterns and results emerging from the responses to the survey. Therefore this summary does not provide in depth analysis, interpretation or discussion of these findings. It is left for lawyers, law firms and other interested observers to draw their own interpretations and conclusions.

This summary proceeds in four sections:

- A. Basic demographic information about the law firms and lawyers that participated in the Workplace Culture Check.
- B. Summary of lawyers' perceptions about the availability of systems and resources for ethical support inside their firms including a designated ethics function, ethics training, channels for raising, reporting and resolving ethical issues and discipline for ethical misconduct.
- C. Summary of lawyers' subjective assessment of whether their firm generally encourages and supports members of the firm to raise ethical issues; whether they feel the firm responds appropriately when they do so; and whether they themselves personally feel that they have the capacity and support to raise and act on ethical issues.
- D. Summary of lawyers' responses to threeⁱⁱ hypothetical scenarios raising ethical challenges in legal practice.

A. INFORMATION ABOUT LAW FIRMS AND LAWYERS THAT PARTICIPATED IN THE WORKPLACE CULTURE CHECK

Table 1: Law Firms that Participated in the Survey

This table shows information about the size (by number of practicing certificate holders) of the 15 law firms that participated in the Workplace Culture Check compared with the total population of law firms in Queensland, and how many lawyers in each firm participated in the survey.

	Firm 1	Firm 2	Firm 3	Firm 4	Firm 5	Firm 6	Firm 7	Firm 8	Firm 9	Firm 10	Firm 11	Firm 12	Firm 13	Firm 14	Firm 15	TOTAL
How many PC holders in each firm?	>50							20-49		10-19		5-9	Unknown			
How many firms of that size in Qld? ⁱⁱⁱ	14 (median size of 87 PC holders; Total of 1268 PC holders) ^{iv}							27 (median size of 27 PC holders)		47		155	-			
How many PC holders in each firm responded to the survey?	27	12	34	17	53	29	16	28	19	1	12	7	33	10	23	323 ^v

Table 2: Respondents' Position within Firm and Gender

This table shows information about the proportion of lawyers who responded to the survey by seniority in their firm and gender. It is important for interpreting the results of this survey to notice that women are much more likely to be junior lawyers while men are much more likely to be senior lawyers. This reflects the general population of lawyers.

	Proportion of all respondents	Proportion of male lawyers	Proportion of female lawyers
1st to 3rd year lawyer	35% (112)	21% (29)	45% (79)
4th + year lawyer	13% (42)	14% (19)	13% (22)
Associate	9% (29)	8% (11)	9% (16)
Senior Associate	16% (52)	16% (22)	17% (29)
Partner/Director	20% (63)	34% (46)	8% (14)
Others^{vi}	8% (25)	7% (10)	3% (5)
Subtotals		100% (137)	100% (175)^{vii}
TOTAL	100% (323)	42% (137)	54% (175)

Table 3: Respondents' Primary Areas of Practice

This table shows information about the areas of specialization of legal practice nominated by those who responded to the survey.

	Percentage (and number) of respondents	Areas of practice included^{viii}
Commercial/Business	27% (87)	Bankruptcy and insolvency; Building and construction; Commercial and construction; Body corporate; Energy and resources; Environment and planning; Insurance; Intellectual property; Tax; Telecommunications; Trade practices.
Personal Injury	30% (96)	
Litigation	18% (57)	Personal injury and workcover; Medical negligence.
Property Law	10% (31)	
General Practice	5% (17)	Conveyancing; Family/de facto law; Immigration law; Wills, estates and trusts.
Industrial and Employment Law	4% (12)	
Government/Public Law	2% (7)	Administrative law; Child protection/dangerous prisoner; Constitutional; employment; native title.
Criminal Law	2% (7)	
Other	2% (5)	
Missing/not applicable	1% (4)	
TOTAL	100% (323)	

B. LAWYERS' PERCEPTIONS OF SYSTEMS AND RESOURCES AVAILABLE FOR ETHICAL SUPPORT IN THEIR FIRMS

Table 4: Lawyers' Perceptions of Availability of Ethical Supports in their Firm: Designated Ethics Function, Ethics Training, Channels for Raising and reporting Ethical Issues, Firm Discipline for Unethical Conduct

	Percentage Answering Yes (Total number answering question)
DESIGNATED ETHICS FUNCTION	
<i>This ethical support gives lawyers an avenue to raise ethical issues outside of their workgroup and apart from their supervising partner, and gives partners a source of specialist advice for difficult issues.</i>	
My firm has staff/consultants whose role is to support ethical practice	45% (281)
Designated ethics partner/solicitor to address ethical concerns	16% (257)
Ethics committee to address ethical concerns	15% (257)
ETHICS TRAINING	
<i>This provides opportunities for top-down communication of the firm's ethical expectations, the formation of contextual ethical judgment through collective discussion, and an avenue for lawyers (and other staff) to raise and discuss ethical issues.</i>	
My firm provides in-house training about ethical issues that may arise in practice	77% (281)
Regular in-house ethics training program ^{ix}	65% (264)
My firm encourages and financially supports staff to attend external learning opportunities about ethical issues	56% (281)
My firm's induction training for new staff includes substantial training on ethical issues	38% (279)
CHANNELS FOR RAISING AND REPORTING ETHICAL ISSUES	
<i>The maintenance of an ethical practices depends on the confidence and ability of employee lawyers to report ethical issues up the line and the support and encouragement of senior colleagues to consider and action ethical issues that do arise.</i>	
My firm expects all staff to alert others to ethical issues whenever they see them arising	83% (281)
Written policy encouraging reporting of misconduct	39% (257)
An in-house ethics hotline	2% (277)
DISCIPLINE FOR UNETHICAL CONDUCT	
<i>A strong statement of the ethical rules the firm expects lawyers to follow and a clear statement that discipline can occur might be a necessary counter-pressure to the pressure of billable hours.</i>	
Firm has an internal discipline process for unethical conduct	41% (277)
Aware of someone in firm actually being disciplined for unethical conduct in last 5 years	59% (277)
Firm has discipline system and aware that someone has been disciplined for unethical conduct in last 5 years	12% (277)

Firm has discipline system but not aware that anyone has been disciplined for unethical conduct in last 5 years	29% (277)
Firm does not have discipline system and not aware that anyone has been disciplined for unethical conduct in last 5 years	52% (277)
Firm does not have discipline system and aware that someone has been disciplined for unethical conduct in last 5 years	7% (277)

Table 5: Variation by Seniority, Gender and Firm Size in Lawyers' Perceptions of Availability of Ethical Supports in their Firm^x

Initial analyses of the data indicated that there were some differences in the way that men and women and also the most senior (partners/directors) and most junior (1st to 3rd year) lawyers had responded to the questions shown in Table 4. Therefore tests of one-way significance and multiple regression were conducted in order to determine whether there were statistically significant variations in the way they had answered these questions. Firm size was also considered because this is likely to make a difference to the ethical supports in place in the firm and the firm culture.

	Variation in response by seniority, gender or firm size?
DESIGNATED ETHICS FUNCTION	
My firm has staff/consultants whose role is to support ethical practice	No significant variation.
Designated ethics partner/solicitor to address ethical concerns	Some variation by seniority and firm size ^{xi}
Ethics committee to address ethical concerns	No significant variation
ETHICS TRAINING SUPPORTS	
My firm provides in-house training about ethical issues that may arise in practice	No significant variation
Regular in-house ethics training program ^{xii}	No significant variation
My firm encourages and financially supports staff to attend external learning opportunities about ethical issues	Significant variation by seniority ^{xiii}
My firm's induction training for new staff includes substantial training on ethical issues	No significant variation
RAISING AND REPORTING ETHICAL ISSUES	
My firm expects all staff to alert others to ethical issues whenever they see them arising	No significant variation
Written policy encouraging reporting of misconduct	No significant variation
An in-house ethics hotline	No significant variation
DISCIPLINE OF UNETHICAL CONDUCT	
Aware of firm having a discipline system <u>and</u> whether anyone has actually been disciplined in last 5 years ^{xiv}	Significant variation by seniority ^{xv}

Table 6: Performance Measurement Indicators in Lawyers' Firms

It is sometimes suggested that if lawyers feel their performance is evaluated solely by reference to billable hours that this might make some feel that they do not have time to discuss ethical issues. Some might even feel under pressure to cut ethical corners. On the other hand firms where lawyers feel they are evaluated by reference to a range of indicators, including indicators of ethical conduct, this might provide incentives for lawyers to take greater ethical responsibility for their work. Therefore the Workplace Culture Check asked lawyers how performance was measured in their firms. Visual inspection indicated no great differences by gender and seniority in the responses to these questions.

	Percentage answering yes (number)
Does your firm measure performance by any of the following indicators? (Respondents could tick more than one)	
Amount billed by fee earner	89% (252)
Level of fee earner's diligence and competence	71% (202)
Client feedback	69% (196)
Amount of supervisory work undertaken	54% (154)
Number of pro bono hours worked	23% (66)
Ethical reputation of the fee earner	15% (43)
Don't know	7% (20)
Ticked nothing	6% (19)
Analysis of extent to which performance measured only by reference to amount billed by fee earner, or amount billed in combination with other indicators	
Performance measured by 'amount billed by fee earner' and at least one other indicator	78% (235)
Performance measured only by 'amount billed by fee earner'	6% (17)
Performance measured by at least one other indicator and not 'amount billed by fee earner'	5% (15)
Don't know/nothing ticked	12% (36)
TOTAL	100% (303)

This question also gave lawyers a chance to add open text comments to add to the list of performance indicators provided in the survey. A number of respondents noted that their firm's performance indicators are quite wide-ranging:

A number of other factors including attitude to and cooperation with coworkers; compliance with the firm's core values (excellence, intelligence, integrity, reliability, commerciality, innovation); work earned/new clients; marketing initiatives; work on firm's precedent and knowledge data base

Performance is measured by many indicators, there is compliance with the firm values, meeting targets, client feedback etc.

Many added extra indicators to the list above

The amount of work introduced into the firm the adherence to the firm's values and culture.

Articles written, presentations undertaken, assistance given to junior lawyers.

Participation in internal and external CLEs and presentations.

Fee performance of subordinates internal articles written, time recorded. Extra study.

Some emphasised the important of ethics to performance evaluation in their firm:

Ethical conduct and absolute integrity is a given expectation at this firm. Anyone acting unethically will be dealt with severely and possibly dismissal depending upon the circumstances, nature and extent of the transgression.

But equally a number emphasized the importance of building new business and keeping clients satisfied:

We are measured on various aspects of our jobs not just on what we bill. Our firm is very client focused - this is one of the performance measures that the client is satisfied.

Ability to build and maintain new and existing client relationships

Firm promotional and external liaison activities

Contribution to practice development

Don't know if performance is measured by client feedback but client feedback is definitely discussed in reviews etc

One respondent was quite cynical about the effect of the performance measurement system in their firm:

It rewards high absenteeism and those who won't take ownership or responsibility.

C. LAWYERS' SUBJECTIVE ASSESSMENT OF WHETHER THEIR FIRM GENERALLY ENCOURAGES AND SUPPORTS STAFF RAISING ETHICAL ISSUES; AND OF THEIR OWN CAPACITY TO RAISE AND RESOLVE ETHICAL ISSUES

Table 7: Lawyers' Perception of General Encouragement to Raise Ethical Issues and Response to Raising Ethical Issues in their Firms

This table shows responses to questions about lawyers' general perceptions of whether supervising partners in their firm encourage people to raise ethical issues and of what would happen if someone did raise concerns about being asked to do something they perceived as ethically questionable.

	Percentage answering in way that shows they perceive firm as ethically supportive (Total number answering question)
SUPERVISING PARTNERS' ENCOURAGEMENT TO RAISE ETHICAL ISSUES^{xvi}	
All supervising staff within my firm encourage staff to raise any ethical issues with them	69% (281)
All supervising partners within my firm see encouraging staff to raise ethical issues with them as part of their role	63% (281)
The firm has a system for staff to raise ethical issues independently of supervising partners	43% (280)
WHAT WOULD HAPPEN IF A STAFF MEMBER RAISED CONCERNS ABOUT BEING ASKED TO DO SOMETHING THEY PERCEIVED AS BEING ETHICALLY QUESTIONABLE?^{xvii}	
Their actions in raising the issue would be appreciated by our firm	85% (280)
They would suffer reprisal	86% (279)
They would be told that such issues should not concern them	84% (279)
The staff member would experience adverse consequences	82% (280)
The issue would be ignored and not dealt with in an appropriate manner	83% (280)
Our firm would be cautious about trusting anyone who raises issues	81% (277)
Their reasons and personal motives for raising such issues would be questioned	70% (280)
Our firm would regard them as someone who can be trusted	56% (280)
Our firm would demonstrate its endorsement of their actions by asking them contribute to staff training in raising ethical issues	26% (280)

Table 8: Lawyers' Perception of General Encouragement to Raise Ethical Issues and Response to Raising Ethical Issues in their Firms: Variation by Gender, Seniority and Firm Size^{xviii}

Again, there were differences in responses to the questions shown in Table 7 by gender and seniority so further tests were conducted to find out whether these variations were significant taking into account gender, seniority, and firm size.

	Variation in response by seniority, gender or firm size?
SUPERVISING PARTNERS' ENCOURAGEMENT TO RAISE ETHICAL ISSUES^{xix}	
All supervising staff within my firm encourage staff to raise any ethical issues with them	No significant variation
All supervising partners within my firm see encouraging staff to raise ethical issues with them as part of their role	Variation by seniority ^{xx}
The firm has a system for staff to raise ethical issues independently of supervising partners	No significant variation
WHAT WOULD HAPPEN IF A STAFF MEMBER RAISED CONCERNS ABOUT BEING ASKED TO DO SOMETHING THEY PERCEIVED AS BEING ETHICALLY QUESTIONABLE?^{xxi}	
Their actions in raising the issue would be appreciated by our firm	No significant variation
They would suffer reprisal	No significant variation
They would be told that such issues should not concern them	Variation by seniority ^{xxii}
The staff member would experience adverse consequences	No significant variation
The issue would be ignored and not dealt with in an appropriate manner	No significant variation
Our firm would be cautious about trusting anyone who raises issues	Significant variation by seniority ^{xxiii}
Their reasons and personal motives for raising such issues would be questioned	No significant variation
Our firm would regard them as someone who can be trusted	No significant variation
Our firm would demonstrate its endorsement of their actions by asking them contribute to staff training in raising ethical issues	No significant variation

Table 9: Lawyers' Subjective Sense Of Their Own Capacity To Raise, Resolve And Act On Their Own Ethical Judgments^{xxiv}

This table shows lawyers' more subjective sense of their own "personal ethical fit" in the firm, that is their capacity to raise, resolve and act on ethical issues. There were quite dramatic differences evident in these responses by both seniority and gender. This table shows these differences, with the questions divided into those where there are statistically significant differences by seniority only, and those where there are statistically significant differences by both seniority and gender.

	All	1 st to 3 rd Year Lawyers	Partners/ Directors	Female	Male
Vary by Seniority					
I am able to discuss ethically complex dimensions of my work with partners/senior members of the firm	61%	51%	83%	55%	70%
I can talk with others in my firm about the ethical bases of decisions we make or actions we take	55%	44%	77%	47%	65%
I am able to raise ethical issues in confidence	54%	44%	75%	47%	64%
If I raise concerns, they are given consideration	51%	39%	77%	46%	59%
I am treated with respect and courtesy in my firm	54%	47%	66%	52%	57%
I am treated fairly, in a consistent and predictable fashion	42%	34%	64%	36%	50%
I am able to express honest opinions on issues that may have serious consequences if others disagree	41%	24%	70%	33%	52%
I am able to openly discuss pay and conditions	32%	16%	53%	23%	43%
When a conflict arises I know that I will not be under pressure to put the firm's interests ahead of the client's	58%	45%	83%	52%	67%
Vary by Seniority and Gender					
I know where to turn to for ethical advice in my firm	51%	38%	79%	44%	60%
I know who can make a decision on the best course of action if an ethical issue arises for me in my work	52%	37%	79%	45%	62%
I am helped to recognize when ethical dilemmas emerge	36%	22%	65%	27%	48%
Total Personal Ethical Fit (sum of all 12 items)					
Means	5.9	4.3	8.7	5.1	6.9

TOTALS	268	96	47	153	114
		143		267	

Table 10: Results from Multinomial Regression Analysis: Influence of Gender, Seniority and Firm Size on Sense of Personal Ethical Fit

We used multinomial regression to test whether seniority, gender and firm size independently influenced overall sense of total personal ethical fit (shown in the last row of Table 9). This is especially important because gender and seniority co-vary (that is, men are much more likely to be firm leaders than women: see Table 2). It is only seniority that is significantly associated with sense of personal ethical fit. That is leaders of the firm were much more likely to be feel optimistic about their own sense of ethical fit than the most junior lawyers in the firm. Gender and firm size did not make a difference.

Gender	-0.12
Junior vs Senior	0.4***
Firm Size	0.03
R ²	0.21
F	12.68***

Note: *** significant at the 0.001 level or less

D. LAWYERS' RESPONSES TO HYPOTHETICALS RAISING ETHICAL ISSUES

Table 11: Responses to Hypothetical 1

Imagine that your practice is acting in a large commercial matter in which legal fees will not be questioned, and that both you and your group are below budget for the month. Imagine that your supervising partner directs you to make up the budget shortfall by billing that commercial file for work not carried out or carried out on a different matter.

What would you do?	
1. Say nothing and do what is asked	1% (4)
2. Raise your concerns with your supervising partner	25% (71)
3. Raise your concerns with another senior practitioner	35% (98)
4. Refuse and accept the consequences	18% (51)
5. Refuse – but first consult with supervising partner or senior practitioner ^{xxv}	20% (55)
TOTAL	279
Analysis of comparison between what they would personally do and what they thought other lawyers would do and what firm culture would encourage	
Those who thought other lawyers would refuse and accept the consequences and that firm culture would also encourage that – but they personally would choose another option	11% (30)
Those who thought other lawyers would refuse and accept the consequences, but firm culture would not encourage that and they personally would not do it	6% (16)
Those who would refuse and accept consequences despite fact that firm culture would not encourage it and they believed other lawyers would not do it	10% (28)
All other combinations	73% (203)
TOTAL	277

There was an opportunity for respondents to amplify their responses to the hypothetical scenarios in an open text box.

A number of respondents felt that this sort of scenario would not occur in their firm:

I do not believe that I would come across this situation at our firm as our settled files are independently costs assessed and the fees billed would never be more than what is on a cost assessment.

Professional fees are assessed on an itemized basis and would not allow for such a situation. This type of behaviour is criminal and would not be tolerated in this firm.

That would never be asked at our firm.

One felt that it might happen:

I see junior lawyers doing this - they are close to the partner and I hesitate to speak to the partner for the consequences.

Another felt that there might be some legitimate reason for it:

This should be discussed, there may be other reasons than that perceived by the junior lawyer.

A number commented about who they would talk to about it and the way in which they would escalate the matter if it was not dealt with satisfactorily in the first instance:

I would tell my supervising partner that it is not on to do this and if I did not get the appropriate response I would then raise it with another senior practitioner for further guidance!

I would raise my concerns with the supervising partner in the first instance. If he continued to give that direction, I would raise concerns with the managing partner. If the matter was not satisfactorily addressed by the managing partner, I would refuse and accept the consequences and determine whether I had an obligation to report the matter to the law society.

I think in the first instance the concerns should be raised with the supervising partner. If that does not work then you would raise your concerns with another senior practitioner. Ultimately, your final option may be to simply refuse and accept the consequences.

I think the action taken would depend on the seniority of the lawyer – as a senior lawyer I would be comfortable with raising the issue with the partner in question and then if that is not successful, raising it with another partner. A more junior lawyer may feel more comfortable approaching another senior practitioner rather than the partner

If my supervising partner still persisted in wishing to act in a manner that is inappropriate I would need to raise the issue beyond that level. I feel comfortable in stating that this would be supported by more senior staff.

In the first instance I would raise the concerns with the supervising partner and, if my concerns were not alleviated, I would go to another senior partner or the ethics officer. We are encouraged to raise concerns with any manager directly if we are comfortable to do so, but when we are not comfortable with that we can always go directly to another senior manager/lawyer or the ethics officer.

Table 12: Responses to Hypothetical 2

You are acting for a company in a property conveyance. Its constitution specifically provides that before any real property can be acquired by the company a directors' meeting must be held, minutes recorded and that written authority is given to the directors signing the contract. Just before settlement, you discover that there is no document authorizing the company to enter in the transaction. You discuss this with the directors and they suggest that you type up a minute of meeting and backdate it to show that they did have the required authority at the relevant time, so that settlement can proceed. They say they simply overlooked holding the meeting and it is purely a technical matter. The deal is worth millions of dollars to the company.

What would you do?	
1. Say nothing and do what is asked	2% (5)
2. Raise your concerns with your supervising partner	51% (155)
3. Refuse to do as the company asks and delay settlement	20% (59)
4. Refuse and if needs be terminate the retainer	16% (47)
Missing	12% (35)
TOTAL	303
Analysis of comparison between what they would personally do and what they thought other lawyers would do and what firm culture would encourage	
Respondents who thought what a lawyers should do, what firm culture encouraged and what they would do was all consistent:	
1. Say nothing and do what is asked (all questions)	1% (3)
2. Raise your concerns with your supervising partner (all questions)	44% (116)
EITHER 3. Refuse to do as the company asks and delay settlement; OR, 4. Refuse and if needs be terminate the retainer (all questions)	31% (82)
Number who thought firm culture was out of step with what a lawyer should do and what they personally would do:^{xxvi}	
Thought lawyers <u>should</u> choose options 3 or 4, AND they personally <u>would</u> choose 3 or 4. But firm <u>culture</u> would encourage options 1 or 2.	4% (11)
Thought lawyers <u>should</u> choose options 3 or 4. But firm <u>culture</u> would encourage option 2 (raise concerns with supervising partner) and they personally <u>would</u> choose option 2 (raise concerns with partner).	10% (27)
Others	10% (29)
Total	282

In the open text comments to this hypothetical, a number of lawyers commented that there was a relatively simple solution to this problem that the options provided in the survey did not cover:

If receiving instructions from the full board, there is probably a better solution which may be to simply proceed to settlement and later record a ratification of the decision by appropriate minutes. It is never appropriate to back-date minutes, but in most instances a subsequent ratification will be sufficient to allay concerns and prevent any negative consequences arising. Such instructions can generally be quickly obtained from all directors either by a group email or phone calls and will generally only cause minor delays to settlement.

Have a minute that ratifies the entry into the contract and date it the day the meeting was held. It can be solved.

Hold a meeting of directors or shareholders if convenient to ratify the decision to enter into the contract.

I would advise the directors to hold, and document via minutes, a meeting whereby they ratify execution of the contract. No documents should be backdated.

Type up a resolution for all directors to sign confirming the authority of the directors to sign the contract and affirming the purchase but not backdated.

You'd simply conduct the necessary meeting.

Some recognized that this solution would need to be investigated to ensure it was available:

Get them to send around a flying minute before settlement, but if it can't be completed in time then delay settlement. If the client disagrees with the approach, get them to sign something stating that they acknowledge that they are acting against legal advice and then terminate the retainer.

It may be possible to prepare a retrospective approval (not a backdated one) depending on what the constitution or the Act says - I'd want to check.

This is an issue which needs thorough investigation and particularly whether the action of the directors can be ratified by a subsequent meeting.

The other option is to refuse to comply by explaining to the client the consequences of their instructions and the ethical issues for you as a lawyer. The other thing is to present the client with the alternative solution to getting the necessary authority/paperwork from a directors' meeting urgently (if a directors' meeting can be convened say by phone) to avoid the settlement becoming delayed. The last resort would be to terminate the retainer in circumstances where the client was insisting you breach your ethical obligations.

Others were not sure what options were available but knew they should not backdate a document:

I don't have experience in conveyancing therefore I can not understand the technical options to the lawyer. However, I would not backdate anything, I would advise the client of their options (backdating a document is not one of them). I would raise the concerns with someone senior too. If needed I would then terminate the retainer if they wouldn't accept the advice on how we could proceed.

I would both raise it with the supervising partner and refuse the request

I would never create a false document and backdate it for a client.

If the supervising partner did not act, you would need to take further steps, ie refuse to do as company asks and delay settlement.

The first allegiance is to the court. The client itself is in error. I would seek my supervising partner's instructions. However it would be unethical and in breach of professional rules to act in this matter.

The result in that situation is to refuse to carry out the instructions and terminate if necessary, but at my level of seniority I would need to raise this with my supervising partner first.

A lawyer should refuse to do as the company asks and delay settlement, and, if it is then required, terminate the retainer. The general culture of our firm would also do as above.

At my level the firm would encourage me to raise this with a senior colleague rather than making decisions of my own accord.

Table 13: Responses to Hypothetical 3

You are an employed solicitor in a large commercial law firm. Your supervising partner asks you to handle a simple conveyancing transaction for a major client of the firm and his mother. You send out the documents for signing with express instructions that the signatures are required of both the client and his mother and that her signature must be witnessed. When the documents are returned, you discover that the mother's signature has not been witnessed. You therefore explain to the client that that the documents will have to be re-signed by his mother in front of a witness. The client objects to this as an unnecessary disturbance for his mother and reminds you that he is a major client who has been giving the firm work for many years. He wants you to sign the document as the witness.

What would you do?	
1. Say nothing and do that the client asks	0
2. Confirm with the client's mother that she did sign the document and do what the client asks	2% (6)
3. Refuse to sign and insist the document be executed again by the mother and properly witnessed	77% (233)
4. Raise concerns with a supervising partner and follow that person's advice	11% (33)
Missing	10% (31)
TOTAL	303
Analysis of comparison between what they would personally do and what they thought other lawyers would do and what firm culture would encourage	
Respondents who thought what a lawyers should do, what firm culture encouraged and what they would do was all consistent (option 3 or 4)	75% (202)
Those who thought they were inconsistent	25% (68)

The respondents' comments indicated that many lawyers felt the appropriate response to this situation was fairly clearcut in their own minds and in their firms:

Again this is a black letter law issue. It is not merely unethical but is contrary to both the Oaths Act and Legal Profession Act requirements.

This happens ALL the time, though not in commercial transactions. Our clients frequently get documents wrongly signed or witnessed and, despite their objections, we just insist that things be done correctly.

If the client is truly a good client, you will be able to square this course of action away with them. If you cannot, it should alert you to the fact that there may be something wrong.

In my experience with the firm, the solicitor (depending on the level of authority) would discuss the matter with his/her supervising partner who would persist with having the document executed again.

This is assuming the document is one whereby the client's mother cannot simply confirm her signature on the document. The firm would encourage us to visit the client personally and have the document resigned and re-witnessed. I would also raise the issue with the supervising partner. I assume his advice would be the same as the action taken.

Offer to attend on the mother personally at no charge to the client and if refused then decline to proceed

I would contact the mother and arrange to re-sign with her and leave the too important person out of it.

One respondent commented that the firm view might be different in slightly different circumstances:

Our firm may encourage something different if the signature that had not been witnessed was the client's or a person who the partners knew well and knew what their signature looked like.

ⁱ Note that all members of the 15 firms (lawyers and non-legal staff) were invited to participate in the survey. This summary however includes only responses from lawyers. Note also that responses from three firms (Firms 2, 10 and 12 as shown in Table 1) are not included in the statistical data in sections B, C and D of this report. This is because these three firms did not have both senior male lawyer respondents and junior female respondents, a difference that is quite important for some questions. This reduced data set means that our conclusions about differences between senior and junior and male and female lawyers are more robust. However they are not significantly different from the patterns of response with all firms included.

ⁱⁱ There were actually six hypothetical scenarios included in the Workplace Culture Check survey. The three in this summary have been included because they elicited the most variation in responses and did not have any major problems of ambiguity in the wording of the questions.

ⁱⁱⁱ Based on data from September 2007. The Workplace Culture Check was conducted in early 2009.

^{iv} As of September 2007, these firms ranged in size from 51 – 153 practising certificate holders in Qld.

^v Two respondents were unable to be identified with a firm.

^{vi} Includes 7 consultants; 3 managers not working as lawyers but with a practising certificate; and 15 others.

^{vii} These two numbers add to 312 because gender is missing for 11 respondents.

^{viii} The survey gave a number of options based on the areas of practice categories developed by the Law Society of Queensland. Respondents could also write in their own area of practice. These have been grouped into larger categories as indicated.

^{ix} There was a very high level of positive response to the general question asking whether the firm provided “in-house ethics training” (reported immediately above). However another later question asked respondents to specify “how often” ethics training occurred. Not everyone could do this. Therefore a more reliable measure combining responses to the two questions was created. For this item respondents were coded as saying that their firm has a “regular ethics training program” if:

(a) they answered yes to the first question (“My firm provides in-house training about ethical issues that may arise in practice”); and

(b) they have also chosen a regular time period for the question “If your firm offers an in-house ethics training program for staff, how often does that training occur?” Options were “at least one a month”, “at least quarterly”, “at least half yearly”, “at least annually”, “more than annually”, “never”, “my firm does not have an in-house ethics training program”.

^x Frequencies were visually inspected for variation by seniority and gender, and were also tested for one-way significance using Pearson Chi-square. For those where there was significant one-way variation by either gender or seniority, logistic regression was used to test the influence of seniority,

gender, and firm size in one model. This table reports results of the logistic regression only, as this is considered to be the most robust result.

- ^{xi} Seniority is significant at the very low p-value of 0.1. Lawyers at firms with 20-49 partners are significantly less likely to say they have an ethics partner or solicitor than firms with 50+ partners (statistical significance at the low p-value of 0.04). Model statistics: Nagelkerke R Square = 0.15, p= 0.017
- ^{xii} See note ix above.
- ^{xiii} Seniority is significant at the low p-value of 0.03. Model statistics: Nagelkerke R Square = 0.06, p= 0.17
- ^{xiv} Note that the two items on discipline shown in Table 1 were combined for this analysis in order to get a more robust, single measure.
- ^{xv} Binary logistic regression on the variable whether respondent was aware of discipline system and actual discipline in last 5 years or not. Seniority is significant at high level of p=0.008. Model statistics: Nagelkerke R Square = 0.14, p= 0.17
- ^{xvi} Respondents were asked to answer on a five point scale: strongly agree to strongly disagree. Answers have been coded into two categories: "ethically supportive" and "ethically unsupportive". The mid-point "neither agree nor disagree" has been coded as "ethically unsupportive".
- ^{xvii} Respondents were asked to answer on a scale from strongly agree to strongly disagree. We have coded the answers to each question into two categories: "ethically supportive" and "ethically unsupportive". The mid-point "neither agree nor disagree" has been coded as "ethically unsupportive".
- ^{xviii} See note x above.
- ^{xix} See note xvi above.
- ^{xx} Seniority has a very low level of statistical significance (p-value of 0.057). Model statistics: Nagelkerke R Square = 0.103, p= 0.022
- ^{xxi} See note xvii above.
- ^{xxii} Seniority has a very low level of statistical significance (p-value of 0.07). Model statistics: Nagelkerke R Square = 0.096, p= 0.07
- ^{xxiii} Seniority has a low level of statistical significance (p-value of 0.026). Model statistics: Nagelkerke R Square = 0.121, p= 0.029
- ^{xxiv} Respondents were asked to choose between: always, often, sometimes, rarely, never. These have been coded into "always" and "not always".
- ^{xxv} Note that some people would not have realized they could choose more than one option.
- ^{xxvi} None had the following combination: Thought lawyers should choose options 3 or 4. But firm culture would encourage option 1 (say nothing and do what is asked) and they personally would choose option 1.