

The student as inadvertent employee in work-integrated learning: A risk assessment by university lawyers

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An employment contract between the student and the host organization may be the unintended consequence of a work-integrated learning (WIL) placement. The student, as an 'inadvertent employee' of the host organization, can expose the university to risk. A case study involving thirteen Australian university lawyers identifies the legal and reputational risks associated with paid and unpaid WIL placements, and how university lawyers manage these risks through WIL agreements, legal advice and the support of external agencies. In Australia, the key themes which emerge from university lawyer experiences, and the existing literature, are the vocational placement exemption under the *Fair Work Act 2009* (Cth), and scholarship payments. The article concludes with a series of lessons for WIL practitioners in terms of managing the labor-related risks of WIL programs.

Keywords: Work-integrated learning, Fair Work Act, legal risk, reputational risk, university lawyers

This article presents an empirical study of labor-related risks in WIL programs from the perspective of Australian university lawyers. A university lawyer is a qualified lawyer, employed by the university, who delivers legal services to the university. A case study involving university lawyers offers a rich description of their experiences with risk, as well as the practices and methods they employ to manage the reputational and legal risks of the student being an inadvertent employee.

There are significant legal and reputational risks to universities of a student being an inadvertent employee when they engage in work-integrated learning (WIL) programs, therefore it is important to consider how these risks are managed by university lawyers. WIL, a curriculum design which combines formal learning with student exposure to workplace settings, is delivered by universities as an elective or compulsory component of most university degrees. For the purpose of this article, WIL is distinguished from other forms of work-based learning, such as work experience that does not entail the integration of university study and practice (Smith, 2012). Work experience, that is not part of a WIL program, poses specific legal risks relevant to the contract of employment (Cameron, 2013; Stewart & Owens, 2013), and which is demonstrated by recent case law in Australia (*Fair Work Ombudsman v. Crocmedia Pty Ltd*, 2015; *Fair Work Ombudsman v. Aldred*, 2016; *Fair Work Ombudsman v. AIMG BQ Pty Ltd and Anor*, 2016).

In unpaid WIL placements, an unintended consequence of the student – host organization relationship is likely to be a contract of employment. From a university perspective, the student as an inadvertent employee of the host organization can expose the university to both legal and reputational risks. In this article, legal risk is an event or circumstance that exposes the university to the possibility of liability or non-compliance with external or internal rules and regulations (Cameron, 2017b), whereas reputational risk is an event or circumstance that affects the university's prestige, standing, or brand (Blustain et al., 2016). Whilst the employment contract is between the host organization and the student, the university may nevertheless be exposed to the possibility of accessorial liability under the *Fair Work Act 2009* (Cth) (Fair Work Act). Student exposure to workplace settings in WIL programs raises an important issue in labor law, which can impact the relationship between the entity that hosts

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the student in the workplace (host organization), the student and the university: in what circumstances does 'work' by the student during a placement with the host organization (WIL placement) create a contract of employment?

The next section of this article provides context to the case study by reviewing the labor regulation of WIL programs under the *Fair Work Act* which applies to a significant proportion of Australian employers. The regulatory framework in Australia is different to other jurisdictions, such as the United States, which do not exclude WIL programs from the legislation (refer Cameron, 2013). Despite the legal differences, it is argued that an international audience will relate to the risks described in the case study, and can apply the case study findings to their circumstances. The review of Australian law is followed by a summary description of the case study design, which incorporates sampling, interview design, data collection and data analysis, after which the case study is presented and discussed. The article concludes with risk management lessons for staff involved with the management and/or delivery of WIL programs (WIL practitioners).

LABOR REGULATION OF WORK-INTEGRATED LEARNING IN AUSTRALIA

The *Fair Work Act* regulates many of the terms and conditions of the employment contract for "national system employees" in Australia (sections 13 & 30C). National system employees include: all employees in the states of Victoria, the Australian Capital Territory and the Northern Territory; all private sector employees in the states of New South Wales, Queensland and South Australia; all private sector and local government employees in the state of Tasmania; all employees of constitutional corporations in the state of Western Australia, and those employed by the Commonwealth. Relevantly, "vocational placement" is excluded from the definition of national system employee (s 13). "Vocational placement", as defined in section 12, means a placement that is:

- a. undertaken with an employer for which a person is not entitled to be paid any remuneration; and
- b. undertaken as a requirement of an education or training course; and
- c. authorized under a law or an administrative arrangement of the Commonwealth, a State or a Territory.

Consequently, a student will not be an employee if the WIL placement is a vocational placement.

If the WIL placement is not a vocational placement, the issue becomes whether the student is on work experience or is an employee according to the ordinary meaning or common law definition of employee (ss 11 and 15). At common law, an Australian tribunal will assess the totality of the relationship between the student and the host organization, which includes the control exercised over the manner and method of any work performed (*Hollis v. Vabu Pty Limited*, 2001). The Fair Work Ombudsman (FWO), an Australian government agency which enforces the *Fair Work Act*, has also provided the following indicators to assist with working out whether a student is an employee: the reason for the arrangement; length of time; significance to the business; what the person is doing; and who is getting the benefit? (Fair Work Ombudsman, 2017). These indicators were recently applied in the case of *Klievens v. Cappello Rowe Lawyers* (2017), in which the tribunal rejected a student's claim that he was an employee whilst undertaking practical legal training.

If the student is an employee, the host organization is required to pay remuneration as prescribed by the industrial instrument that applies to the host organization, pay superannuation (*Superannuation Guarantee [Administration] Act 1992* (Cth)), withhold Pay As You Go (PAYG) tax from the remuneration (*Income Tax Assessment Act 1936* (Cth)), as well as provide statutory leave entitlements. As an employer,

the host organization contravenes the *Fair Work Act* by failing to pay remuneration and leave (ss 44, 45, 50 and 293), and may also be ordered to pay a pecuniary penalty to the Commonwealth government (s 546). A person involved in a contravention by the host organization is taken to have contravened the same provisions of the *Fair Work Act* (s 550). In a WIL context, Stewart and Owens (2013) note that the university could be involved in a contravention of the *Fair Work Act* by a host organization.

University lawyers have previously acknowledged that the *Fair Work Act* is a legal risk in relation to WIL programs. In a survey by Cameron and Klopper (2015, p. 354), university lawyers stated that "wages and other payments" and "*Fair Work Act*" were sources of legal work as well as future legal risk to the university. Legal work by university lawyers included advice as to the "risks of infringement of *Fair Work Act* and issues relating to employment entitlement" and to "whether placement is acceptable under *Fair Work Act* (i.e., does it fit the definition of vocational placement)". However, the survey results raised questions about the circumstances in which wages and payments and the *Fair Work Act* represent legal risks to the university, and how the legal risks are being managed by university lawyers. The experiences of university lawyers, reported in rich description as part of a case study design, can assist with answering these questions.

RESEARCH DESIGN

Case Study

This research is part of a multiple instrumental case study (Stake, 1995) of risk management by university lawyers with respect to WIL programs. Unlike intrinsic case studies in which the research focus is on the case itself, the purpose of this research was to provide insight about the phenomenon of risk management in WIL programs. Thirteen university lawyers (cases) from 12 university sites in Australia were selected to describe their experiences with legal risk and risk management. A case typology was maintained throughout the selection process to keep track of these characteristics and to ensure balance and variety in case selection (Stake, 2000). A finalized case typology is at Table 1. Other demographic information not available during the selection process has also been added to the case typology: university lawyer background; recognized WIL lawyer (Cameron & Klopper, 2015); and office structure. The five university types (Technical; Group of Eight (GO8); Gumtree; New Generation; and Regional) are adopted from a classification of Australian universities by Moodie (2012).

Interview Design

The interview design, which received university ethics approval, incorporated semi-structured and structured interview questions, and was tested in a pilot study of four university lawyers. Demographic characteristics were garnered from the structured questions, with more open-ended questions pertaining to legal risk, risk management, and circumstances that challenge and assist risk management by university lawyers. Specific labor-related risks to the university emerged during the interview, as well as practices and methods by university lawyers to manage these risks. University lawyers described other legal risks in WIL programs, which are reported separately. For instance, the labor-related risks were categorized as a type of contract risk (Cameron, 2017a). This study focuses on risk and risk management as it relates to the student as an inadvertent employee in WIL programs.

TABLE 1: Case typology of university lawyers

State or Territory of main campus	N	University type	N	Office size (Number)	N	University lawyer experience	N
New South Wales	3	GO8	5	2 to 5	6	2 to 4 years	4
Victoria	3	Technical	2	6 to 9	6	5 to 9 years	5
Australian Capital Territory or South Australia	3	New Generation	2	Greater than 9	1	Greater than 9 years	4
Western Australia	2	Regional	2				
Queensland	2	Gumtree	2				

Position	N	Recognized WIL lawyer	N	Office structure	N	University lawyer background	N
University lawyer	9	No	10	Flat	8	Mix	8
Manager	4	Yes	3	Hierarchical	5	Private sector	3
						Public sector	2

Data Collection and Analysis

The data collected for the case study is based on 13 in-person interviews, e-mail communications with university lawyers for the purpose of obtaining further information and/or clarification of their responses during the interview, and documents referred to by participants during the interview such as WIL agreements. The data analytic technique employed in this case study was inductive and comparative. Eclectic coding (Saldana, 2013), being a mix of various coding techniques, was employed to create an initial code map, which was then used as a basis for identifying data related to labor-related risks and risk management by university lawyers. The coding strategies applied included: structural, descriptive, attribute, in vivo, versus, simultaneous and sub-coding. The case study findings are presented as a cross-case analysis of legal risk, reputational risk and risk management related to the student as an inadvertent employee in WIL programs.

There are two important notes before proceeding with the case study findings. First, university lawyers were de-identified and assigned an ID number prior to the interviews to protect anonymity, and have been given a pseudonym in this case study to assist with readability. Second, the university lawyers' views reported in this case study were their personal views and are not necessarily those of the university by which they are employed.

RESULTS

Legal Risks

The legal risk of a student being an inadvertent employee of the host organization arises in an unpaid WIL placement that is not a vocational placement according to the *Fair Work Act*, if students remain with the host organization after the specified term of their WIL placement (Steve), or if students are

paid during a WIL placement. With respect to unpaid WIL placements, Cath and David acknowledged that the reference to “requirement of an education or training course” in section 12(b) is a “grey area” in the *Fair Work Act*. However, their interpretation differed as to whether unpaid placements in compulsory and elective WIL courses were covered by the vocational placement exemption. The position of David was that all unpaid WIL placements are vocational placements:

We’ve taken the more liberal view and said, ‘as long as it is a course requirement, doesn’t matter whether it’s an elective subject or a compulsory subject’... as long as it’s written into the handbook that in order to pass this subject that you need to do this (and it can be an optional part), but as long as it’s written in there we’ve taken the view that that should satisfy the definition... not tested in the courts anywhere, but that’s certainly the view we’ve taken.

In contrast, Cath has adopted a more cautious approach to the issue, in that unpaid placements in elective WIL courses may not be covered by the vocational placement exemption:

The vocational placement exemption under the *Fair Work Act* doesn’t necessarily cover you. It clearly covers the required course, it’s not so clear whether it covers elective courses... depends on who you talk to as to whether you say that is or isn’t the case. We’ve taken the cautious approach of until someone tells us, absolutely, that it is covered... we have to assume that it may not be, and that there may be an opportunity for a claim.

For David and Cath, uncertainty will persist until the vocational placement exemption is subject to judicial scrutiny. For Terri, the *Fair Work Act* was not an issue because, based on discussions with the Fair Work Ombudsman (FWO) and advice from an external law firm, any activities that are part of the unpaid WIL placement would be exempt from the *Fair Work Act*.

University lawyers also discussed arrangements in which the student receives a stipend, bursary or scholarship payment either directly or indirectly from the host organization as part of the WIL program. An indirect payment was described as a “tripartite arrangement” (John) – the host organization makes a payment to the university, with the funds then distributed by the university to the student. Cath and John have treated the tripartite arrangements with a healthy dose of skepticism. Classifying the payments as a scholarship may be viewed as a method of avoiding the host organization’s obligations as an employer. John was adamant that the tripartite arrangement, which had been a longstanding practice of some universities, was for all intents and purposes a contract of employment:

The student is liable to pay PAYG tax... it’s not a scholarship under the definition of the *Income Tax Assessment Act*. They’re an employee as far as the *Fair Work Act* is concerned, so at the end of the day these scholarship tripartite arrangements are really just a historical aberration that needs to be now stopped, and students need to be directly hired by the organizations and regarded as an employee, entering in an employment relationship, paid as such, and the student pays PAYG tax, and that’s it.

David also described the tax implications of a tripartite scholarship arrangement: “if a payment can be interpreted by the tax office as in lieu of services, it doesn’t matter how it’s paid... whether it goes through us, and then to the student... it could ultimately still be taxable income”.

Overall, university lawyers differed in their opinion as to whether the student as an inadvertent employee represented a legal risk to the university (as opposed to a reputational risk). Both Jenny and Cath rejected the notion that compliance with the *Fair Work Act* was a legal risk to the university,

whereas according to the advice received by Steve, a university that sets up a WIL program that does not fit within the vocational placement exemption may be complicit in the breach by the host organization. There was greater consensus that the student as an inadvertent employee posed a reputational risk to the university.

Reputational Risk

Reputational risk was a common theme amongst university lawyers irrespective of their opinion as to whether the student as an inadvertent employee posed a legal risk to the university. For Jenny, it was important that the university made sure that the WIL program complied with the *Fair Work Act* to protect students from exploitation: “you don't want to put them in somewhere where they're going to be exploited, and we clearly had the opportunity to protect them. So I guess its reputation...” Steve acknowledged the legal and reputational risks associated with a WIL placement that did not meet the vocational placement exemption under the *Fair Work Act*. The consequence for the university is that the host organization may not participate in future WIL programs, effectively terminating their relationship with the university. As Steve argued:

... we could be complicit in any finding of unpaid work, but otherwise, you know, it would just look bad anyway on the University's side if we were trying to encourage host organizations to host students, and not actually working through how to appropriately structure it. So they might end up on the wrong side of the law, and you know, won't want to host students next time.

The reputational consequences of not doing the right thing by the host organization and the students were described by David in the context of paid WIL placements. As David explained:

... so it wouldn't be the university that would be tapped on the shoulder to pay the tax, it would be the student and then if it's classed as income the host... why haven't they paid superannuation, payroll tax, all of the other payments, Work Cover, that go with being an employee? and so, we were managing... wanting to make sure that it was right, because it would be huge reputational damage if something like that came out and we hadn't done the right thing... by the students or by the law.

Whilst the university may not be exposed to legal risk, the potential reputational damage from a finding that the host organization is an employer of the student is real for the university.

Cath acknowledged that a WIL program in breach of labor law does not necessarily pose a legal risk to the university. Nevertheless, there exists a reputational risk that Cath posed as a question: “who wants to be a host if they could be subject to a claim?” Cath also described the reputational risk as a “loss of confidence from others who want to enter into the same arrangement”. The point made by Cath about reputational risk is similar to Steve – the university may lose the support of existing and potential host organizations, and, therefore, lead to a reduction in the supply of WIL placements, if the host organization is deemed an employer. Cath recalled a proposed tripartite scholarship arrangement as an example of reputational risk. Consistent with John's concerns about tripartite scholarship arrangements, Cath's advice incorporated the reputational impact of the university's involvement in an arrangement which may be viewed as a ‘back door way of employing somebody’ without paying payroll tax, superannuation and meeting other legal obligations of an employer. It is apparent that Cath, John and David were not only cognizant of the legal risk but also the reputational risk associated with the student as an inadvertent employee of the host organization. The next section describes how university lawyers manage these reputational and legal risks.

Risk Management by University Lawyers

The case study revealed three primary practices of university lawyers to manage the risk of a student as an inadvertent employee: WIL agreements; legal advice to WIL practitioners; and external support.

University lawyers include provisions in a WIL agreement that the student is not, or is not intended to be, an employee of the host organization. From a risk perspective, these provisions do not negate an employment relationship, as a Court will analyze the substance of the arrangement to determine whether the person is an employee (*Hollis v. Vabu Pty Limited*, 2001). Nevertheless, the provisions can be submitted as evidence of the parties' intentions with respect to the WIL placement. Further the host organization makes a number of promises in the WIL agreement designed to minimize this risk including:

- The student will not receive remuneration or payment of any kind;
- The WIL placement will not exceed the period of time specified in the WIL agreement; and
- The student is surplus to staffing requirements of the host organization. In other words the student is not replacement labor.

For paid WIL placements, the WIL agreement distinguishes scholarship and stipend payments from remuneration by stating that any stipend or scholarship payment is not payment for services rendered to the host organization. If the student is remunerated, the university lawyer seeks to distinguish the parties' contractual rights and obligations attached to the WIL program from that of employment by requiring the host organization and the student to enter a separate contract of employment. This clause effectively distances the university from participating, or being perceived to participate, in the employment relationship, which could otherwise expose the university to legal risk.

University lawyers also ask staff questions about the nature of the work-based activity and then provide advice about the appropriate structuring of the WIL placement so that it complies with the *Fair Work Act*. In particular, university lawyers explore, during the first conversation with WIL practitioners, whether student activities constitute work experience, a scholarship (with a work component), employment and/or a WIL placement. The first question that Steve and Tony ask is whether the work experience is a required part of the degree or part of a particular course that the student is enrolled in. Other questions include "what work are they actually doing, how long are they spending?" (Steve), "is it paid or unpaid?" (Tony), as well as a request for documentation already used by the WIL practitioner to gain a better understanding of the activity. Asking targeted questions about student activities also enables the university lawyer to determine the appropriate agreement for managing risk, whether that is a scholarship, employment or WIL agreement (Cath).

External parties can also support the risk management practices of university lawyers. Clarification from external sources is a method employed by university lawyers to improve risk management in WIL programs. For example, Terri turned to the Fair Work Ombudsman (FWO) and external counsel for advice and information. Steve explained that the fact sheets on unpaid work and internships published by the FWO have "been useful to actually point to and say, 'this is a real issue, we need to make sure that we're doing the right thing by our students... I'm not just saying this because I want to be a nuisance'". David went one step further, meeting with representatives from the FWO to gain a clearer understanding of labor-related risks:

We had some meetings with officers from the Fair Work Commission [*sic*] and really worked through a process of getting a good understanding of what the law was, where the grey areas were, and one of the grey areas is the definition of vocational placement.

John sought external support of a different kind – a tax firm about the taxation implications of scholarship arrangements attached to WIL programs; in particular, tripartite arrangements. The advice supported John's position conveyed to WIL practitioners that the arrangement was not a scholarship under the Income Tax Assessment Act, the student was liable to pay PAYG tax as an employee, the arrangement needed to stop and procedures be put in place to ensure the student was employed directly by the host organization. These external support mechanisms appear to be important for university lawyers, especially considering the demographic characteristics of university legal offices in Australia (Table 1). University lawyers generally work in small teams and can have limited experience in the tertiary sector.

DISCUSSION

University lawyers expanded the responses to the survey by Cameron and Klopper (2015) about the *Fair Work Act* and wages and other payments as sources of legal risk to the university. The university's involvement in a WIL placement, that has the unintended consequence of an employment contract between the host organization and the student, may expose the university to accessorial liability under the *Fair Work Act*. University lawyers also acknowledged the serious reputational consequences of the student as an inadvertent employee, in particular a breakdown in the university – host organization relationship. Managing the host organization relationship is of strategic importance to the university, in the sense that, without the host organization, there is no WIL placement. The failure to attract and retain host organizations may undermine the university's ability to deliver WIL placements to students.

The university lawyer manages the reputational and legal risk of the student as inadvertent employee by conducting thorough due diligence of the work-based activity to determine whether it is a WIL placement, work experience and/or employment, and then prepares a WIL agreement intended to minimize the legal risk. University lawyers may also seek external support through government agencies and private firms for their risk management practices. The Fair Work Ombudsman has been particularly proactive and has engaged with university lawyers to identify issues relating to the *Fair Work Act*.

Two themes emerged from the case study, and which can be situated in the literature: scholarship payments; and core and elective WIL courses. Both themes are discussed in the sections which follow.

Scholarship Payments

Stewart and Owens (2013, p. 77) argue, in their report to the Fair Work Ombudsman on unpaid work practices, that “the definition of ‘vocational placement’ contained in the *Fair Work Act* is a complex one and, with respect, not particularly well drafted”. For instance, the entitlement to “remuneration” is not defined in the *Fair Work Act*, which the authors suggest has a broader meaning than wages. This broader meaning is particularly relevant to scholarship arrangements involving a WIL placement. Whilst gratuities and bonuses may not be payments which the student is entitled to during a WIL placement, a formal scholarship arrangement may be considered an obligation by the host organization to pay the student. Accordingly, the student would become ‘entitled’ to remuneration, as per the definition in section 12 of the *Fair Work Act*, and the vocational placement exemption does not apply. This interpretation of the vocational placement definition, if accepted, increases the legal risk of

students, as scholarship holders, being deemed employees of the host organization. It also supports university lawyers' concerns about scholarship payments in WIL programs being used as a method of circumventing the host organization's legal obligations as an employer.

The circumstances in which scholarship arrangements meet the vocational placement exemption remain unclear. In 2015, the Fair Work Ombudsman (FWO) prepared a document entitled, "Facilitating student placements – FAQs for Higher Education institutions" (FAQ document) to "assist education institutions ensure unpaid work experience, internships, work-integrated learning or other student placement arrangements they establish are lawful" (Fair Work Ombudsman, 2015). In response to the question, "Do vocational placements need to be paid?" the FWO provided the following answer:

No, if a student placement meets the vocational placement exemption, then it can be lawfully unpaid. However, a host organisation may elect to provide payment at their discretion and under no obligation. This may include payments like gratuities or scholarships (emphasis added).

The concern with the FAQ document is the suggestion that scholarships may not be an obligation on the part of host organizations. Host organizations may use the scholarship as a "back door method" of employing students, and university involvement in the arrangement may expose the university to accessorial liability under the *Fair Work Act*. A gratuity may be a discretionary payment but a scholarship is effectively a contract with legal obligations involving the student, organization and perhaps even the university depending on how the payment is collected and distributed.

Core and Elective Work-Integrated Learning Courses

University lawyer responses about the legal standing of core and elective courses under the vocational placement exemption are supported in the literature. Stewart and Owens (2013, p. 78) acknowledge the legal uncertainty about whether an elective course in a university degree is a "requirement of an education or training course", but suggest that the more appropriate interpretation is that a WIL placement in an elective course is a course requirement. According to the FWO, the issue is free from doubt. In its February 2014 publication *Vocational Placements Fact Sheet*, the FWO asserts that "the placement must be a required component of the course as a whole, or of an individual subject or module of the course. It doesn't matter whether that subject is compulsory or an elective chosen by the student" (Fair Work Ombudsman, 2014). Nevertheless, the FWO resources do not represent the law, rather an interpretation of the law. Consequently, universities should not represent to host organizations, nor can universities or host organizations be assured, that the WIL placement is exempt under the Fair Work Act or is not an employee – employer relationship, based solely on the FWO resources. This is the first of a series of lessons for WIL practitioners, covered in the section which follows, when managing labor-related risks in WIL programs. These lessons are based on the case study and the author's experiences with WIL practitioners on the topic of labor-related risks.

LESSONS FOR WORK-INTEGRATED LEARNING PRACTITIONERS

Unpaid Work-Integrated Learning Placements

There remains confusion amongst some WIL practitioners about the impact of the *Fair Work Act* on their WIL programs. The general consensus, supported by university lawyers and the FWO, is that an unpaid WIL placement, which is part of an elective or compulsory component of the student's degree, will meet the vocational placement exemption under the *Fair Work Act*, irrespective of whether the student is performing work during their WIL placement. The source of WIL practitioner confusion is an inability to distinguish WIL from work experience. Unlike work experience, the performance of work is not a factor which may convert the WIL placement into an employment relationship.

Reputational Risk

Whilst student work in the course of a WIL placement may be protected by the vocational placement exemption, the university remains exposed to reputational risk if the host organization requires the student to perform work which is not consistent with the agreed learning objectives of the WIL placement, or not agreed to prior to the WIL placement. The potential for student exploitation in this manner was previously articulated by Cameron (2013), with university lawyers in the case study alluding to student exploitation as a reputational risk.

Scholarship Payments

There is a risk that scholarship arrangements may be considered an attempt to circumvent the host organization's legal obligations as an employer. As such, WIL placements that form part of a scholarship arrangement should be scrutinized by WIL practitioners to ensure that the scholarship payment itself is not in any way associated with consideration for work. The purpose of the scholarship payment to the student should be made explicit, and that any work performed during the WIL placement is clearly aligned with the learning objectives and outcomes of the WIL program.

University Lawyers

University lawyers can assist WIL practitioners with managing labor-related risks in WIL programs by providing advice during WIL course design, by drafting and reviewing WIL agreements, and by obtaining external support for risk management practices. A recent experience with a WIL practitioner in the engineering discipline demonstrates the consequences of not involving university lawyers, and is an example of WIL practitioner confusion about the difference between WIL and work experience. The WIL practitioner asserted that students completing 12 week WIL placements could not perform work without being paid, and as a consequence the university policy was to only accept paid WIL placements in which the student was employed by the host organization. The WIL practitioner lamented that the mining downturn in Australia had reduced the number of paid WIL placements. Student demand for WIL placements quickly exceeded supply, presenting a strategic risk to the university which was exacerbated by the university policy. When pressed about the legal basis for the WIL practitioner's assertion, the WIL practitioner produced a FWO fact sheet that examined work experience, not WIL (Fair Work Ombudsman, 2017). The intervention of a university lawyer could have clarified this misunderstanding and directed the WIL practitioner to the appropriate external resources.

Risks Under Higher Education Law

Student work in unpaid WIL placements may expose universities to risk under higher education law. For instance, to maintain registration as a higher education provider with the Tertiary Education Quality and Standards Agency (TEQSA), the national regulator of the higher education sector in Australia, the higher education provider must demonstrate:

- The identification and management of risks to higher education operations (*Higher Education Standards Framework (Threshold Standards) 2015* (Cth) (HES Framework), section 6.2.1(e)); and
- Quality assurance of WIL programs (HES Framework, section 5.4.1), which involves managing risks that can undermine quality.

According to TEQSA, the risks that may undermine quality in WIL programs include poor supervision, poor course design and the failure to clearly articulate the expectations and obligations of the student, host organization and university (TEQSA, 2017). Work performed by a student in an unpaid WIL placement may be a product of these risks, and a form of student exploitation, if the work is: considered excessive; not specified in a WIL agreement; or not consistent with the learning objectives and outcomes of the WIL program. Student work in an unpaid WIL placement may, therefore, pose a legal risk under the HES Framework, as well as a reputational risk, which needs to be managed by WIL practitioners through appropriate course design, supervision and WIL agreements. Overall, the impact of higher education law on student exploitation in WIL programs may be fertile ground for future research.

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