PROTECTING STUDENTS AT WORK

Australian universities and regulating for quality work experience

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ABOUT THIS REPORT

This report summarises research undertaken as part of an Australian Research Council Discovery Grant–funded project, which has examined the challenges posed by the regulation of post-secondary forms of work experience.

Work experience is generally understood to mean the performance of work within or for a business, non-profit organisation or government agency, in order to gain experience, skills and/or contacts that will help the worker obtain employment or other work opportunities in the future. Work experience may be undertaken as part of a government assistance program, or an 'internship' scheme established for an organisation's purposes, or (as with most of the arrangements considered in this report) as part of a formal scheme of education or training.

THE AIMS OF THE PROJECT HAVE INCLUDED:

01 to evaluate whether current legal and jurisprudential understandings of work relationships are adequate to ensure the fulfilment of policy goals for the law of work in light of the phenomenon of post-secondary work experience;

02 to identify the broad range of regulation relevant to post-secondary work experience in Australia;

03 to evaluate the efficacy and role of self-regulation as a tool for promoting and enhancing regulatory compliance in relation to post-secondary work experience; and

04 to contribute to and broaden the policy debate, and thereby to enhance regulatory reform in Australia by identifying and critiquing alternative regulatory responses to post-secondary work experience.

The research project has resulted in a number of publications and presentations, which are listed in Appendix A. These include a comparative study of the regulation of internships and other forms of work experience commissioned by the International Labour Organization (ILO) to inform the development of international policy on this subject (Stewart, Owens et al. 2018). There is also a collection of essays that brings together established and emerging scholars from around the world to discuss the use, benefits and regulation of such arrangements (Stewart et al. 2021).

In this report we present a summary of the project's research findings that relate specifically to the tertiary education sector in Australia.

Chapter 1 provides contextual information, discussing what we mean by work experience, what we know about its prevalence, and outlining some important policy concerns about its use and value.

In **Chapter 2** we summarise the laws regulating work experience in Australia, including a consideration of the extent to which participants are recognised and protected under both labour and other workplace laws, as well as regulation to ensure educational quality.

In **Chapter 3** we introduce the qualitative and quantitative data gathered as part of our project. This derives from a variety of sources, including an extensive range of interviews conducted at 15 universities around Australia, a survey of university staff engaged in work experience programs, and a national workshop in November 2019. More is said about our research methodology in Appendix B.

Chapter 4 outlines key findings to date from our research, including a way of understanding how different universities' engagement with work experience can be categorised, and how much knowledge of relevant regulation there appeared to be in the institutions we studied. We also discuss approaches to internships taken overseas, the extent of compliance with what we have termed educational regulation, and some of the challenges in providing sufficient resources for the organisation and management of work experience programs.

In **Chapter 5** we consider some of the ways in which work experience culture and practice is evolving, including in response to the COVID-19 pandemic. We look in particular at the rise of virtual internships and the potential role that new intermediaries might play in facilitating such arrangements. The changes discussed in this chapter are likely to intensify as the economic consequences of the pandemic deepen, the call for sustainable workplaces in face of global climate change increases, and the pressure on graduates to be 'work ready' intensifies.

Finally, we conclude in **Chapter 6** with a series of policy recommendations about how work experience could be better regulated in Australia. Effective regulation, by both governments and universities themselves, has the potential to play a key role in ensuring not only that individual participants and stakeholders are protected and understand their rights and responsibilities, but also that work experience programs achieve their goals in a way that supports and does not undermine other broader social and economic policy goals. The chapter includes observations on some of the policies and practices we identified at the universities covered by our study.

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ABBREVIATIONS

ACEN	Australian Collaborative Education Network
AHRC	Australian Human Rights Commission
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students
ESOS Act	Education Services for Overseas Students Act 2000 (Cth)
EU	European Union
Fair Work Act	Fair Work Act 2009 (Cth)
FWO	Fair Work Ombudsman
ILO	International Labour Organization
PCBU	person conducting a business or undertaking
TEQSA	Tertiary Education Quality and Standards Agency
TEQSA Act	Tertiary Education Quality and Standards Agency Act 2011 (Cth)
WIL	work-integrated learning
WE	work experience

CHAPTER 1
BACKGROUND — THE NATURE AND PREVALENCE OF WORK EXPERIENCE ARRANGEMENTS

1.1 Introduction: From education to work

> Work experience is highly valued by firms and so the lack of such experience constitutes a major obstacle for first-time jobseekers. Many young people are trapped in a vicious circle: they are unable to acquire work experience because they cannot find a first job, but they cannot obtain a job because they do not have work experience. (ILO 2013, p. 64)

There are many different working arrangements that seek to help job seekers, and young job seekers in particular, to make the transition from education to work (see Jeannet-Milanovic, O'Higgins & Rosin 2017). They include internships or placements advertised on the open market or created for job seekers as part of 'active labour market programs',[1] as well as those associated with tertiary education. In today's highly competitive labour market, the latter forms of work experience may be undertaken to satisfy the requirements of degree courses, or selectively chosen by students as an elective part of their study to gain 'skills and knowledge in the workplace' and facilitate the transition into work (Jeannet-Milanovic et al. 2017, p. 143).

> For many students, demonstrating job readiness through some form of work experience is perceived to be a critical part of the process of finding work in their chosen industry or occupation. And with the active encouragement of governments, tertiary institutions have become just as keen to provide those opportunities, especially as part of a broader embrace of the concept of 'work-integrated learning' (WIL) (Patrick et al. 2009).

For example, in 2015 the Australian Collaborative Education Network (ACEN), Universities Australia, the Australian Chamber of Commerce and Industry, the Australian Industry Group and the Business Council of Australia released a National Strategy on Work Integrated Learning in University Education. This strategy clearly states that work experience has the potential to contribute to a broad range of individual, group and national objectives:

> WIL is aimed at improving the employability of graduates by giving them valuable practical experience which is directly related to courses being studied at university. WIL also improves the transition from university to work and productivity outcomes for the employer and the economy. (ACEN et al. 2015, p. 1)

The strategy 'is designed to increase opportunities to participate in WIL, recognising the benefits to students, employers, universities and the economy' (p. 2), and indicates broad enthusiasm for WIL within the tertiary sector and industry.

However, work experience is not always a pathway to decent work. As the International Labour Organization (ILO) has pointed out, interns and other work experience participants risk being treated as a source of cheap labour, replacing existing workers and undermining wages and work standards for all (ILO 2012).[2] These issues may be limited, but are not eliminated, when work experience is associated with tertiary education.

1.2 Defining 'work experience'

Work experience is an umbrella term which can be used to describe an enormous diversity of learning experiences, both formal and informal. In this report we treat formal work experience as one form of WIL, a slightly broader concept which is most commonly used to denote programs in which

> students engage with workplaces and communities as a formal part of their studies … A commonly expected outcome of these student WIL experiences is gaining new knowledge, understandings and capabilities, and mastering skills considered essential to particular workplace practices. The underlying assumption is that students cannot learn these skills and knowledge in formal classrooms. (Orrell 2011, p. 5; see also Burke & Carton 2013, pp. 101–7)

In universities formal work experience is promoted by a range of strategies that foster or encourage students' learning by engaging them in aspects of real work, either to satisfy a mandatory requirement of a course of study, or at least to gain academic credit.[3] This definition encompasses initiatives in which students engage in real-world workplace activities, such as internships and clinical placements in businesses, or industry projects which might be completed on campus. Each of these learning experiences has in common the fact that it is a component of a university curriculum and that students' learning is situated within the act of working (Cooper, Orrell & Bowden 2010, p. 1).

The report also considers, albeit more peripherally, informal arrangements for learning through work experience such as extracurricular or 'open-market' internships, because some universities encourage students to undertake them. These internships give rise to a series of additional important issues. In certain factual situations the intersection of formal tertiary work experience and these informal extracurricular or open-market internships can pose difficult regulatory challenges.[4] Work experience in other education contexts may raise unique issues and regulatory problems; however, they are not considered. This report focuses specifically on work experience undertaken as a part of study in universities which are self-accrediting under the *Tertiary Education Quality and Standards Agency Act 2011* (Cth) (the TEQSA Act).[5]

When considering the forms of work experience, it is worth making explicit that they do not all resemble the classic 'internship' in which a student works (full- or part-time) in an office or other place of work. New forms of work experience, such as industry projects which are completed remotely or on campus, rather than in the workplace, or a remote placement with a host organisation which does not have a physical office, are becoming increasingly common. Some of the implications of these changes will be considered in Chapter 5.

1.3 The prevalence of work experience in Australia

Perhaps because of its diversity, the number of tertiary students engaging in work experience has been difficult to gauge precisely.

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[1] A recent example in Australia is the PaTH (Prepare-Trial-Hire) Programme, under which young job seekers can undertake voluntary 'internships' lasting anywhere from 4 to 12 weeks. PaTH interns are not paid by the business that hosts them, although they receive a fortnightly allowance from the Commonwealth in addition to their welfare benefits. Introduced in 2017, less than 10,000 PaTH internships were arranged over the first two years, only 16% of the number projected by the Commonwealth. Nearly two-thirds of the interns obtained an ongoing job, with 70% of those still employed three months later. Despite participating businesses having to promise not to use interns to displace paid employees, it is unclear to what extent that commitment may have been breached (ARTD Consultants 2019).

[2] According to a recent study, close to a half of the respondents to a 2020 survey on the impacts of the COVID-19 pandemic on training reported no longer offering a stipend or wages to interns/trainees (ILO 2021, p. 32).

[3] This is similar to the definition proposed by Craig Cameron (2013, p. 136), who defined WIL as 'a tertiary program which combines and integrates learning with its workplace application in the workplace'. However, the definition in this report differs in that it is restricted to programs offered by universities, not all tertiary education providers.

[4] For example, where work experience is not part of a course of study there is a possibility that a student undertaking it is an 'employee' and is entitled to the protections of the *Fair Work Act 2009* (Cth) (Stewart & Owens 2013, pp. 137–150, 249–253; Stewart, Oliver et al. 2018, pp. 164–167). For further discussion, see Section 2.2(c).

[5] All 42 Australian universities are authorised as self-accrediting institutions under the *Tertiary Education Quality and Standards Agency Act 2011* (Cth). In addition there are a number of international universities operating in Australia.

A 2016 nationally representative survey of unpaid work experience among working-age Australians demonstrated that unpaid work experience is common in this country, with 58% of respondents aged 18–29 and 26% of respondents aged 30–64 having participated in at least one period of such work in the last five years.[6] Approximately half of that unpaid work experience was associated with some form of formal education or training, and 20% was part of university study (Oliver et al. 2016, p. 26).

Universities Australia (2019, p. 8) reported that in 2017, 451,263 Australian tertiary students had a WIL experience. This equates to one out of every three university students enrolled in that year (37.4%). Interestingly, more than 100,000 students had more than one WIL experience during the year, meaning the total number of experiences undertaken by Australian tertiary students in 2017 was significantly higher than half a million.[7]

Evidence such as this demonstrates that work experience is extensively utilised in the Australian higher education context, with particularly high numbers of students in some disciplines, for example, education and health, in which work placements have a long history (Radloff & Coates 2010, p. 27).[8] In many disciplines, undertaking periods of work experience is required by accreditation bodies before a graduate can be admitted to practice in the relevant profession. Universities often respond to such requirements by including a requirement for work experience placements in the curriculum, which also contributes to the growth of tertiary work experience.[9] In fact, the numbers participating in work experience

are probably higher than the 2016 survey suggests, because some students are paid for their placements.

1.4 Satisfaction and effectiveness

Because of the high numbers of students engaged in work experience, it is important for Australian educators to carefully evaluate whether or not it is functioning effectively.

There is certainly a great deal of supportive literature about work experience (or more broadly WIL), especially from an educational perspective. A 2015 review of 57 studies on the impact of work experience completed by university students concluded that it offers a 'win-win situation' for students, employers and higher education institutions, in terms of enhancing employment opportunities, improving skills and competencies, and creating a better understanding of career paths (Sanahuja Velez & Ribes Giner 2015). 'Pragmatic or operational' benefits have been reported for all three stakeholder groups: students, employers and academic institutions (Coll et al. 2009, p. 14). In 2020, however, Bittmann and Zorn (2020) reported that only voluntary work experience (as distinguished from both paid work and work placements required for graduation) has positive effects on graduate income and satisfaction and a limiting effect on job mismatch. And Jackson and Collings (2018) concluded that undertaking paid work in the final year of tertiary study has a much more significant positive impact on outcomes for Australian university graduates than undertaking mandatory or elective work experience during study.

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6   This survey undertaken on behalf of the Commonwealth Department of Employment considered all forms of unpaid work experience, not just those undertaken as a part of tertiary study (Oliver et al. 2016, p. 24).

7   This is more than the number of work experience placements that were undertaken, as it included various types of work-integrated learning, some of which were not work experience, such as simulations (Universities Australia 2019, p. 6).

8   This is also confirmed by the 2016 survey data (Oliver et al. 2016, p. 39).

9   For example, the Australasian Veterinary Boards Council (2020, p. 32) requires that 30% of the entire curriculum/course work for the degree of Doctor of Veterinary Science must be 'practical, hands-on clinical instruction and experience' in order for the degree to receive accreditation.

The 2016 survey mentioned above confirmed that Australian tertiary student participants perceive their work experience as positive. Of the respondents who had undertaken unpaid work experience as a part of a tertiary education course, 70.4% agreed or strongly agreed it would help them find paid employment (Oliver et al. 2016, p. 51).[10] 73.8% indicated they were satisfied or very satisfied with the experience (p. 42). Similar results were reported in a major European survey (TNS Political & Social 2013). Similarly positive results were reported in a recent survey of business and creative industries graduates from three Australian universities, although extracurricular internships rated more highly than those delivered as WIL (Jackson & Bridgstock 2021). Graduates perceived work experience as relevant to 'skill development, gaining of relevant experience, provision of networking opportunities, and employment prospects', but in different ways and to different degrees (p. 733).

However, students are naturally invested in work experience, and may not be best placed to objectively evaluate its effectiveness. This seems true in light of some of the issues, risks and complications associated with work experience that have been identified by Australia's tertiary education regulator, the Tertiary Education Quality and Standards Agency (TEQSA 2017b). Those risks are primarily (although not totally) student-focused, and include, for example, that:

• the work experience opportunity is not adequately integrated with the overall course of study;

• the provider has not designed an assessment scheme which will test students' achievement of the expected learning outcomes;

• students are not adequately supervised in their work experience placement; and

• students are (or feel) isolated, have unreasonable difficulty in interacting with fellow students while on placements, or do not have sufficient access to support services.

In addition to the risks for student participants in work experience, there are a number of broader issues, risks and complications. These are numerous and will not be fully canvassed here. However, they can be illustrated through a brief discussion of some key policy concerns.

1.5 Policy issues associated with work experience

Despite the positive findings in educational studies, there is also a growing body of research that identifies potential problems with work experience. The concerns can be grouped into four main categories.

First, and as indicated by TEQSA above, some work experience placements may not deliver on the promise of useful and high-quality training and skill development. The European Commission (2013) has estimated that at least 30% of 'traineeships', as they are known in the European Union (EU), are deficient in terms of either learning content or working conditions. A key policy challenge is, therefore, to ensure that the work experience offered under the auspices of Australian universities is not fundamentally flawed, either as education and/or work.

Secondly, work experience may not in fact provide a bridge from education to paid work. There is a strongly entrenched perception that work experience enhances employability, on the basis that it 'improves skills, knowledge and experience, assists an individual to match their human capital profile to labour market demands and enhances their long-term marketability' (Grant-Smith & McDonald

2018, p. 566). Experiments have also shown that having work experience improves a job applicant's chances of getting an interview (Baert et al. 2018). For international students, an internship can provide a pathway to a favourable migration outcome, as applicants for a Temporary Skill Shortage Visa require two years' work experience in their occupation or field (Department of Home Affairs 2021b).

Yet at the same time, '[e]conometric analysis of the outcomes of unpaid work experience and the extent to which participation facilitates subsequent paid employment is scarce' (Grant-Smith & McDonald 2018, p. 566).[11] What evidence there is generally suggests that paid placements are associated with better labour market outcomes than unpaid ones, and that there may be advantages to undertaking more formally structured programs (O'Higgins & Pinedo Caro 2021; Hunt & Scott 2020).[12] A study in the UK has also suggested that graduates undertaking open-market internships earn less 3.5 years after graduation than those going straight into paid work or further study (Holford 2017).[13] However, the more that education-related work experience becomes mandatory, the greater the risk that any advantages it offers may also be rendered nugatory (Bittmann & Zorn 2020, p. 87). In an era when work experience is becoming more the norm for all students rather than the exception for some of them, a key challenge for universities is to ensure that it avoids or overcomes any such limiting consequences.

Thirdly, if work experience is to become the norm, it must be genuinely inclusive and not discriminate on irrelevant bases such as sex, race, migration status or class in order to achieve its aims. For example, the practice of expecting or requiring unpaid or low-paid work experience may impede social mobility as the cost of undertaking such placements is likely to be harder to bear for those from less advantaged backgrounds, especially if it is necessary to travel to an expensive location to find them or give up existing part-time or casual employment to undertake them (Hewitt, Owens & Stewart 2018, pp. 242-244). Other studies concerning internships generally have demonstrated this. For example, British graduates from a middle-class background are more likely to have taken an internship, compared to those from the working class, while the latter are more likely to have worked in a paid job to subsidise their work experience, as opposed to relying on savings or parental support (Cullinane & Montacute 2018).

However, the situation is more complex than is suggested by any neat binary divide between the middle and working classes. In a more nuanced examination of these problems, Wright and Mulvey (2021) demonstrate that upper-middle-class students not only leverage greater cultural, social and economic resources than working-class students, but can deploy them through an 'opportunity stacking' strategy to intensify both the quantity and quality of the internships they secure. Similarly the situation of working-class students may exhibit multiple, intersecting layers of disadvantage that can work to the opposite effect.

For international students, these issues of equity and access are compounded. Many international students find it difficult to organise an internship because employers are reluctant to take on interns without unrestricted working rights or a right to remain in Australia over the long term. Additionally, many international students experience financial stress which reduces their availability for an unpaid internship and many lack local networks and Australian work experience in order to arrange an internship (Reilly et al. 2021).

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[10] Similar results were identified in a 2011 survey of Canadian students engaged in WIL (Kramer & Usher 2011, pp. 7, 16–19).

[11] This is just one of the issues on which further research is needed on the role played in the labour market by unpaid work experience (see McDonald & Grant-Smith 2020).

[12] But compare Bittmann and Zorn (2020), a recent Austrian study which found positive labour market outcomes from voluntary, extracurricular internships, but not from 'mandatory' internships required to complete a particular course of studies. See also Jackson and Collings (2018), an Australian study that found that participating in WIL did not result in a higher rate of full-time employment, though there was some evidence it could improve job matching (the chance of finding employment relevant to the field of study).

[13] Cf. Saniter & Siedler 2014. See also Sienkiewicz 2018, p. 8.

Similarly, in Australia the likelihood of undertaking unpaid work experience increases according to socio-economic status, while participation is higher for those living in capital cities, compared to smaller towns or rural areas (Oliver et al. 2016). Data collected by Universities Australia also reveals that there are obstacles to the participation of equity/disadvantaged groups in WIL learning activities such as internships. In 2017 a total of 451,263 students (both domestic and international) participated in WIL in Australia, for an overall participation rate of 37.4% of all enrolled students (Universities Australia 2020). However, these experiences were not accessed by all groups of students equally:

- Indigenous students were less likely to participate in work-based activities, with a participation rate of 31.1% compared to 37.3% of domestic non-Indigenous students.
- Students from low socio-economic backgrounds were even less likely to participate, with a participation rate of just 27.8% compared to 48.6% of those from high socio-economic backgrounds.
- Regional and remote areas were also not proportionally represented in these opportunities, with only 27.2% completing placements compared to 37.7% of domestic students from metropolitan areas.

Jackson and Bridgstock (2021) also report that fewer first-in-family students are participating in work experience in business and creative industries. The financial barriers to participation in work experience are significant and extend to students who may be eligible for financial support while studying. The most recent edition of a survey exploring the financial hardship faced by university students conducted by Universities Australia (2018) reported that one in seven domestic students say they regularly go without food or other necessities because they cannot afford them. And three in five domestic students say their finances are a source of worry.

Financial stress has also been reported as an obstacle for international students. Although not considered an official equity group, such students were less able to leave or suspend their part-time employment (Universities Australia 2019). International students have also been found to experience substantial housing stress, such as overcrowding, unsafe accommodation, unfair eviction, and intimidation and harassment (Farbenblum & Berg 2019). Financial barriers such as housing stress are intensified when students are required to undertake lengthy placements and when there is little flexibility as to how any such requirements may be fulfilled, and can even result in students discontinuing their studies (Gair & Baglow 2018, p. 53; Grant-Smith & de Zwaan, 2019). Research by Grant-Smith and de Zwaan (2019) on Australian nursing students undertaking mandatory unpaid clinical placements found that the majority of research participants struggled financially during clinical placements as a consequence of factors including loss of income and increased expenses, including for transport, additional meals, work-appropriate clothing, additional resources and materials, and childcare costs.

Fourthly, the use of unpaid or low-paid work experience may displace paid employment and undermine labour standards. This is especially the case where there is no real educational component involved in the work experience over and above what might be expected from ordinary 'learning on the job'. Without that, interns run the risk of being treated as 'cheap dead-end labour, exerting downward pressure on the wages and opportunities of others who might otherwise be employed' (Standing 2011, p. 76). The International Labour Conference (2012) has specifically highlighted this problem. Its Resolution on the youth employment crisis called on governments to regulate and monitor apprenticeships, internships and other work experience schemes, 'to ensure they allow for a real learning experience and not replace regular workers' (para. 26(e)).

The same point has been acknowledged by the ILO's Committee of Experts on the Application of Conventions and Recommendations (2014, para. 187), in commenting that 'problems have been raised in several countries relating to unpaid internship programmes and other similar arrangements, when they are used to evade the payment of applicable minimum wages and to curtail employment opportunities'. The European Parliament (2020, paras 9, 13) has likewise observed that 'internships should never lead to job replacement', called for fair and decent remuneration for interns and other trainees, and condemned the practice of unpaid internships as 'a form of exploitation of young people's work and a violation of their rights'.

Drawing on our research, the ILO (2019, pp. 68–69) has acknowledged these four policy concerns, as part of the background to a proposal for a possible new Convention and/or Recommendation on the subject of 'quality apprenticeships'. A questionnaire issued to ILO Member States in late 2019 has sought feedback on whether any new instrument(s) should contain a section on traineeships (including internships). There are specific questions about the possibility of states requiring a written traineeship agreement, as well as ensuring 'adequate remuneration' for trainees, amongst other benefits and protections (ILO 2019, pp. 97–98).

The prevalence of work experience associated with tertiary study in Australia, and the policy issues identified above, mean it is imperative that we consider how Australian work experience is being regulated. Regulation can impact the structure and prevalence of work experience programs, as well as the extent to which they constitute high-quality learning experiences or are opportunities for student exploitation. An introduction to the regulation of work experience undertaken by Australian tertiary students will be the focus of Chapter 2. That chapter will also briefly introduce how work experience is regulated in other jurisdictions.

CHAPTER 2
THE REGULATION OF WORK EXPERIENCE IN AUSTRALIA

2.1 Introduction

There are various ways in which work experience can be – and is in practice – regulated. Organisations that 'host' placements will often develop their own rules and processes (whether formal or informal) for selecting those who will participate, for designing and supervising whatever tasks participants are invited or required to perform, and for ensuring their adherence to the organisation's policies and procedures. Educational institutions also have internally generated rules that govern the administration and assessment of educational placements, as we discuss later in the report.

At a broader level, other bodies or groups may seek to influence the use, content or treatment of work experience. In many countries, private codes or guidelines have been put forward by peak bodies or industry groups. In the United Kingdom, for instance, the National Council of Voluntary Organisations (2015) has developed a guide for internships in the voluntary sector, emphasising the difference between employment and 'true' volunteering, canvassing the arguments about the appropriateness of taking on volunteer interns, and suggesting 'principles of good practice'. Pressure groups representing interns have also been very active in this space. For example, the European Youth Forum (n.d.) has developed an Employers' Guide to Quality Internships, which has been endorsed by a number of major companies. In principle too, collective bargaining might be used to set minimum wages and other conditions for those undertaking work experience. It has indeed been reported that collective agreements play a significant role in regulating traineeships in many European countries (Hadjivassiliou et al. 2012, pp. 62, 95–8; European Commission 2016, p. 6).

For the purpose of this chapter, we are principally interested in *instrumental state regulation* of work experience – that is, regulation by and through parliaments, executive governments or courts. In our comparative research on this issue, we have come to distinguish between five different types of state regulation (Owens & Stewart 2016):

- **specific regulation** of the use or content of internships;

- **regulation by inclusion**, that is, expressly bringing internships within the operation of labour or other social protection laws, either by defining them as employment or extending employment rights to certain training arrangements;

- **regulation by exclusion**, that is, expressly exempting internships from the operation of labour or social laws;

- **strategic enforcement** of labour or social laws by the state, even in the absence of any specific extension or exclusion;

- systematic use by the state of **soft law**, such as codes of practice, to influence the use and content of internships in both government and non-government organisations.

In Australia, we see a mixture of inclusion, exclusion and specific enforcement (Stewart, Owens et al. 2018, ch. 6). The nature of work experience is such that many students undertaking it will be participating in a workplace environment. This raises a number of legal issues, including whether student participants are covered by the gamut of legislation relating to employees and (sometimes) other workers in the workplace. These laws are examined below, including those dealing with matters such as superannuation and migration. The educational laws which govern tertiary work experience will also be considered.

2.2 General labour laws

(a) The Fair Work Act

The *Fair Work Act 2009* (Cth) (Fair Work Act), the main labour statute in Australia, is overwhelmingly concerned with the regulation of employment. There are some exceptions, including the anti-bullying provisions in Part 6-4B which are mentioned below. But for the most part the Act creates rights or imposes obligations in respect of arrangements between 'employers' and 'employees'.

There is no comprehensive definition of those terms in the Act. Instead, it is assumed that they are to be given their 'ordinary' or common law meaning.[14] The common law principles used to identify an employment relationship are discussed in more detail below. For now, it suffices to say that a work experience arrangement is capable of being treated as employment, even when no pay is provided. However, the Fair Work Act has an exception that is of critical importance to universities and other educational institutions. Sections 13, 15(1)(b), 30C(1)(a) and 30M(1)(a) each provide that an individual undertaking a 'vocational placement' is not to be regarded as an employee. This too is considered in more detail below.

A further limitation is that the Fair Work Act generally only applies to employees engaged by 'national system employers', as defined in sections 14, 30D and 30N. Who constitutes such an employer varies from State to State, according to whether the State in question has legislated to extend the application of the Fair Work Act (Stewart et al. 2016, ch. 6). But in summary, the Fair Work Act covers the following:

- in Victoria, the ACT and the Northern Territory – all employers

- in Tasmania – all employers except State government agencies

- in New South Wales, Queensland and South Australia – all employers except State or local government agencies

- in Western Australia – Commonwealth government agencies, and trading, financial or foreign corporations (including companies and most not-for-profit associations, though not individuals or partnerships).[15]

Since universities can be characterised as trading corporations,[16] they are subject to the Fair Work Act in each State or Territory. So too are most of the organisations that might agree to host university student placements or internships, though with some clear exceptions (such as State government departments outside Victoria, or local councils in New South Wales, Queensland or South Australia).

As far as wages are concerned, each national system employer must comply with any applicable award, enterprise agreement or national minimum wage order in relation to its employees. Section 323(1) of the Fair Work Act also provides that any amounts payable to an employee in relation to the performance of work must be paid in full (subject to certain permissible deductions), and in money. The provision does not contemplate that an employer could satisfy a minimum wage obligation by providing some other form of benefit, such as a learning opportunity, training or experience.

In addition, national system employers must comply with the National Employment Standards (NES) in Part 2-2 of the Fair Work Act, in relation to matters such as annual leave, personal/carer's leave, public holidays, maximum hours of work and notice of termination; although some entitlements (such as to annual leave) do not apply to casual employees. When an employee is engaged, they must also be given a Fair Work Information Statement, a two-page document issued by the Fair Work Ombudsman (FWO). National system employers are also obliged by section 535 of the Fair Work Act to keep a variety of records on each of their employees.

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[14] *C v Commonwealth* (2015) 234 FCR 81, [34]; *Jamsek v ZG Operations Australia Pty Ltd* [2020] FCAFC 119, [175]–[176].

[15] As to the principles for determining whether incorporated bodies have sufficient trading activities to be classified as trading corporations, see Stewart et al. 2016, paras [6.11]–[6.22].

[16] *Quickenden v O'Connor* (2001) 109 FCR 243.

Being a national system employee for the purpose of the Fair Work Act also has a range of other consequences, including:

- having to be given certain information about any proposed enterprise agreement that will cover the job the employee is doing, and an opportunity to vote on whether such an agreement should be approved;

- being eligible to belong to a trade union registered under the *Fair Work (Registered Organisations) Act 2009* (Cth), and allowing officials of such a union to exercise certain statutory powers in relation to the employee;

- being able to lodge an unfair dismissal claim under Part 3-2 of the Fair Work Act;

- being protected under Part 3-1 against various forms of 'adverse action' on prohibited grounds.

(b) State industrial laws

With the exception of Victoria, the States have retained their own equivalents to the Fair Work Act for employees not covered by that Commonwealth statute.[17] In most States, this legislation applies only to employees in the public and local government sectors, though the coverage of the Western Australian system is a little broader, especially in relation to sole traders or partnerships.

If a student is working as part of a work experience placement for a non-national system employer, their entitlements to pay and leave will depend on whether they satisfy the definition of 'employee' under the relevant legislation. The laws of each State and Territory are different: some may include students undertaking unpaid work experience, while in other jurisdictions they are more likely to be excluded (Stewart & Owens 2013, pp. 91–5).

Importantly, no State has a direct equivalent to the vocational placement exception in the federal Fair Work Act. Accordingly, universities outside Victoria and the Territories cannot be sure that if an unpaid placement is arranged at a non-national system employer it is necessarily lawful, even if the placement is intended to meet a course requirement or is undertaken for credit. In New South Wales, a parliamentary committee did recommend that such an exception be created (Committee on Children and Young People 2014, p. 27). But no action has been taken in response.

Queensland does also have special legislation, described further in Section 2.8(d) below, that regulates the arrangement of work experience by educational institutions in that State. Section 10(1) of the *Education (Work Experience) Act 1996* (Qld) provides that a student undertaking work experience arranged by an educational establishment, other than as a mandatory or assessable part of a higher education course 'is taken not to be the employee of the work experience provider and the provider is taken not to be the employer of the student'. Section 10(2) further provides that any law 'regulating working conditions' does not apply to such an arrangement.[18] However, while this may affect the operation of Queensland laws, it cannot as a general rule preclude the operation of the federal Fair Work Act. The legal position is somewhat complex, because for some purposes the Fair Work Act does preserve the operation of State laws on 'training'. But if a work experience participant qualifies as an employee, under the common law principles about to be discussed, and performs work for a national system employer, it seems clear that their entitlement to minimum wages and certain other conditions cannot be excluded by the Queensland Act (Stewart & Owens 2013, para. 5.31).

(c) Identifying an employment relationship

In order for an arrangement to be characterised by the common law as one of employment, two distinct requirements must be met. The arrangement must involve a *contract* – that is, a legally enforceable agreement – and that contract must be one of *employment*, involving work in a subordinate or dependent capacity for the other party (the employer).[19] Disputes about employment status often turn on the second point, notably where it is argued that a person is an 'independent contractor' performing work for their own business, not an employee of someone else's business. But sometimes the reason why a person is not an employee is because they do not have a contract to perform work.

A *volunteer*, for example, is typically someone who performs work without any obligation to do so, and without expectation of reward. They do not have a contract, because two key requirements are lacking: even if they have agreed to perform the work in question, there is nothing to suggest an intention that the agreement be legally binding; and there is no 'consideration' – that is, an agreed return or *quid pro quo* for the work they are doing.[20]

On the face of it, it might seem easy to characterise an arrangement to undertake work without pay in order to gain experience as a 'voluntary' arrangement. But it is clearly possible to agree to work for a benefit other than wages,[21] and there is no reason in principle why an agreement to provide training or work experience could not be good consideration for a promise to attend and perform work.[22] Furthermore, as the High Court of Australia has stressed, it is the objective reality of an arrangement that determines whether it is to be classified as contractual in nature, not necessarily how it is described or understood by the parties themselves.[23]

In 2013 the FWO published a report on the nature and prevalence of unpaid work experience in Australia, prepared by two of the present authors (Stewart & Owens 2013). That report noted that Australian courts had previously taken different approaches to the status of such arrangements. In some instances, it was held that the lack of 'mutuality' of commitment or apparent intention to create a contract was fatal to any claim to employment status.[24] But in other instances, employment contracts were found to exist, especially with arrangements of longer duration. One particularly telling example is *Cossich v G Rossetto & Co Pty Ltd*.[25]

The case involved a claim for unpaid wages by a student undertaking a wine marketing course, which required 240 hours 'work experience within the wine industry'. The course contained few restrictions on how the work experience could be gained. The applicant had to locate the work experience herself, there was no liaison between the

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[17] *Industrial Relations Act 1996* (NSW); *Industrial Relations Act 2016* (Qld); *Industrial Relations Act 1979* (WA); *Fair Work Act 1994* (SA); *Industrial Relations Act 1984* (Tas).

[18] This is subject to certain exceptions outlined in section 10(3), which include the *Work Health and Safety Act 2011* (Qld).

[19] *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95.

[20] See e.g. *Teen Ranch Pty Ltd v Brown* (1995) 87 IR 308. See further Murray 2006.

[21] See e.g. *Cudgegong Soaring Pty Ltd v Harris* (1996) 13 NSWCCR 92.

[22] *Edmonds v Lawson* [2000] 2 WLR 1091, [23]–[25]; and see e.g. *Fair Work Ombudsman v Devine Marine Group Pty Ltd* [2014] FCA 1365. Cf. *Barbour v Memtaz Derbas* [2021] FWC 1718, [97[, in which training and supervision was stated by a tribunal member not to be capable of being consideration, although without reference to any supporting reasoning or authority.

[23] *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95, [25]. Cf. *WorkPac Pty Ltd v Rossato* [2021] HCA 23, a recent decision in which the High Court attached far more weight to contractual form over substance and objective reality in categorising an employment relationship as being casual in nature. But the case did not turn on whether a contract existed and nothing was said in it to challenge the authority of the decision in *Ermogenous*.

[24] See e.g. *Pacesetter Homes Pty Ltd v Australian Builders' Labourers' Federated Union of Workers (WA Branch)* (1994) 57 IR 449.

[25] [2001] SAIRC 37.

university and the business, and no guidelines as to what she was expected to do on the placement. The university required only that she write a report at the completion of her work experience. The applicant spent 21 days with one winemaker, and then approached another with whom she completed the course requirements. Thereafter, she continued to work unpaid for a further eight months, with no change in the substance of what she did, except for an increase in the hours she worked after graduation. She usually worked alone, though with a manager close by, undertaking various tasks, such as serving customers, preparing and maintaining wine displays, and moving and unloading cartons of wine. She also prepared for and attended wine tastings on four evenings. She was paid a small amount, ostensibly to assist with travel expenses.

An industrial magistrate accepted the applicant's evidence that there was a requirement or expectation that she attend for work and found she was an employee who was entitled to be paid for her work. He said:

> I do not regard the work of the applicant performed as anything less than would be required of a full-time employee who was properly engaged under the relevant award … To my mind the very length of the period in question, which was in excess of a year and one which the respondent would have me treat entirely as work experience, militates against it being so treated. By nature, work experience ought to be relatively short and little more than a period of acquaintance and understanding of the duties of the work involved. Without attempting to put a limit on it, a year is simply far too long and suggestive of exploitation.[26]

After analysing the different approaches possible at common law to the identification of an employment relationship, the view ultimately expressed in the 2013 report (Stewart & Owens 2013, p. xxiii) was that:

> where a person is performing productive work for an organisation, under an arrangement whereby they will either gain experience or be considered for an ongoing job, it is appropriate to assume that they are doing so under an employment contract – unless there is clear evidence to the contrary. Such an approach is consistent with the purposes and policy of the Fair Work Act.

The report also suggested that 'volunteering' should generally be understood to mean 'unpaid work that is performed with the *primary purpose of benefiting someone else or furthering a particular belief*, rather than gaining experience or contacts that may enhance employability' (Stewart & Owens 2013, p. 5, emphasis in original).

In response to the report, the FWO has undertaken a number of initiatives to promote a clearer understanding about the distinction between legitimate and illegitimate forms of work experience. It has also expressed a determination to take action against organisations who are shown to be 'systematically or strategically exploiting unpaid work experience as a form of free labour' (FWO 2014). It has expressed the view that an intern or other work experience participant should be treated as an employee if they are expected to perform tasks that an organisation needs to be done, and they are not altruistically offering their services as a true 'volunteer' would. A factsheet on the FWO website suggests that unpaid work experience undertaken without a connection to an authorised education or training course may still be lawful – but only if the person on placement is not doing 'productive' work, or if the main benefit of the arrangement is for that person and they are receiving a meaningful learning experience, training or skill development (FWO 2017a).

In accordance with that view, the FWO has instituted a number of proceedings against businesses using unpaid or underpaid 'interns' to do the work of employees.[27] In 2015, for example, a media company was fined $24,000 for underpaying two university students who worked as radio producers under an arrangement entirely separate from, albeit related to, their studies. The breaches were acknowledged not to be deliberate and were quickly rectified after the FWO intervened. However, Judge Riethmuller described the arrangements as 'exploitative' and emphasised that 'profiting from volunteers is not acceptable conduct'.[28] Extensive reference was made to the 2013 report, not least in establishing the prevalence of this type of arrangement in the media sector.

Similar views have been expressed in other cases brought by the FWO. In one, a communications business systematically used interns to perform work that would or could otherwise be performed by paid employees. It advertised unpaid traineeships to which two employees were appointed as a 'graphic design intern' and a 'multi-media intern'. One of the interns, who was recruited by the employer and eventually moved into an independent contracting arrangement, was an international student who negotiated with the employer to fraudulently alter her pay slips to better suit her visa aspirations. The proprietor was fined $17,500.[29]

In a subsequent decision, one of the underpaid workers was an international student who answered an advertisement for an event planner internship and had to do 180 hours of unpaid work over a period of four months before being given paid employment. Her duties ranged from administration and office cleaning to event organising and magazine editing. As none of this work was a formal part of her tertiary studies, it needed to be remunerated in accordance with the Fair Work Act. The company and its director, who had previously been warned for purporting to engage employees as volunteers, were fined over $280,000.[30] Judge Altobelli stated that 'the Court will not countenance attempts to disguise employment relationships as unpaid internships and thus deny employees their required minimum entitlements'.[31]

An even larger penalty, of nearly $330,000, was imposed on a fashion industry start-up company and its sole director for underpaying three employees more than $40,000.[32] One was a graphic designer who had recently graduated from university and whose work for the company included what purported to be an unpaid internship which lasted six months and involved two days' work per week. It was notable here that the business owner, who was personally fined more than $50,000 for her involvement in the underpayments, had herself started in the industry as an unpaid intern. Despite claiming ignorance of 'the laws and regulations regarding internships and employment generally', she did also admit that she had been aware of the FWO's interest in the issue and that there had been 'cases where people have said they were an intern and they weren't an intern'.[33] In fixing a penalty, Judge Manousaridis took into account the need to deter employers from taking advantage of 'inexperienced' workers, as well as the FWO's submission that there was 'evidence to suggest that other businesses in the fashion industry engage individuals as purported interns in circumstances where individuals are in fact engaged as employees'.[34]

In yet another ruling that cited the 2013 report for the FWO and relied on its analysis, a young worker engaged on a year-long 'internship contract' was found to have been an employee after the first two weeks, having progressed in fairly short order from being

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[26] Ibid [29]–[30]. For further analysis of the decision, see Owens 2021.

[27] Besides the matters discussed below, see also the proceedings noted in FWO 2018a, 2018b, 2021.

[28] *Fair Work Ombudsman v Crocmedia Pty Ltd* [2015] FCCA 140.

[29] *Fair Work Ombudsman v Aldred* [2016] FCCA 220.

[30] *Fair Work Ombudsman v AIMG BQ Pty Ltd* [2016] FCCA 1024.

[31] Ibid [124].

[32] *Fair Work Ombudsman v Her Fashion Box Pty Ltd* [2019] FCCA 425.

[33] Ibid [75].

[34] Ibid [86].

shown how to repair a mobile phone to running a store for the employer. He was able to recover the difference between the $8 per hour allowance he was paid and the minimum wage rates required by the General Retail Industry Award.[35]

A further illustration of the lack of judicial tolerance for attempts to exploit the willingness of some job seekers to work for free came in a recent case involving a migrant worker who had 'volunteered' to work unpaid as a cook. The employer, in seeking to defend its conduct, argued that the arrangement was similar to an unpaid internship, and therefore not illegal. But Judge Riley rejected this analogy, stating that 'subject to limited exceptions, it is not legal to enter into an agreement for a person to work for another person on a voluntary basis'. Her Honour noted (without reference to any authority or legal precedent) that those exceptions could include 'work for not-for-profit organisations, vocational placements, work experience and internships'.[36] But she also expressed a narrow view of the last three concepts. For example:

> An internship is an opportunity for an inexperienced person to attend a workplace and observe and, in a minimal way, assist. An internship is primarily for the benefit of the intern. If an intern does work that is useful for the employer, and that the employer would ordinarily have paid an employee to do, then the arrangement has probably strayed into an employment relationship, and the employer would be obliged to pay the intern for the time spent doing work that was useful to the employer.[37]

In most of the cases just mentioned that involved internships, the organisation or employer conceded that the interns were employees. It is possible for different conclusions to be reached in proceedings in which that issue is contested.[38] Clearly, however, an organisation that relies on interns to do productive work, without a connection to an authorised education or training course, is at risk of being found to have breached the Fair Work Act.

It is also worth stressing that the FWO can secure redress for unpaid or underpaid interns without necessarily instituting court proceedings. In one case, for example, an architecture student spent a month working for four days a week at a firm of architects without being paid, then a further six months working full-time for just $12 per hour, well below the minimum award rate. Once again, this was productive work that was not a formal part of his studies. Following an investigation, the firm agreed to pay him nearly $7,000 and entered into an enforceable undertaking that required it, among other things, to commission an independent audit of its payment practices, comply with its workplace obligations, and make a donation to support the work of Interns Australia (FWO 2015).

(d) The vocational placement exception to the Fair Work Act

As already mentioned, a 'vocational placement' is *not* to be treated as involving employment for the purpose of the Fair Work Act, even if it would otherwise fall within the common law conception of an employment relationship. The term is defined by section 12 of the Act to mean:

> a placement that is:
>
> (a) undertaken with an employer for which a person is not entitled to be paid any remuneration; and

THE DEFINITION HAS FOUR REQUIREMENTS, ALL OF WHICH MUST BE SATISFIED IN ORDER FOR A PARTICULAR ARRANGEMENT TO QUALIFY FOR THE EXCEPTION.

> (b) undertaken as a requirement of an education or training course; and
>
> (c) authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory.

This definition is not as clear as it might be (Stewart & Owens 2013, pp. 75–82), and it has not been carefully analysed by any court or tribunal. Where some aspect of it has been in issue, there has been a tendency to pass over it rapidly, without considering each of the elements of the definition.[39] But it has been held, for example, to cover a program of unpaid training legally required to enter a profession.[40]

The definition has four requirements, all of which must be satisfied in order for a particular arrangement to qualify for the exception.

The first is that there must be a 'placement'. The use of this term suggests that there must be some procedure or process for the 'placing' of individuals. For example, a period of work experience undertaken by a student at an organisation entirely on their own initiative might well not qualify as a 'placement', even if the student persuaded an educational institution to grant them credit for it. The concept of a placement arguably connotes some form of arrangement between the institution and the host organisation.

Secondly, a person (presumably the person undertaking the placement) must not be entitled to any remuneration. The term 'remuneration' is not defined in the Act, but previous case law suggests it has a broader meaning than the word 'wages', extending to any form of 'recompense or reward for services rendered', including 'non-cash benefits'.[41] It would not matter how valuable these benefits are, because the definition refers to 'any' remuneration, nor whether the remuneration is provided by the employer or by someone else. But payments by way of reimbursement for expenses incurred are not ordinarily treated as remuneration.[42] It should also be stressed that a placement is only disqualified from falling within the definition if there is an *entitlement* to the remuneration. On this basis, the discretionary payment of a one-off bonus would not stop the exception applying.

Two situations that may be difficult to analyse involve the payment to a university student undertaking a placement of something called either an honorarium or a scholarship. The term 'honorarium' is generally understood to mean a non-contractual payment made to someone undertaking voluntary work, where the payment bears

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[35] *Xie v Yang* [2019] SAET 38.

[36] *Kaur v Bangari and Karyal Pty Ltd* [2021] FCCA 2961, [18].

[37] Ibid [19].

[38] See e.g. *Barbour v Memtaz Derbas* [2021] FWC 1718, in which a law graduate who volunteered to do unpaid work for a law firm until it was ready to start paying him was found by a tribunal member not to have an employment contract.

[39] See e.g. *Corner v SkyCity Adelaide Pty Ltd* [2010] FWA 9259.

[40] See e.g. U*pton v Geraldton Resource Centre* [2013] FWC 7827; *Klievens v Cappello Rowe Lawyers* [2017] FWC 5126. But compare *GLS v PLP* [2013] VCAT 221, discussed below in Section 2.3, where the remuneration received by a student undertaking a practical legal placement would have disqualified her from falling within the vocational placement exception. That point did not arise for decision in this case, because it did not involve a claim under the Fair Work Act.

[41] *Oliveri v Australian Industrial Relations Commission* (2005) 145 IR 120, [25]–[26].

[42] *Bell v McArthur Riving Mining Pty Ltd* (1998) 81 IR 436, 449.

no relation to the work done.[43] In practice, whether a particular payment should properly be classified as a 'true' honorarium or as remuneration may depend on both the amount and the circumstances in which it is paid. The higher the amount, the more that payments to different students seem to vary according to the value of the work they perform, and/or the clearer the expectation that the payment will be made, the more likely a court might be to conclude that the money is a reward for work done.

As for scholarships, anecdotal evidence gathered during our research for this project suggests that it has become common, especially at certain institutions, for students undertaking placements to be supported by payments sourced from external organisations. Where those organisations do not benefit from any work performed, such as where a charity provides support for disadvantaged students to gain work experience at other enterprises, there is clearly no possibility of any employment relationship with the scholarship provider. But where the provider itself hosts and benefits from the placement in question, the matter may be less clear. The fact that money is provided to the university, which then pays the student under what is presented as a separate arrangement, might not preclude a court from characterising the scholarship as in substance one of remuneration for work performed, with the scholarship provider being the employer (Cameron 2018, pp. 344–5).[44] A further possibility is that the arrangement might be characterised as one of labour hire, with the university in effect being paid by the provider to supply the services of the student. If so, that might mean the university itself could be treated as an employer,[45] as well as becoming obliged in some jurisdictions to obtain a licence to operate as a labour hire provider.[46] We stress, however, that these are matters that have not yet (to our knowledge) been considered by any court or tribunal.[47]

The third requirement for a vocational placement is that it must be undertaken as a 'requirement' of an education or training 'course'. On the narrowest view, a placement would only qualify if it was a mandatory requirement to complete an entire degree. But it is also possible to understand it more broadly to include arrangements undertaken for credit in any component of a course of a study, whether compulsory or elective (Stewart & Owens 2013, p. 78). Importantly, the FWO (2017b) has adopted that broader interpretation in its guidance material on the exception. However, until the matter is considered by a court, there remains some doubt over the correct interpretation.

The fourth requirement is authorisation. It is unclear from the wording of the definition whether it is the *placement* or the *education or training course* that must be 'authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory'. Arguably, however, it should be sufficient for a whole program of study or training to be authorised, for example under the regimes discussed below in Section 2.8. If so, any work experience placement undertaken as part of that program would necessarily be considered as authorised (Stewart & Owens 2013, pp. 78–9). It should also be noted that the relevant authorisation must come from an Australian law or government. A course or program authorised overseas, but not locally, would not fall within the definition, even if the relevant placement was conducted in Australia.[48]

If the various elements of the definition are satisfied, then the 'person' undertaking the placement is not to be regarded for the purposes of the Fair Work Act as an employee of the 'employer' with whom the placement is undertaken. The student could, however, still qualify as an employee for other legal purposes. By the same token, however, if one of the required elements of the exception is *not* satisfied, this does not automatically mean that the person concerned is an employee of the 'employer' for whom they are performing the relevant work. It might still turn out that they do not have a contract of employment, under the principles discussed above in Section 2.2(c).

(e) Summary: The legality of work experience arranged or facilitated by universities

Based on what has been said above, a placement, internship or other form of work experience arranged or facilitated by an Australian university will generally be lawful where the arrangement either:

(1) involves **employment** by the 'host' organisation (which may be the university itself) *and* the student or graduate is paid the minimum wages required by an applicable award, enterprise agreement or minimum wage order and is also accorded the other rights and entitlements granted to employees by law;

(2) is a **vocational placement** within the meaning of the Fair Work Act, in that it involves work for a national system employer for which there is no entitlement to remuneration (though reimbursement of expenses or support to meet living costs may be acceptable), undertaken to meet a mandatory requirement or gain credit as part of an education or training program authorised by an Australian law or government;

(3) involves genuine **volunteering**, in the sense of performing work altruistically for the benefit of others or to further a cause or belief, and where there is neither an obligation to work nor an expectation of reward; or

(4) is primarily **observational** in nature or involves **non-productive tasks** which do not benefit the host organisation.

The largest grey area involves the operation of industrial laws which do not, unlike the federal Fair Work Act, have an explicit exception for vocational placements. It is possible, but not certain, that a court or tribunal might still choose to characterise a placement undertaken as part of an authorised education or training course, or indeed any other form of work experience, as involving something other than a contract of employment, purely as a matter of common law.

Where a work experience arrangement arranged or facilitated by a university breaches labour laws, the primary responsibility will fall on the employer, which will usually be an external organisation. But in such a case the university, or indeed one or more of the university staff members involved, might still potentially be liable as well, under provisions such as section 550 of the Fair Work, to the extent that they were knowingly involved in the relevant breaches. 'Accessorial' liability of this kind would only be imposed, however, where the relevant institution or person had clear knowledge of both the facts suggesting a contravention and of the applicability of the relevant laws (Ranieri 2018).

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[43] *Andreevski v Western Institute Student Union Inc* (1994) 58 IR 195, 200; *Wieland v Return to Work SA* [2018] SAET 190, [14].

[44] For a recent example of a tribunal emphasising substance over form in the characterisation of a work arrangement involving multiple parties, see *Gupta v Portier Pacific Pty Ltd* [2020] FWCFB 1698, [36]–[54], finding that a meal delivery driver was working for Uber Eats, not (as the platform's contractual documents suggested at the time) the restaurants preparing the meals.

[45] Labour hire agencies are generally, though not invariably, taken to be the employer of the staff whose services they hire out to 'hosts' or clients (Stewart et al. 2016, paras 10.27–10.28). Compare *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* (2020) 381 ALR 457, in which the court concluded (with great misgivings) that the agency in question did not employ the staff whose services it hired out. An appeal against the decision is currently before the High Court.

[46] See *Labour Hire Licensing Act 2018* (Vic); *Labour Hire Licensing Act 2017* (Qld); *Labour Hire Licensing Act* 2017 (SA); *Labour Hire Licensing Act* 2020 (ACT).

[47] It did at one stage seem that a dispute involving a trilateral arrangement between Swinburne University, one of its students and the National Australia Bank would test out some of these issues (Patty 2018). But it appears the matter has been resolved.

[48] See e.g. *Fair Work Ombudsman v Kjoo Pty Ltd* [2017] FCCA 3160; and see also FWO 2021.

2.3 Discrimination and harassment at work

The Commonwealth, States and Territories all have laws that prohibit discrimination against workers on various grounds, as well as certain kinds of harassment or vilification (Ronalds & Raper 2019). To the extent that a person undertaking some form of work experience is doing so as an employee, they will necessarily be protected by these laws. Otherwise, however, their coverage of tertiary students or graduates engaged in work experience is patchy. In some instances, students are deliberately excluded from the coverage of the protections. In others, the protections are simply not extended to students if they are unpaid, as they are not within the defined category of 'worker' to whom the legislation applies. In some other situations, work experience participants are protected.[49]

Examples of the failure to expressly extend protections to students engaged in work experience can be found in the federal laws that prohibit discrimination and harassment at work. For example, the *Sex Discrimination Act 1984* (Cth) applies to a broad range of working relationships, including partnerships, commission agents, contract work and employment (including prospective employees) (ss 14–17). Employment is defined to include part-time and temporary employment, work under a contract for services, and work as a Commonwealth employee (s 4). However, the Act does not extend coverage to unpaid workers who are not employees. The Australian Human Rights Commission (AHRC) has recently noted this deficiency as part of its national inquiry into sexual harassment. It recommended that the definitions of 'workplace participant' and 'workplace' in the *Sex Discrimination Act 1984* should cover 'all

persons in the world of work, including paid and unpaid workers, and those who are self-employed' (AHRC 2020, pp 465–8, 470). In April 2021 the federal government agreed, in principle, to rectify this by extending the existing definitions (Australian Government 2021, p. 13).

The *Racial Discrimination Act 1975* (Cth), *Disability Discrimination Act 1992* (Cth) and the *Age Discrimination Act 2004* (Cth) similarly cover a range of workplace relationships but do not appear to extend to unpaid work.[50] To fall within these statutes, therefore, a student engaged in work experience would need to establish that they had been engaged to perform work pursuant to some form of contract, under the common law principles discussed above in Section 2.2(c).

Section 351 of the federal Fair Work Act imposes a separate prohibition on employers engaging in a range of discriminatory actions against employees and prospective employees. But as noted above, students undertaking unpaid 'vocational placements' are not treated as employees for most purposes under this legislation. However, there is one part of the Fair Work Act that *does* apply to such students. This is Part 6-4B, which concerns anti-bullying orders. It is considered separately in the section that follows on work health and safety.

Some State and Territory anti-discrimination statutes extend protections from sexual harassment and discrimination to students engaged in work experience, but that is not uniformly the case (Stewart & Owens 2013, pp. 107–9). For example, section 87(1)(a) of the *Equal Opportunity Act 1984* (SA) prohibits a person subjecting to sexual harassment 'a person with whom he or she works'. Section 87(9)(c) goes on to provide that 'a person works with

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49 The extent of coverage of unpaid work experience participants is considered in Hewitt et al. 2021.

50 *Racial Discrimination Act 1975* (Cth) ss 3 (definition of 'employment'), 15; *Disability Discrimination Act 1992* (Cth) ss 4 (definition of 'employment'), 15–18; *Age Discrimination Act 2004* (Cth) ss 5 (definition of 'employment'), 18–21.

another if both carry out duties or perform functions, in whatever capacity and *whether for payment or not*, in or in relation to the same business or organisation' (emphasis added). These provisions clearly include interns and students undertaking work experience within an organisation. Section 85B of the same Act prohibits discrimination on a range of bases against 'employees', a term defined in section 5(1) to include unpaid workers. Queensland's *Anti-Discrimination Act 1991* is even broader, applying to almost any form of 'work', a term defined in Schedule 1 to include work under a work experience arrangement or a vocational placement, as well as work performed on a voluntary or unpaid basis.

In Victoria, Part 6 of the *Equal Opportunity Act 2010* extends protection from sexual harassment to any employee, a term defined in section 4(1) for this purpose to include 'an unpaid worker or volunteer'. This would arguably include a student engaged in work experience. But the extension to unpaid workers or volunteers is specifically provided *not* to apply for other purposes under the statute. Hence, for example, the prohibitions in Division 1 of Part 4 against discrimination in employment may not extend to students engaged in work experience. The same is true in New South Wales of the protections provided by the *Anti-Discrimination Act 1977*.

Federal, State and Territory legislation does also prohibit educational authorities from discriminating against students on a range of grounds, including access to benefits.[51] In order to engage the protection of this legislation a student who was disadvantaged in terms of access to or participation in a work experience, and who wished to claim that constituted prohibited discrimination by the educational provider, would need to establish the disadvantage was on the basis of one of the protected grounds (such as gender, race, disability or age). However, many of the broadest provisions, for example to accommodate caring responsibilities, are imposed only on employers, and do not extent to educational providers.[52] And, in any event, disadvantage arising generally from social class, migration status or economic circumstances is not protected under the legislation. Even if it was theoretically conceivable, proving all elements of discrimination (whether direct or indirect) so as to successfully pursue an educational provider under the legislation is likely to be practically impossible. It is also possible that, if a student engaged in work experience is discriminated against or harassed within their host organisation, the educational authority may be vicariously liable for that discrimination.[53] However, the nature of many work experience placements makes it highly unlikely that such a claim would be successful. Instead, it is probable that, unless some other factor is at play, in jurisdictions where State laws to not extend coverage to unpaid workers, students who are discriminated against or harassed while on placement will fall through the cracks of these protections.

However, the situation and status of each student engaged in work experience may be factually complicated. For example, in *GLS v PLP*[54] the tribunal found that Ms GLS, a Graduate Diploma in Legal Practice student undertaking a practical legal training placement, was an employee. Central to this decision was a verbal agreement she would be remunerated $50 or $100 per day (the amount varied during the course of her placement). As a consequence of her status as an employee, Ms GLS was entitled

to protections against sexual harassment in section 93 of the *Equal Opportunity Act 2010* (Vic) and her employer was liable for the sexual harassment to which he subjected her.

There are other factual situations where students undertaking a work experience placement may receive protections under the same legislation. For example, educational institutions have an obligation to protect their students from sexual harassment, and if one student harasses another in a workplace while they are both undertaking a work experience placement, the institution could conceivably be liable under a provision such as section 98 of the Victorian Act. Conversely, if an unpaid student on a work experience placement was harassed by an employee of the host organisation while on placement, it is probable neither the host organisation nor educational institution would be liable.

The impact of the failure to provide consistent legislative protection against discrimination and harassment to students undertaking internships should not be underestimated. As a number of highly publicised events and investigations have demonstrated, the absence of legislative coverage can mean individuals face challenging situations which cause enormous personal and professional damage without any process for redress. This is made clear by, for example, the recent initiatives in multiple jurisdictions to extend prohibitions against sexual harassment to cover parliamentarians.[55]

Moreover, there is evidence that students engaged in internships are being subject to inappropriate discrimination and harassment. Newman, Bogo and Daley (2009) have reported discrimination against gay and lesbian students engaged in workplace learning. The AHRC report into sexual harassment and assault in universities reported that for 2% of the students who had been sexually harassed or sexually assaulted in a university setting in 2015 or 2016, the most recent incident had occurred in a workplace as part of their university studies (AHRC 2017, p. 68). Perpetrators included colleagues and clients at a workplace outside the university (p. 87).

2.4 Work health and safety laws

All Australian jurisdictions except Victoria have now largely harmonised their work health and safety laws.[56] The 'model' legislation adopted in each jurisdiction applies to 'workers', which is broadly defined in section 7(1) of each statute to include a person who carries out work in any capacity for a person conducting a business or undertaking (PCBU), including work as an employee, a contractor, an outworker, an apprentice or trainee, a volunteer or 'a student gaining work experience'. Under section 19(1), each PCBU is under a general duty, so far as reasonably practicable, to ensure the safety of any workers that they engage or cause to be engaged, or whose work activities they influence or direct, at least while those workers 'are at work in the business or undertaking'.

It is clear, therefore, under the model laws that, whether or not a work experience arrangement involves an employment contract, the host organisation for which the work is performed must take responsibility for the safety of the individual concerned. Whether the same is true of any third party that has been involved in facilitating or arranging work experience, such as an educational institution, or an agency that arranges internships, will depend on whether it can be

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[51] See e.g. *Sex Discrimination Act 1984* (Cth) s 21, *Age Discrimination Act 2004* (Cth) s 26, *Disability Discrimination Act 1992* (Cth) s 22. At the State level, see e.g. *Equal Opportunity Act 1984* (SA) ss 37, 59, 74, 85I, 85ZE.

[52] See e.g. *Equal Opportunity Act 2010* (Vic) ss 17, 19.

[53] See e.g. *Sex Discrimination Act 1984* (Cth) s 106.

[54] [2013] VCAT 221.

[55] See e.g. the 2021 federal government commitment to extend the *Sex Discimination Act 1984* (Cth) to members of parliament (Australian Government 2021, p. 12); and the *Equal Opportunity (Parliament and Courts) Amendment Act 2020* (SA), which amends the *Equal Opportunity Act 1984* (SA) to prohibit members of parliament sexually harassing one another.

[56] See *Work Health and Safety Act 2011* (NSW); *Work Health and Safety Act 2011* (Qld); *Work Health and Safety Act 2020* (WA); *Work Health and Safety Act 2012* (SA); *Work Health and Safety Act 2012* (Tas); *Work Health and Safety Act 2011* (ACT); *Work Health and Safety (National Uniform Legislation) Act 2011* (NT). At the time of writing, the Western Australian Act had not yet been proclaimed to take effect, leaving the *Occupational Safety and Health Act 1984* (WA) still in force. For a detailed analysis of the model legislation, see Johnstone & Tooma 2012.

said that the individual is 'at work in' the third party's own business or undertaking, as well as that of the host. As a 'worker', a person undertaking work experience will also owe duties of their own under section 28 of the model statute, for example to take reasonable care of both their own and others' safety while at work.

The position is not very different in Victoria, even though the legislation there is not framed in quite the same way as under the model law. Section 23(1) of the *Occupational Health and Safety Act 2004* (Vic) requires employers to 'ensure, so far as is reasonably practicable, that persons other than employees of the employer are not exposed to risks to their health or safety arising from the conduct of the undertaking of the employer' (s 23(1)).

A further set of protections that are designed to ensure safety in the workplace, and which definitely cover participants in workplace experience programs of all kinds, is found in Part 6-4B of the Fair Work Act. It allows 'workers', a term given the same meaning as in the model work health and safety legislation, to apply to the Fair Work Commission for protection against workplace bullying, at least where they are working for a constitutional corporation or the Commonwealth or in a Territory (Stewart et al. 2016, ch. 21.3). As a Full Bench of the Commission has noted, the jurisdiction is broad enough to cover work experience arrangements, even when undertaken to satisfy the requirements of an educational curriculum.[57] Similar legislation has also been passed in Queensland, and proposed in Western Australia, for the benefit of workers at other types of organisation.[58]

2.5 Workers' compensation

Each State and Territory has a statutory scheme that requires organisations to insure their workers against work-related injury or illness. The term 'worker' is generally defined to cover those who are employees in the common law sense. Coverage of these schemes can also be extended to certain types of non-employee. But as a general rule, this has not been done for work experience participants. Accordingly, they will usually be covered by the statutory schemes (as opposed to any private insurance policy) only where they are employed. This appears to be the case even in States that have broad statutory definitions. For example, in Victoria section 3 of the *Workplace Injury Rehabilitation and Compensation Act 2013* defines a worker as anyone who performs work for an employer, or agrees to perform work, 'at the employer's direction, instruction or request, whether under a contract of employment … or otherwise'. This might well be considered to cover any type of internship or placement. But the WorkSafe Victoria website (2020) specifically states that university students undertaking work placements or work experience as part of their studies 'are not recognised as workers'.

There are, however, a number of exceptions to this pattern. Section 14 of the *Workers Compensation Act 1951* (ACT) provides that anyone 'engaged under an arrangement (whether or not under contract) by which training or on-the-job experience is provided' is treated as a 'worker', at least to the extent that they perform 'work that is for (or incidental to) the principal's trade or business while so engaged'. This is so even if they receive no payment. But they are not treated as the principal's worker if the training is arranged for them by an educational institution or is 'part of a work experience program (however described) run by the educational institution'.

There has also been a significant change in Queensland, as a consequence of the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019* (Qld), which took effect on 1 July 2020. Section 7 in Part 1 of Schedule 2 to the Workers' Compensation and Rehabilitation Act 2003 (Qld) now provides that:

> A person (an **intern**) … is a worker if the person –
>
> (a) is performing work for a business or undertaking without payment of wages to gain practical experience in the type of work performed by the business or undertaking, or to seek to obtain a qualification; and
>
> (b) would be a worker if the work performed by the person were for the payment of wages.

There is an equivalent provision on who constitutes an employer in section 8 of Schedule 3. Section 63B also allows WorkCover to charge additional premiums for interns. There is an exception for school students and 'vocational placement students' at registered training organisations, for whom separate provision is made by section 22 of the 2003 Act. But that exception does not appear to cover university students. Accordingly, host organisations will now need to ensure that such students (or indeed) graduates undertaking work experience that involves productive work are covered by the necessary accident insurance policy. The new provision only applies to unpaid interns. But guidance on WorkCover Queensland's website (2020) suggests that paid interns 'will generally already be covered by the scheme as a worker'.[59] This change to the scope of the Queensland coverage means that situations such as that of Matthew Vickers, who was injured as a consequence of a shark attack while volunteering on a 4-week coral reef research mission conducted by James Cook University, should no longer occur in that jurisdiction.[60] After his accident in 2018, James Cook University denied that it had any liability for Mr Vickers' injuries, and appears not to have had accident insurance coverage for him.

2.6 Superannuation

Under the *Superannuation Guarantee (Administration) Act 1992* (Cth), an employer must pay a tax or 'charge' if it fails to pay a specified percentage (9.5% at the time of writing and rising to 10% in July 2021) of each employee's ordinary time earnings into a superannuation fund on behalf of that employee. This is subject to a number of exceptions, including where less than $450 is earned in a month, and where a worker under 18 is employed to work for 30 or fewer hours a week. The terms 'employer' and 'employee' are given their 'ordinary' (i.e. common law) meaning by section 12 of the Act, and then expanded in various ways, including to cover a person working 'under a contract that is wholly or principally for the labour of the person', even if they are not an employee as a matter of common law.[61]

In practice, a person undertaking unpaid work experience would probably only qualify for compulsory superannuation contributions if they were found to be working under a contract of employment, under the principles discussed in Section 2.2(c), and therefore entitled to wages under an award, minimum wage order or enterprise agreement.

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[57] *Bibawi v Stepping Stone Clubhouse Inc* (2019) 285 IR 190, [20]. This case did not involve such an arrangement, but a mental health service client undertaking voluntary work for a disability services organisation, as part of a Commonwealth-funded program. The fact that the purpose of the program may have been to improve the client's health and wellbeing did not prevent him from being a 'worker', given that the work he was doing 'needed to be done and was plainly of value to [the organisation's] operations': ibid [19].

[58] *Industrial Relations Act 2016* (Qld), Chapter 7; Industrial Relations Legislation Amendment Bill 2020 (WA) cl 27.

[59] For background to the reform, see Peetz 2018, pp. 23–6.

[60] For further details of Mr Vickers' experience, see Park 2018.

[61] See e.g. *Dental Corp Pty Ltd v Moffet* (2020) 297 IR 183.

2.7 Migration legislation

The *Education Services for Overseas Students Act 2000* (Cth) (ESOS Act), discussed below in Section 2.8(c), establishes the legal framework governing delivery of education to international students in Australia. But it is the *Migration Act 1958* (Cth) and *Migration Regulations 1994* (Cth) which provide the foundation for how student visa holders engage in the labour market in Australia. International students may enter Australia on a variety of different visas according to their enrolment and course of study. There are currently eight different visa subclasses for international students wishing to study in Australia.[62]

Visa Condition 8105 restricts the number of hours an international student can work during a semester. This condition prevents international students from working over 40 hours per fortnight unless the requirement to undertake work is 'specified as a requirement of the course when the course particulars were entered in the Commonwealth Register of Institutions and Courses for Overseas Students' (CRICOS).

Whether a work experience placement is deemed as counting towards the fortnightly work hours restriction will depend on whether it meets the definition of 'work' in the *Migration Regulations 1994*. Regulation 1.03 states that 'work' is 'an activity that, in Australia, normally attracts remuneration'. In considering whether a particular activity falls within this definition, regard must be had to the actual circumstances surrounding the activity, including the motivation of the parties.[63]

International students who study in Australia must comply with the terms of their visa (Reilly 2012). A failure to comply with the fortnightly work hours requirement is a breach of the *Migration Act 1994* (Cth) and can lead to visa cancellation and deportation (Howe 2019).

Given the strong punitive consequences for breach of the fortnightly work hours requirement, universities need to be attendant to Visa Condition 8105 in considering the forms of work experience for international students. For example, in circumstances where a work experience placement is one where a student works (full- or part-time) in an office or other place of work and it is not a course requirement that has been registered with CRICOS, it is possible that an international student will be unable to work over forty hours a fortnight in the placement because of Visa Condition 8105. Although the parties' intention may be that this work is an unpaid internship, if it is work that would typically be paid when performed by a citizen, this may mean it counts as 'work' for the purposes of regulation 1.03. In circumstances where a work experience placement counts towards an international student's fortnightly work hours quota, this will likely mean that an international student will have to forgo remunerated work for the period of the work experience placement. Universities should be mindful that this will have implications for the ability of international students to financially support themselves during a work experience placement.

Where an international student undertakes an informal internship, they will also have to be compliant with the fortnightly work restriction in Visa Condition 8105.

In an unprecedented move, due to border restrictions because of the COVID-19 pandemic, the Australian government in May 2021 relaxed the fortnightly work hours limit in sectors such as aged care, hospitality, tourism and agriculture where there is an established labour market need. This has been established as a temporary measure and the Department of Home Affairs (2021a) has undertaken to refrain from cancelling the visas of students who work over forty hours in the prescribed sectors.

2.8 Regulation of work experience as education

(a) Tertiary Education Quality and Standards Agency

TEQSA is charged with regulating the higher education sector in Australia. It is an independent statutory authority, established by the TEQSA Act. Its remit means that it is able to impose procedural obligations and quality standards for work experience arrangements undertaken as part of higher education courses, though not 'open market' arrangements that have no direct connection to such educational courses.

The objects of the TEQSA Act include to protect and enhance 'excellence, diversity and innovation in higher education in Australia' and to 'encourage and promote a higher education system that is appropriate to meet Australia's social and economic needs for a highly educated and skilled population' (sections 3(c)(iii), 3(d)). In order to do this, the TEQSA Act requires entities to be registered before they are able to offer an Australian higher education award. Registered higher education providers must then either be authorised as self-accrediting (all Australian universities are self-accrediting) or have each of the courses of study the institution offers accredited by TEQSA.[64]

To accredit a course of study, TEQSA must be satisfied that the course being assessed meets the Provider Course Accreditation Standards and the Qualification Standards set out in the Higher Education Standards Framework (Threshold Standards) 2015. For those institutions that are not self-accrediting, the accreditation process involves the institution providing TEQSA with evidence to establish that, among other things:

• the learning outcomes of each course of study are specified (section 1.4.1);

• the methods of assessment are consistent with the learning outcomes being assessed (section 1.4.3);

• facilities, including those where external placements are undertaken, are fit for purpose (section 2.1.1);

• student diversity is accommodated (section 2.2.1);

• a safe learning environment is fostered (section 2.3.4); and

• the teaching and learning activities are effective to ensure the achievement of student learning outcomes (section 3.1.3).

A list of the minimum evidence that must be provided is presented in a TEQSA guide (TEQSA 2017a, p. 15). Importantly, an institution seeking accreditation must specifically provide details of any 'work-integrated learning arrangements' (p. 19). WIL is defined by TEQSA (2017b, p. 1) as 'any arrangement where students undertake learning in a workplace outside of their higher education provider as a part of their course of study'. The standards specify that WIL arrangements must be 'quality assured, including assurance of the quality of supervision of student experiences' (section 5.4.1). However, the precise information TEQSA requires to demonstrate this is not specified.

At the course-planning stage, the level of national oversight clearly differs markedly between self-accrediting and other registered higher education providers. A non-self-accredited institution is required to persuade TEQSA in advance that its courses, including all WIL opportunities embedded within units, will provide a quality learning experience for students. Self-accrediting universities, on the other hand, can integrate WIL into a curriculum without being required to provide advance evidence of appropriate supervision arrangements,

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[62] These visa categories are largely for English language intensive courses for overseas students, schools, vocational education and training, higher education, postgraduate research or non-award studies.

[63] For a further discussion on this point, see Howe, Stewart and Owens 2018.

[64] EQSA can accredit a course of study that leads to a higher education qualification against Levels 5, 6, 7, 8, 9 or 10 of the Australian Qualifications Framework, which embodies the national policy for regulated qualifications in Australian education and training (available at <https://www.aqf.edu.au>). Accreditation usually lasts for seven years and can be renewed before expiry.

assessment schemes or relevance of WIL to learning objectives. However, higher education providers that are authorised to self-accredit remain responsible under the TEQSA Act for ensuring their self-accredited courses of study comply with the standards. Therefore, all universities should be considering the detailed criteria in the standards as part of their self-accreditation practice. Consistency with the standards also forms the basis of compliance assessments under the TEQSA Act (section 59). If a compliance audit reveals that a provider has failed to comply with the standards, TEQSA can impose sanctions by shortening or cancelling the period of accreditation for the course of study (section 99).

As all Australian universities are self-accrediting, the majority of educational regulation of work experience (with the exception of TEQSA compliance audits and self-authorisation renewals) occurs internally, that is, conducted within those institutions. This means that there is generally a lack of transparency about the processes that different universities use to regulate work experience and the effectiveness of those processes to ensure equity of access and positive learning outcomes. It may be that self-accredited universities are rigorously applying the criteria in the standards as part of their self-accreditation practice. However, it is not clear if this is consistently the case. In addition, TEQSA compliance audits and re-registrations are irregular (occurring only up to every seven years). And, while TEQSA's decisions are published in summary form, no other details of its review process, the material it considered, nor reasons for decisions are made publicly available.[65]

(b) Higher Education Support Act 2003

While TEQSA provides limited oversight of WIL pedagogies in self-accredited institutions, there are other regulatory measures which minimise the concern that educational providers face an incentive to offer WIL courses which allow tuition to be charged without the need to incur significant expenses for facilities or instruction costs (Burke & Carton 2013, p. 123).

Since 2005, Australian universities have had a funding imperative to offer structured learning support to students engaged in WIL: if they fail to do so, they cannot charge students to enrol in WIL courses (Bates 2008, pp. 305–6). Until late 2020 the *Higher Education Support Act 2003* (Cth) provided that if units or topics that incorporated WIL were to be eligible for Commonwealth funding, they needed to be directed by the university and meet specific academic criteria as to the quality and nature of the university input.[66] This was done by excluding 'work experience in industry' units from funding under section 33-30 of the Act. Paragraph 5.5.1 of the *Administration Guidelines 2012* (Cth) made under the 2003 Act provides that a subject is not 'work experience in industry' if all of the following are performed by the higher education provider:

(a) ongoing and regular input and contact with the student; and

(b) oversight and direction of work occurring during its performance; and

(c) definition and management of the implementation of educational content and objectives of the unit; and

(d) definition and management of assessment of student learning and performance during the student placement; and

(e) definition and management of the standard of learning and performance to be achieved by the student during the student placement.

This position was changed in late 2020, when the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020* (Cth) amended section 33-30 and extended Commonwealth funding to 'work experience in industry' courses, provided new requirements regarding institutional support and monitoring were met.

Section 33-30 now provides that Commonwealth funding is calculated according to the number of students enrolled in units *except for* 'ineligible work experience' units. Clause 1 of Schedule 1 of the Act provides that an ineligible work experience unit is:

a unit of study that the student is enrolled in that meets the following conditions:

(a) the unit wholly consists of work experience in industry;

(b) either:

(i) the student is exempt from paying his or her student contribution amount in relation to the unit; or

(ii) the unit does not meet the requirements specified by the Administration Guidelines for the purposes of this subparagraph.

Section 169 20(2) permits the Administration Guidelines to exempt students from payment of their student contribution amounts and tuition fees for units of study that consist wholly of work experience in industry. Paragraph 5.10.1 of the Administration Guidelines creates such an exemption for a unit of study that wholly consists of work experience in industry, unless all the following are performed by staff or other persons engaged by the higher education provider:

(a) interaction with the student, which may include site visits; and

(b) organisation of student placement; and

(c) ongoing monitoring of student work and progress; and

(d) assessment of student learning and performance during the student placement.

Together, these provision within the Act and the Administration Guidelines mean that, unless the institution satisfies all the requirements in paragraph 5.5.1 of the Guidelines, a unit will be considered work experience in industry. If so then, unless the university complies with all the obligations set out in paragraph 5.10.1, students enrolled in that unit will be exempt from paying any student contribution amount and the university will not receive any Commonwealth funding for the unit.

The criteria mentioned above relate to the level of oversight, direction and management that universities need to provide, and include formalising the support given to students on placement, as well as the educational content, standards of performance to be achieved, and assessment of student learning within WIL courses. These provisions constitute a regulatory acknowledgement of the importance of these criteria for ensuring demonstrable learning outcomes for students. They are clearly articulated as threshold standards and should be sufficient to assuage concerns that students are being charged fees for WIL experiences when the education provider has not put structures in place to ensure that is a supported and appropriate learning opportunity. However, if completing WIL is a requirement of a particular course of study, but not located within a particular unit for which fees would be charged, then the *Higher Education Support Act 2003* (Cth) does not apply. Such arrangements and requirements for WIL are not uncommon.[67]

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[65] A register of the decisions made by TEQSA can be found at <http://www.teqsa.gov.au/national-register>.

[66] See *Higher Education Support Act 2003* (Cth) Sch 1, cl 1(1) (definition of 'work experience in industry').

[67] Extended periods of work placements undertaken during holidays, etc. are a requirement of some courses of study. For example, the University of Adelaide's School of Animal and Veterinary Sciences requires those taking the Bachelor of Science (Veterinary Bioscience) to complete 12 weeks of Animal Husbandry Extra Mural Studies. Such studies are taken outside formal courses, and no university fees are charged to students undertaking them. Therefore the *Higher Education Support Act 2003* (Cth) does not apply. A similar situation exists in engineering, where Engineering Australia, the relevant accreditation body, demands students engage in at least 12 weeks practical work prior to graduation. At the University of Technology Sydney, Diploma in Engineering Practice students are required to undertake 48 weeks of paid or voluntary engineering work for which they do not receive academic credit, and for which they are not charged university fees. They do, however, receive credit for completing two preparatory and two reflective courses undertaken around their practical placements.

(c) Education Services for Overseas Students Act 2000

The ESOS Act sets out the legal framework governing delivery of education to international students in Australia on a student visa. In essence the system it sets up, of provider and course accreditation and review, is not dissimilar to the TEQSA regime. In addition, the ESOS Act requires that providers must comply with the *National Code of Practice for Providers of Education and Training to Overseas Students 2018 (Cth)* (the National Code). The National Code establishes standards for the conduct of registered providers and the registration of their courses. There are a number of provisions in the National Code relevant to work experience courses. For example:

- A registered provider must not provide false or misleading information on a variety of topics, including any work-based training a student is required to complete as a part of a course (Standard 1.2.2).

- Comprehensive information must be provided to all prospective students including with regard to any 'work-based training, placements, other community-based learning and collaborative research training arrangements' (Standard 2.1.2).

- The registered provider must enter into a written agreement with the student which, inter alia, sets out details of any work-based training, placements, and/or other community-based learning and/ or collaborative research training arrangements (Standard 3.3.1).

The most specific requirements relevant to how courses involving elements of work experience are organised and resourced are found in Standard 11.1.2 of the National Code, which stipulates that a provider requires ESOS Agency approval for various modes of study including work-based training. Standard 11.2.3 empowers the ESOS Agency to request the provider demonstrate that 'any work-based training to be undertaken as part of the course is necessary for the student to gain the qualification and there are appropriate arrangements for the supervision and assessment of students'. Assurance may also be sought that 'the provider and any partner they engage to deliver a course … has [sic] adequate staff and education resources, including facilities, equipment, learning and library resources and premises' to properly deliver the course (Standard 11.2.5).

(d) Other legislation

Queensland is the only State or Territory with specific legislation on work experience at university level.[68] The *Education (Work Experience) Act 1996* (Qld) covers any arrangement made on behalf of a student by an 'educational establishment', including a university, for a person to provide work experience as part of the student's education. Among other things, the arrangement must be in writing (section 6(2)) and cannot commence unless appropriate insurance cover has been arranged (sections 8–9). Further conditions include that no more than 30 days must be spent on work experience in any year, the work experience must not be provided at a time outside 'ordinary working hours', and the student must not be paid for their work (section 12(1)(d), (f) and (g)). Importantly, however, none of these rules apply where the work experience is arranged as a 'mandatory or assessable part' of a course offered by a higher

education provider registered under Part 3 of the TEQSA Act (section 4(2)). As noted too in Section 2.2(b), this legislation cannot as a general rule preclude a work experience participant who qualifies as a national system employee from claiming an entitlement to minimum wages and other entitlements under the federal Fair Work Act.

2.9 Other countries

An examination of the legislation and regulatory regimes established in other countries provides some comparative examples which enable not only a critical evaluation of the Australian regulatory approach to work experience, but also some best practice examples. Other countries have taken a very different approach to the regulation of educational work experience. Of particular note are those that have implemented regulation focusing on the educational quality of work experience. In this section, the regulatory approaches of France, Argentina, Brazil and Romania will be briefly introduced, to contrast with the Australian position.

In 2011, France introduced a range of measures to regulate internships, ensure their educational validity, and protect interns from being exploited.[69] The only internships now legal in France are those undertaken under a tripartite agreement between an intern, a host and an educational institution (Code de l'éducation, article L124-5). In order to ensure educational outcomes and avoid the exploitation of students, each internship contract must specify both the educational objectives of the internship and its conditions. For example, the internship agreement must state the activities the intern will undertake and specify the skills they will develop (articles D124-4(4), L124-2(2)). In addition, the intern must be supervised by both the educational institution in which they are enrolled and by the organisation with which they are placed (articles L124-2(3), L124-9). In order to ensure effective supervision, there are strict limits on the numbers of interns that supervisors can oversee.[70]

The French laws also attempt to address issues of equity of access to work placements. For example, placements over six months in duration have been prohibited, and for any placement exceeding two months the student is entitled to compensation (although this is expressly stated not to be a salary) (article L124-6). In addition, students are granted a range of other workplace protections, including limits on daily and weekly working hours (article L124-14), protections against harassment,[71] occupational work and safety protections (article L124-14), and compensation for work-related injury (Code de la sécurité sociale, article L412-8).

Argentina, Brazil and Romania have also sought to regulate the content and quality of tertiary work experience in various ways. In each, as in France, there is a requirement for educational internships to be undertaken pursuant to formal agreements, which must stipulate the learning objectives of the placement.[72] In addition, the laws in each jurisdiction also set minimum standards for the supervision of interns by the host organisation and educational institution.[73] In Argentina and Brazil, internship arrangements are not covered by labour laws, and there are arguably fewer protections extended to student interns than in France. However, if the provisions of the internship agreement are breached in

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68 Victoria regulates work experience at schools and TAFE institutes, but not universities: see *Education and Training Reform Act 2006* (Vic) Part 5.4.

69 Act No 2011-893, 2011 ('Cherpion Law') and Law no 2014-788, 2014 ('Fioraso Law').

70 A tutor within the host organisation cannot supervise more than three interns at one time, while a teacher within the educational institution cannot supervise more than 16 interns at one time: *Code de l'éducation*, articles R124-13, D124-3.

71 According to *Code de l'éducation*, article 124-12, interns are entitled to the rights and protections of article L1152-1 (protection against moral harassment) and article L1153-1 (protection against sexual harassment) of the *Code du Travail*, under the same conditions as employees.

72 In Argentina a tripartite agreement is required between student, host and educational institution: see *Creacion del Sistema de Pasantias Educativas en el Marco del Sistema Educativo Nacional*, Law No. 26,427, articles 5, 6 and 9. In Romania an agreement is required between the educational institution and host organisation: see Law No. 258/2007 and Order of the Minister of Education, Research, Youth and Sport no. 3955/9.05.2008 (Order No. 3955/2008). In Brazil the host organisation and educational institution must enter an agreement, with a separate agreement entered into with the student: see *Lei do Estágio* (no. 11,788 of 2008), article 3.

73 In Argentina, see *Creacion del Sistema de Pasantias Educativas en el Marco del Sistema Educativo Nacional*, Law No. 26,427, articles 17, 18. In Romania, see Appendix 2 of the Order of the Minister of Education, Research, Youth and Sport no. 3955/9.05.2008 (Order No 3955/2008), articles 6.1, 7, 10. In Brazil, see *Lei do Estágio* (no. 11,788 of 2008), articles 3, 7.

either jurisdiction, then the relationship between student and host automatically defaults to an employment contract.[74] In contrast, Romanian internship agreements do not need to be employment contracts; however, there are incentives to encourage host organisations to enter into employment contracts with interns and bring them under the protections of labour law.[75]

Through these innovations, these jurisdictions have attempted to create threshold standards to ensure that work experience placements deliver quality educational outcomes and that students engaging in this form of work are protected and not exploited.[76] In particular, the French system illustrates a coherent approach to the regulation of work experience, in which both the 'learning' and 'work' characteristics of placements have been addressed.

While this has not been done by extending the coverage of labour laws to students engaged in work experience, but through separate regulatory instruments, the result is notable for being cohesive and systematic. This regime has clearly identified the regulatory goals it is prioritising and the actors which have responsibility for them. In each jurisdiction the role of employers in ensuring students engage in quality work experience is also made explicit. In this way the range of regulatory actors is logically extended to include a key partner in every work experience, recognising that, while host organisations must comply with the demands imposed upon them by institutional regulators, they also have a major role as regulators themselves.

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[74] See *Lei do Estágio* (no. 11,788 of 2008), article 3 in Brazil. There are also restrictions on the number of interns that any organisation can have, while 10% of its internships must be reserved for people with disabilities (article 17). In Argentina the relevant provisions are *Creacion del Sistema de Pasantias Educativas en el Marco del Sistema Educativo Nacional*, Law No. 26,427 articles 12, 19.

[75] Internship partners have the option of hiring a student for the period of their internship on a fixed-term employment contract, in exchange for a negotiated rate of pay (Law No. 258/2007, article 21). Incentives are provided to encourage such employment contracts. In particular, article 4(1) in Appendix 2 of Order No. 3955/2008 states that, if the internship is under an employment contract, then the internship partner can benefit from Law No. 72/2007 (the Students Employment Act). Article 1 of that Act provides that employers who hire students during holidays and undertake to pay them not less than the minimum wage can receive, for each student, a monthly subsidy.

[76] The advantages of the French approach, compared to those in place in Estonia and Finland, are considered in Rosin 2016.

CHAPTER 3
CONDUCTING THE RESEARCH

To gain a better understanding of work experience practices, policies and procedures across the Australian university sector, we supplemented our legal research with qualitative and quantitative data, gathered through a series of interviews and a discrete survey, and discussed further at a national workshop.

This chapter briefly explains the processes we used to conduct this empirical research. A more detailed account of our research methodology is set out in Appendix B.[77]

3.1 Preliminary research

At a preliminary stage of our research, we identified and selected for further examination a diverse group of 15 Australian universities located in five different States.[78] These included universities with multi-State campuses, those located in the outer suburbs of a city, rural/regional universities and providers of distance education.[79]

For each of these institutions we then collected and examined all publicly available material about the institutional approach towards, and management of, internships and placements. This material included policies and procedures, information about insurance coverage, and curricula of courses where available. In addition, we attempted to identify how responsibility for various aspects of work experience arrangements was allocated within the institution. This information was collated and reviewed prior to the conduct of the interviews outlined below.

3.2 Interviews with university staff

We undertook a qualitative study of key university personnel to better understand work experience practices, policies and procedures across the university sector.[80] We conducted 68 semi-structured interviews, which were completed between May 2017 and January 2018, at the 15 universities selected. At least four interviews of 45–60 minutes duration were conducted at each university, with personnel involved with work experience in a variety of roles. The four participant cohorts were: policy, legal and risk; education (comprising academic or professional staff involved in providing or supervising work experience programs); careers and volunteering; and international service. In all cohorts those interviewed were at a level of senior administrative or organisational responsibility. Because of their roles, these interviewees were expected to have a strong familiarity with, and knowledge and understanding of, the approach and practices relating to work experience in their university.

For each of the cohorts an interview instrument, based on the same 27 questions with only minor differences, was used. The education, careers and international cohorts had five additional questions relating to education or host organisations, and education participants were also asked to describe a typical work experience opportunity in their school or discipline. Appendix C sets out the questions asked in interviews with participants in the education cohort, which was the most comprehensive interview protocol. The interviews were digitally recorded, professionally transcribed and de-identified prior to analysis.

Analysis of the interview data occurred simultaneously with the data collection phase, which is common in a grounded theory approach.

The qualitative data analysis software NVivo was used to code the interview transcripts manually against themes that were emerging from the material. In addition, NVivo facilitated keyword searches within the interview transcripts.

Towards the end of the data analysis, we stepped back from the detail to get a sense of the bigger picture. While the process outlined below relied on the researchers' first impressions of the data, it nevertheless was extremely valuable as it offered a pathway from analysis to interpretation, a means of abstracting from the specific to a more theoretical position on the basis of the data.

Using a template, each researcher summarised the work experience approach of the universities at which they had conducted interviews. The template included the size and location of the institution, the scale of work experience (both the reported self-assessments of interviewees and university material either provided by the interviewees or publicly available, as well the researcher's own assessment), overall impressions of the institution's work experience policy framework, its integration through the university, attentiveness to and/or fit with the external regulatory environment, and an overall 'verdict'.

Subsequently, we held a team workshop, using these summaries to ground our comparison of institutions. From this we developed a matrix, assigning a score of low, medium or high to the following variables grouped under three criteria for assessing the approach to work experience:

- **Commitment**
  - strength of strategic commitment to encouraging work experience
  - maturity/duration of commitment
  - scale of work experience programs across the institution (not just where professionally required)

- **Administrative character** (on a centralised to decentralised spectrum)
  - position on the centralised–decentralised spectrum of policies and procedures for work experience
  - position on the centralised–decentralised spectrum of management of work experience

- **Legality**
  - reluctance to facilitate extracurricular work experience (excluding paid employment or volunteering)
  - strength of processes for ensuring compliance with the Fair Work Act and other relevant legislation.

This process enabled us to identify six broad work experience approaches that universities appeared to adopt: committed and careful; keen but incautious; enthusiastic but not highly organised; still developing; action needed; and reluctant player. This typology will be explained in Section 4.1.

3.3 Survey

A component of the original research plan for our project was the design and distribution of a survey to be completed by individuals involved in work experience programs within Australian universities. The survey was intended to capture a broader perspective than was possible through the limited number of interviews we would conduct, and to complement the depth of information that the interview data set provided.

A survey instrument (provided in Appendix D) was distributed to a number of universities. Thirteen distributed it to their staff and we received responses. The intention behind the survey was to gather data that could be used to assess the robustness of a university's approach to organising and regulating work experience by reference to three sets of criteria:

- awareness of, and familiarity with, internal (central and local) and external regulation;
- staff information and training – general perception and individual experience; and student information; and
- compliance, legality and complaints.

While on the one hand our interviewees all had positions of higher organisational or management responsibilities in relation to work experience, on the other hand the survey was intended to gather some evidence indicating the degree to which those 'working at the coalface' were aware of, understood and complied with the policies, procedures and practices which their university had mandated. There was not a direct correlation between the institutions at which interviews were conducted and those which contributed to the survey.

Universities were requested to distribute the survey to academic and professional staff. However, due to an initial technical problem with distribution, an inability to ensure the distribution of the survey was the same across institutions, a very small response rate (122 responses were received) and little or no participation by some invited institutions, the material gathered from the survey has only limited value. In particular, it cannot be used as direct evidence of university practices in relation to work experience.

Nonetheless, it remains possible to use the survey data as a prompt in the analysis of the data from interviews and the development of wider perspectives on the regulatory risks in relation to work experience

in universities. Therefore, for completeness, some of the points identified by recipients are set out in Appendix E.

3.4 National workshop

On 8 November 2019 we invited more than 40 university academic and professional staff, together with representatives from bodies such as the Fair Work Ombudsman and the Equal Opportunity Commission SA, to a full-day workshop at the National Wine Centre in Adelaide. The topic for discussion was 'How Australian Universities are Regulating Work Experience'.

During the workshop we presented on five critical topics arising from our research project. They were:

- The challenges of regulating work experience (Prof Andrew Stewart)
- Making university regulatory structures and mechanisms effective (Prof Rosemary Owens)
- Regulating work experience: Particular challenges for universities (Prof Andrew Stewart)
- Regulatory issues arising from internships overseas and those in Australia for international students (A/Prof Joanna Howe)
- Regulating work placements as education – TEQSA, ESOS and the tertiary sector (A/Prof Anne Hewitt).

Importantly, the workshop also provided an opportunity for us to get feedback from participants on a number of key questions regarding the regulation of work experience. A summary of the questions posed to the participants and some of the points they made in response appears in Appendix F.

THIS PROCESS ENABLED US TO IDENTIFY SIX BROAD WORK EXPERIENCE APPROACHES THAT UNIVERSITIES APPEARED TO ADOPT: COMMITTED AND CAREFUL; KEEN BUT INCAUTIOUS; ENTHUSIASTIC BUT NOT HIGHLY ORGANISED; STILL DEVELOPING; ACTION NEEDED; AND RELUCTANT PLAYER.

CHAPTER 4
RESEARCH FINDINGS

In this chapter we focus on six different findings arising from our empirical research into the organisation, management and regulation of work experience in Australian universities.

As previously noted, Appendix A contains a list of publications that explore some of the findings from our project, in particular those concerning the laws regulating work experience both in Australia and around the world.

Section 4.1 examines the approaches taken by universities to manage work experience, as at the time we gathered our data. Across the 15 universities in our study, we identified six broad approaches. These range from universities that were highly sophisticated and careful in managing work experience to, at the other end of the spectrum, an outlier that was highly reluctant to engage in promoting and managing work experience for its students.

Section 4.2 explains the various approaches that universities have taken to regulating work experience. We found that there was no uniform approach across the sector. Although most universities had adopted the promotion of work experience as a high-level strategy, this did not always translate to clear and coherent policies and procedures for managing work experience. In fact, we found that many universities had clearly been unable to implement their policies and procedures consistently across the central and local levels.

Section 4.3 analyses the extent of understanding within universities about the legality of work experience placements. We found that, despite the fact that they were in positions of responsibility in relation to work experience within their universities, a number of our interviewees had only limited knowledge of the range of legal issues which affect work experience placements. This suggests that, to avoid risks, there is a clear need for awareness to be improved across the sector.

Section 4.4 considers how universities were managing 'international educational internships', which we define as internships undertaken for the purpose of study at a particular institution, but in a different country to the one in which the institution is located. There is substantial regulatory complexity and myriad challenges in managing such arrangements. We found that, while they were often eager to promote international educational internships, the universities we studied did not always have adequate regulatory and oversight processes in place to manage them. We also note that the presence of third parties, and in particular brokers, with a vested interest in promoting international educational internships may pose risks for universities and students.

Section 4.5 explores how our selected universities were acting, or failing to act, to enforce regulation directed to ensuring the educational content and quality of work experience. The regulatory regime discussed in Section 2.8 means that university processes for establishing and running work experience placements have a critical effect on students' experiences. We found evidence that university employees, including those at the more senior level, were often poorly informed about the regulatory framework governing tertiary education and that there was a general failure to embed systems to ensure work experience arrangements are compliant with educational regulation.

Section 4.6 presents data about the resource implications of creating and managing effective work placements for students. We interrogate two aspects of resourcing: staff workload, and provision and maintenance of appropriate information technology and administrative systems. With regard to workload, we consider both what interview participants suggested was the actual workload involved, and their perceptions of how this work was recognised and rewarded by their institution. The interview data suggests that academic and professional workload models may have been underestimating the time required to create and supervise quality work experience opportunities and that there appeared to be a general failure to recognise and value the work of those working in this space across the university sector. To the extent that this occurs, it carries attendant risks for ensuring effective regulation of work experience by universities. Where tasks are not accounted for in workload models it is possible that short-cuts may be taken, or compliance ignored altogether. With regard to other resourcing we present a range of information from interviewees about the importance of developing, distributing, supporting and maintaining information technology and administrative systems to support work experience. The interview data suggests that many individuals and institutions recognise the importance of university-wide systems in terms of ensuring student safety, educational quality and regulatory compliance, but that systems could be both cumbersome, if not well designed and supported, and expensive.

4.1 A typology of university approaches to managing work experience

Our research methodology involved multiple phases of data collection and analysis. One important phase was iterative analysis of the 68 semi-structured interviews conducted at 15 universities around Australia in 2017 and 2018. In that process, each interview transcript was reviewed at least three times by the interviewer (for mechanical coding, primary data coding and secondary data coding). The interviewer also read the various institutional policies, strategies and practice documents regarding work experience that the research team had been able to gather. After this process the authors of the report engaged in a process of reflection on the institutions at which the research had been conducted.

This reflection was initially undertaken through a team meeting, at which we discussed critical aspects of the institutional approaches to work experience we had identified. As noted above in Section 3.1, this ultimately involved an assessment on the basis of three criteria: commitment, administrative character and legality. In utilising these criteria to assess the robustness of an institution's regulatory compliance and its capacity to adopt and implement best practices, we acknowledged that there are many different organisational models adopted by universities. In our analysis we did not seek to identify any preferred organisational regulatory model. Rather we considered that a best practice approach to the regulation of work experience could be achieved in a variety of ways. Nonetheless, it was also evident that, where a university did not have strong administrative mechanisms through which to implement its commitment to work experience and ensure regulatory compliance at all levels, there was little prospect that it would be able to ensure regulatory compliance and even less that it would effectively adopt a best practice approach.

We then developed an 'institutional summary template', which each researcher completed for the institutions at which they had completed interviews. That template allowed for impressionistic reflections to be captured, which then informed a subsequent discussion at which we identified six broad approaches to work experience that universities appeared to adopt.

Those broad approaches were described as:

- committed and careful
- keen but incautious
- enthusiastic but not highly organised
- still developing
- action needed, and
- reluctant player.

FIGURE 4.1: APPROACHES TO WORK EXPERIENCE

COMMITTED AND CAREFUL (2 universities)	KEEN BUT INCAUTIOUS (2 universities)	ENTHUSIASTIC BUT NOT HIGHLY ORGANISED (4 universities)
STILL DEVELOPING (3 universities)	ACTION NEEDED (3 universities)	RELUCTANT PLAYER (1 university)

We note that in the time period in which our interviews were conducted many universities had specific projects underway with regard to the management and regulation of work experience, many of which may now have come to fruition.

In addition, other universities may have commenced, completed or re-undertaken projects in this space. Therefore, this broad typology may no longer be accurate in relation to the specific institutions which inspired it. Nonetheless, it remains a useful approach to consider the different ways that universities could engage with work experience and the associated regulatory compliance issues.

The two universities identified as *committed and careful* were characterised by a high commitment to promoting and creating work experience opportunities for their students. At the same time, their management of work experience was both highly centralised and attentive to legality issues. A critical observation made when reflecting on one of the universities in this category was that their management of work experience included 'well-developed and -resourced strategy, processes and policies'.

In contrast the two universities that we characterised as *keen but incautious* also had a high commitment to work experience and a highly centralised approach to managing work experience opportunities within the institution, but were not fully attentive to issues of legality. For example, in this category one institution was said to be 'scrambling' to offer students work experience opportunities.

We branded four universities as *enthusiastic but not highly organised*. In each instance, these organisations were highly committed to work experience, but their systems for managing it were not fully implemented and did not demonstrate consistent attentiveness to legality issues. For one of these institutions the summary was that work experience was a 'part of the institution's DNA'. At the same time, we noted that, while there were high-level policies encouraging and managing work experience, what could be described as the 'middle governance' layer was missing, leading to a gap between strategy and implementation. However, some institutions in this category were highly aware that the institution's processes were not yet robust. For one such university, we summarised the position in these terms: '[broad] institutional recognition that there [is] not currently a consistent approach to managing placements, but a strong and consistent message that the institution is trying to respond to that and hoped to develop a more rigorous educational and risk management regime that could apply broadly in the short to medium term'.

The three universities that we termed *still developing* demonstrated middling commitment to creating and promoting work experience opportunities to students. The systems to manage work experience were not fully implemented and also not fully attentive to legality issues. Practice in one of these institutions was described as moving beyond an 'ad hoc' foundation, with a focus at the time of the interviews on the development of policies and practices. However, at this stage there was as yet limited confidence that policies were

being consistently followed. In another university in this category, we concluded that great work was being done by individuals, but there was little attention institutionally to regulatory compliance. Another still developing university was described as 'in a state of flux' as the management of work experience was under review, with significant plans for future policy change and development.

Three universities fitted into a category we described as *action needed*. This was characterised by middling commitment to work experience for students, a lack of work experience systems, and a sense the institution was not fully attentive to legality issues. In one of these universities we summarised the apparent disconnect between high-level policies and day-to-day practice in these terms: 'proposals, with limited, incoherent or no consultation, and only vague connection to the realities of [individual academic] practice, which had been put forward in the last few years without any integrated follow through'. Another telling conclusion was that one institution in this category had 'areas of best practice, but very little overall consistency throughout the organisation'. Finally, the breadth of areas for improvement at the time of the interviews at one institution in this category was summarised as extending to 'promoting, tracking, managing and regulating [work experience]'.

Finally, we identified one university that we felt was a *reluctant player*. It demonstrated a low commitment to embedding work experience opportunities for students, and its systems for managing work experience were not developed and not fully attentive to legality issues. When reflecting on the interviews conducted at this institution, the summary was that there was an institutional perception that 'the risks of WIL were so significant that [it] should no longer engage in the space'. Despite this overall sense of institutional reluctance, however, there were areas within the institution which placed significant emphasis on developing and managing work experience opportunities for their students and organised placements for considerable numbers of students.

4.2 The effectiveness of university regulatory structures and mechanisms

The regulatory context for universities managing work experience is highly complex. Many regulatory instruments peripherally relate to work experience, but it is not the central focus of any one area. Areas of law that affect the management of work experience include: the Fair Work Act; anti-discrimination law; work, health and safety law; workers' compensation law; migration law; and education law. Universities have an important role to play in this regulatory scheme. For that reason, we explored how they are acting as regulatory actors, asking two critical questions:

1. What are the characteristics of effective regulation and regulators, and how can universities demonstrate these?

2. Where are the gaps and what is not working?

We explore the answers to these questions below, by considering our data regarding: institutional strategies and policies; degree of centralisation; levels of compliance; documents and approval of arrangements; and training. This analysis is complementary to the conclusions of the Institutional Quality Assurance of WIL project led by Queensland University of Technology (Campbell et al. 2019).[81] That project has developed a framework that recognises that institutional requirements are a critical domain of quality assurance. It has developed a number of important standards (see Table 4.1) to be adopted by institutions, governed by the guiding principle that '[q]uality WIL activity across institutions should be evidenced by the proper management of staff, risk management and reporting around WIL experiences supporting continual improvement' (p. 2).

Our own analysis is informed by the understanding that in a regulatory system there is interdependence and interaction between many different parts or components. Within a regulatory system it is desirable to achieve a virtuous circle – where a complex chain of events not only achieves the desired response or outcome but also forms a cycle of continuous improvement (Freiberg 2017, ch 15).

TABLE 4.1: INSTITUTIONAL QUALITY ASSURANCE OF WIL PROJECT STANDARDS

Before WIL	• Standard 3.1 Institutions have shared goals, policies, principles and values about WIL
	• Standard 3.2 Institutions have identifiable leadership and governance structures for WIL
	• Standard 3.3 WIL is supported by adequate and effective IT and administrative systems
During WIL	• Standard 3.4 Institutions provide targeted professional development for academic and professional staff, and industry and community partners
	• Standard 3.5 Enacted legal and risk management frameworks, compliance procedures and processes
After WIL	• Standard 3.6 Provision of funding, resourcing, support and recognition necessary to achieve WIL strategic goals
	• Standard 3.7 Evaluation and tracking of short to long term WIL outcomes for continuous quality improvement

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[81] Details of the project can be found at <https://research.qut.edu.au/wilquality/> (viewed 22 August 2021).

Formulation
of high-level
strategy - broad
aspirations stated

Translating strategy into
action – establishing more specific
policies and procedures to guide
behaviour

How is alignment with the external
regulatory environment ensured?

Who has input and is involved
in drawing up policies and
procedures?

Implementing
corrective
changes to the
system at
all levels

Mechanisms to
ensure effectiveness

**Regular assessment
and review**

Auditing: Where are we at?
What are we doing well?
Where are we falling down?

Is our system 'fit for purpose'
and achieving what we want
it to achieve?

What system have we
put in place for when things
go wrong?

What support mechanisms
exist: e.g. training – how do
those implementing know what
they must do and understand
why they must do it?

(a) Strategies and policies

Developing an effective system for the management and regulation of work experience arrangements has become all the more important because of the significance attached to the development of WIL. We found that many universities had embraced the idea of work experience as part of high-level strategies. Goals such as 'employability' were becoming ubiquitous and were often linked to promises of opportunities for 'real-world work experiences', 'practical learning' and 'global experiences'. Despite these objectives, and as mentioned in Section 1.5, research has not found a clear link between all types of work experience and future employment outcomes. Instead, the most positive outcomes are linked to participation in highly structured programs in large, well-resourced host organisations (O'Higgins & Pinedo Caro 2021; Hunt & Scott 2020). Nevertheless, commitments regarding work experience for tertiary students were often very broad, as illustrated by these quotations from our interview data:

> All students will have an opportunity to undertake [work experience].

> Students will have some sort of work-integrated learning experience.

> [A certain percentage] of students will gain experience overseas.

> The ambition is for every undergraduate student to complete a work placement of some description.

The increased emphasis on work experience means that greater importance needs to be attached to the alignment of internal university regulation with external regulatory requirements.

Despite the proliferation of high-level commitments to creating and embedding work experience opportunities for large numbers of students at many universities, the individuals who participated in our interviews often had only a very vague idea of the range and types of work experience supported and encouraged in their university. This was especially notable in the context of extracurricular work experience, which is notoriously risky from a regulatory perspective, as indicated in Chapter 2. While there was often poor individual awareness of the extent to which the institution supported work experience for students, and which kinds of experience were encouraged, the interviews also demonstrated that many institutions were becoming aware that they had a very poor understanding of the work experience placements in which their students were actually engaging. Many universities were in the process of undertaking internal audits of work experience programs and implementing improved systems for data collection. In many instances these systems were proposed to be institution wide, using software such as Sonia[82] or institutionally designed data management systems, to manage all the administrative aspects of placements. To the extent that effective use of data management tools can assist in achieving a 'virtuous circle of continuous improvement', this is to be lauded.

The extent to which institutional commitment to work experience was reflected in policies governing the creation and management of the experiences varied broadly. Policies ranged from detailed and comprehensive to non-existent. The former is exemplified by the following response:

> The second piece of policy is actual regulation of student placements and that's quite a detailed document and it talks to the responsibilities of the university, of the supervising academic, the student, the partner organisation and the supervising industry person. So it is quite clear and it also has a requirement around legal instruments which might be agreements.

A number of interview participants noted that there was a gap between strategy and implementation:

> There's an institutional commitment to it, but without a detailed plan about how you get there.

> There are aspirational documents around the place that we want to offer more placements, but there isn't any middle governance layer, if you like, that says if you are going to offer a placement … here's how you do it and this is what you've got to look out for and this is what you don't. So there's sort of a big gap between the strategy and the implementation.

One participant noted that the development in this space was incremental and occurred in stages:

> I'm almost sure there's a standard universal university-wide policy. But I know all the growth and development in actually what happens is all being developed at the local area. So again, if I can go back to the three stages I see in this university of work-integrated learning. The first was, 'I don't know. It just kind of happens, whatever.' I think that probably ended 2 or 3 years ago. I think we're in the middle phase, which is we've done the audit, it's growing and we're encouraging it, but it's all organic in local areas. And I think where we'll go in the next one is to do more of it as coordinated strategy. So yes, there are university policies but I'm sure the dominant policies are the local practices and policies.

(b) Degree of centralisation

As institutions grapple with developing processes to manage work experience programs, they face decisions about how they should be organised. A decentralised approach has been adopted in some universities, which has perceived advantages such as:

- an increased capacity to be responsive to localised educational requirements such as accreditation requirements that dictate the nature, location, length or other aspects of students' work experience;

- allowing for a more nuanced alignment of all aspects of the work experience placement to courses or learning opportunities; and

- facilitating the involvement of discipline academics who may have the closest links with their profession and potential host businesses.

However, a decentralised approach to the management of work experience also carries specific risks. For example, external workplace regulatory requirements do not typically vary according to discipline area, and decentralised administration risks patchiness in compliance:

> There's one faculty that takes it all seriously … whereas another faculty … basically the staff feel they're overworked and this is just for them another thing they have to worry about, so for them it's just ticking a box to say 'yep'.

More commonly, the universities in our study were in the process of adopting a more centralised approach, as one interviewee explained:

> I think there's some desire centrally to have control over placements. And part of that is a risk management thing and I understand that, and part of it is a desire to keep the university, you know, have a more or less consistent approach to it. When you consider the complexities of actually doing that across various schools, I suggest

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82 Sonia is proprietary software designed to manage information about placement programs: <https://www.qsrinternational.com/sonia-student-management-software/home> (viewed 22 August 2021).

it's probably not going to happen. You're looking at very different animals in terms of [the different disciplines/schools] … so I suggest it probably won't happen in a pure form. But I can certainly see the need for a centralised administrative role, not necessarily coordination of the placements themselves because I think that's where the complexities come in, but more about setting policy, setting standards.

Some interview participants noted that a centralised approach to overarching risk management can be compatible with discipline experts retaining control of educational aspects:

The academics are still going out and liaising with the students and the host organisation when they're on placement. There are some academic areas that have really strong links with their industry partners and so it's just making sure that we can work together and facilitate that together … it's just working kind of hand-in-hand so it might be that it's slightly tailored for that particular discipline because there's a want from the academic areas to be heavily involved in the engagement with organisations. And that's absolutely fine, we encourage that as much as possible. So we don't necessarily – whilst it is sort of standard across the university, there are some slight deviations depending on the nature of the academic area.

A centralised approach was perceived to have some possible advantages. For example, it avoids the possibility of duplication in dealing with host businesses who may have students from various discipline areas. It also facilitates the use of a single portal for matching students and placement opportunities, which in turn ensures efficiency and maximises the chance of regulatory compliance. However, it was also noted that if there is a mistake anywhere in a centralised system it will be replicated across many areas.

(c) Levels of compliance

Regardless of the de/centralised approach taken by an institution, our interviews demonstrated a risk of policy overload, which affects compliance:

There's a policy for everything.

We drown in policies.

I thought [my previous university] had a lot of policies, though it's nowhere even close to [my current university]. There are policies on policies here. … In [my previous university] I knew with engineering there is almost no policy; here we've got policy coming out of policy around engineering placements.

We also found evidence that policies were ignored or treated as optional:

There's a policy for everything … so I assume it exists but I haven't looked.

I have never looked up the policy on work-integrated learning. But I know they've got to exist.

Yeah, they have policies and procedures but it's not compulsory.

There was considerable evidence of very patchy awareness of the importance of regulatory compliance, especially regarding labour laws, a point taken up further below in Section 4.3. Awareness was often dependant on individuals and sometimes driven from the bottom up, although there did seem to be a significant increase in awareness of the labour law implications of work experience after the 2013 FWO report referred to above in Section 2.2(c):

We are much more selective about what is promoted.

We now have 'compliance by design', that is, we are building programs compliant from the ground up.

Many interviewees reported adopting a risk-based approach:

We take a risk-based approach to these things and I think we have pretty good controls – the risk level, I think we have some pretty good controls around the experience of who we deal with. We've had some bad experiences and we've learnt from them – I've been on the receiving end of, of some bad experiences like personal injuries and those sorts of things, so I think we're a lot smarter as to what we are focusing on. Probably the challenge for us now is high-risk placements. That's where – that's recently come on to my desk where students are going to high-risk environments where there was construction sites, you know, munitions testing or engineering facilities where there were big OH&S issues, or they're going into prisons or mental facilities where they're going to be exposed to dangerous people.

With regard to ensuring alignment with the external regulatory environment and managing both legal and other risks, our research highlighted the potentially positive role of each university's legal office. This is something that has previously been explored in more detail in empirical research conducted by Craig Cameron and colleagues (see e.g. Cameron & Klopper 2015; Cameron et al. 2018; Cameron 2018, 2019a, 2019b). We found that legal and risk personnel and departments were often proactively engaged in compliance, for example by building compliance into internal university regulatory structures and providing regulatory training to relevant personnel. Critical roles that those in legal and risk offices can play to facilitate regulatory compliance include:

• provision of background information for the formulation of policies and processes

• participation in high-level committees formulating policies and guidelines, and

• provision of regulatory compliance aids such as flow charts, fact sheets and checklists to guide staff and students through the process of embarking on unpaid work experience.

Some legal teams, by contrast, were more reactive, responding to a problem only if it was raised directly with them.

(d) Documenting and approving arrangements

Most universities in our study used formal contracts as a way of governing work experience, often based on template agreements developed with the assistance of the legal team. However, this was not always the case. Sometimes an informal exchange of emails was relied upon to set up a work experience arrangement, and sometimes there was no direct communication at all between the university and host businesses. There were also instances of universities allowing and sometimes even requiring students to source their own work experience. As discussed in Section 2.2(d), it is unclear whether such an arrangement can genuinely be regarded as a 'placement', for the purpose of the Fair Work Act's vocational placement exception, nor whether it satisfies the rules regarding Commonwealth funding discussed in Section 2.8(b). Likewise, the problem of privileging some students on the basis of their social, cultural and economic status and background has also been previously remarked (see Section 1.5 above). But more generally, it is apparent that a failure by universities to regularise and control the way in which a business is selected to host a student on work experience may leave all parties (universities, host businesses and students) open to a wide range of risks. The very task of undertaking due diligence in selecting businesses to host a student to undertake work experience, and then

liaising with them as to the content of that experience and obligations regarding matters such as supervision and assessment, can be overwhelming. For under-resourced universities or departments, it is little wonder that this is an area of particular vulnerability in ensuring that work experience is of high quality.

In many institutions there were aspirations for uniformity of approach and documentation regarding work experience across all areas and disciplines. However, interviewees at almost all the universities we studied acknowledged there were deviations from the template or ad hoc arrangements. The reasons for these were varied. In some instances, host businesses or governments had their own contracts, which they insisted on using. In others, it seems that standardised agreement templates were not used because individuals involved in setting up the arrangement were not aware of, or willing to use, them. However, these ad hoc arrangements raise the important question of who checks that terms that are important to the university and the students are incorporated. Variation to standard work experience placements and documentation also revealed the importance of the size and capacity of the legal team. It became obvious that some legal offices had a skeleton staff, which meant that many questions about work experience were dealt with by other administrative branches, such as human resources. The following comments summed up the experience at a number of institutions, though certainly not all:

> *We don't ask legal because the issue will be held up for months and we need a quick answer.*

> *We avoid legal if we can – they only tell us what we cannot do.*

When template documents did exist, the content of these contracts ranged from detailed to rudimentary. It was particularly notable that contracts often did not address workplace issues such as hours of work and protections against discrimination, but were more likely to consider intellectual property ownership and work health and safety than other workplace issues.

Our interviews demonstrated that creating relationships with host organisations and third-party brokers was critical to effective internal regulation of work experience, but was often not given sufficient consideration. Many universities do not have a clear process for selecting and vetting third parties and host organisations, managing expectations and establishing formal processes for communication and feedback. We also found that a common failing of the systems in place to manage work experience is the absence of a systematic way of dealing with complaints, particularly those made by students.

The problems that can arise from due diligence failures or allowing students to find their own placements are exacerbated by the changing nature of the world of work, as well as the special challenges created by the COVID-19 pandemic. As we discuss in more detail in Chapter 5, these issues are encouraging universities to explore the potential for virtual forms of work experience, as well as to promote capabilities for entrepreneurship rather than more traditional notions of employability. Compared to more traditional forms of work experience, often undertaken with large and trusted partner organisations with systems and practices already geared (hopefully) to compliance with workplace obligations, some of these new arrangements may present additional challenges when it comes to the application of labour or educational standards.

(e) Health, safety and work-related injury

We found that most universities placed a strong emphasis on the importance of student safety during work experience. Most survey respondents reported that students undertaking work experience always or sometimes received adequate information about work health and safety. However, they also suggested that students' complaints about workplace health and safety issues (other than discrimination, harassment or bullying) were not infrequent. Many interviewees affirmed the importance of ensuring student safety:

> *We take student safety as absolutely paramount.*

> *If we felt that we were working with a provider who couldn't keep our students safe, they would never be used again, yes, and it wouldn't matter who they were.*

This was reflected in processes and practices which were almost uniformly more robust than in other regulatory areas. For example, for curricular work experience most institutions had comprehensive policy documents and induction processes, and included safety obligations in contracts with hosts. However, the interviews also demonstrated recognition of particular risks:

> *In terms of … work health and safety or, you know, discrimination or any of those kind of actions that might happen in the workplace, we don't have a close eye on what's going on there. We need to trust that the student is aware enough to take some responsibility in that sense or that the employer is reputable. We can't always tell; we don't know all the employers. It would be nice to have kind of a database, I guess, of employers that we've kind of vetted a bit. I know some universities have gone down that track …*

> *I think there will be an increasing tendency to send students off to start-ups potentially, and start-ups are probably the highest risk place you could send a student because they won't have all that health and safety infrastructure; maybe they won't have a good understanding about things like discriminating against them, bullying them, all those sorts of things. So that's where we would be particularly worried where they're sent to very small businesses or start-ups that don't have that employment infrastructure.*

The importance of insuring students against work-related injury was also universally recognised by those whom we interviewed. A number of universities did not merely provide insurance to students in placements undertaken for credit or to satisfy a degree requirement, but offered cover for at least some extracurricular arrangements as well – generally those formally approved as having some relationship with the person's studies. At one institution, this practice was confirmed by each interviewee – except for the one from the university's legal office, who was under the belief that insurance cover would not be available in such circumstances.

It was also notable that most interview participants seemed to make assumptions about the existence and adequacy of their university's insurance in relation to work experience. It became clear in most conversations, however, that the details of such arrangements were either not well known or well understood.

This is an area where the arrangements surrounding a work placement may result in all parties finding themselves in a difficult situation. An example, recounted by one interview participant, concerned a student on placement who was injured at a shopping centre while undertaking duties for their host organisation. As a result of the incident, the student exacerbated a pre-existing injury, rendering them unable subsequently to undertake any study or their usual employment for a substantial period. Because the student had been paid a 'scholarship stipend' while on placement, the university insurer refused to assist, as its agreement with the university only extended to students who were on 'vocational placements'. Likewise the host organisation, citing a clause in its agreement with the university in which the university undertook responsibility for students who were injured, refused to take responsibility. In this situation the student was left in the unenviable situation of pursuing legal action against either the university, the host, or the shopping centre. This situation was only resolved when the university realised the reputational damage likely to result from the whole saga and was finally prompted to provide some financial and in-kind assistance to the student.

(f) Training

Regardless of the nature or details of the internal regulatory system, our research made it apparent that little systematic compulsory training was being undertaken. In fact, compulsory systems and training were often seen as incompatible with university culture, perhaps best exemplified by the statement from one interviewee that *'people in universities don't like rules'*.

As a consequence, the majority of training about work experience and workplace issues was occurring on an ad hoc, voluntary basis, for example through communities of practice, staff websites, and irregular information or training sessions at the university level for persons interested in work experience. National organisations such as ACEN and the National Association of Graduate Careers Advisory Services were recognised as having an important role in disseminating information. But membership and participation depended on individual choice and, in any event, individuals were not always in a position to effect wider organisational awareness and promote structural change.

(g) Conclusion

We found that, at least at the time of our study, most universities had not yet achieved a virtuous circle of regulatory compliance. While many were continuing to improve their work in this space, not all institutions had in place policies and practices to facilitate implementing their broader strategies. There were clear issues with consistency in following policies and practices in some institutions, and in many others the feedback loop required for a virtuous circle did not seem fully developed.

These are all areas on which individual universities can work. And, as universities are critical players in ensuring regulatory compliance in this system, we hope to see continued effort and improvement tailored to each institution's specific circumstances.

4.3 The level of regulatory knowledge in Australian universities

In this section, we assess the state of knowledge regarding the labour standards applicable to work experience by key personnel in the 15 universities we examined. We present information about participants'

awareness of legality issues relating to work experience, especially under the Fair Work Act (for instance, the role of monetary payments to students). We also assess understanding of the risks of workplace discrimination, harassment and bullying, as well as health and safety obligations.

(a) Individual knowledge of the law

With regard to the basic legality of work experience placements, we found there was a significant lack of knowledge about the relevant laws. Only around half the interviewees professed or revealed any knowledge of the circumstances in which work experience placements would or would not be unlawful, and relatively few seemed to have any detailed grasp of the law. Unsurprisingly, more comprehensive knowledge of the legalities of work experience was more common among those in policy/legal or coordination roles, as opposed to those interviewed who were working in international services or careers.

The interviews demonstrated that misconceptions about the law were common, as illustrated by the following comments:

> *Under the Fair Work Act an unpaid internship needs to be of an observational nature and not something that you would pay an employee to do.*

> *It has to be restricted to a very short amount of hours in placement in order to meet with the Fair Work Act and therefore aligns with the subject outcomes and the learning outcomes.*

> *In terms of the Fair Work Act … we need to always make sure that there is more benefit to the student than the employer and then … we can facilitate the placement.*

> *If it's for credit, you know, in terms of the Fair Work Act, it's compliant.*

Results from the survey undertaken as part of this project (see Appendix E) suggest that concerns over a lack of knowledge within universities about legal issues pertaining to work experience are not misplaced. When asked how familiar they were with legal requirements for student work experience the vast majority of respondents claimed to be very or moderately familiar with them.
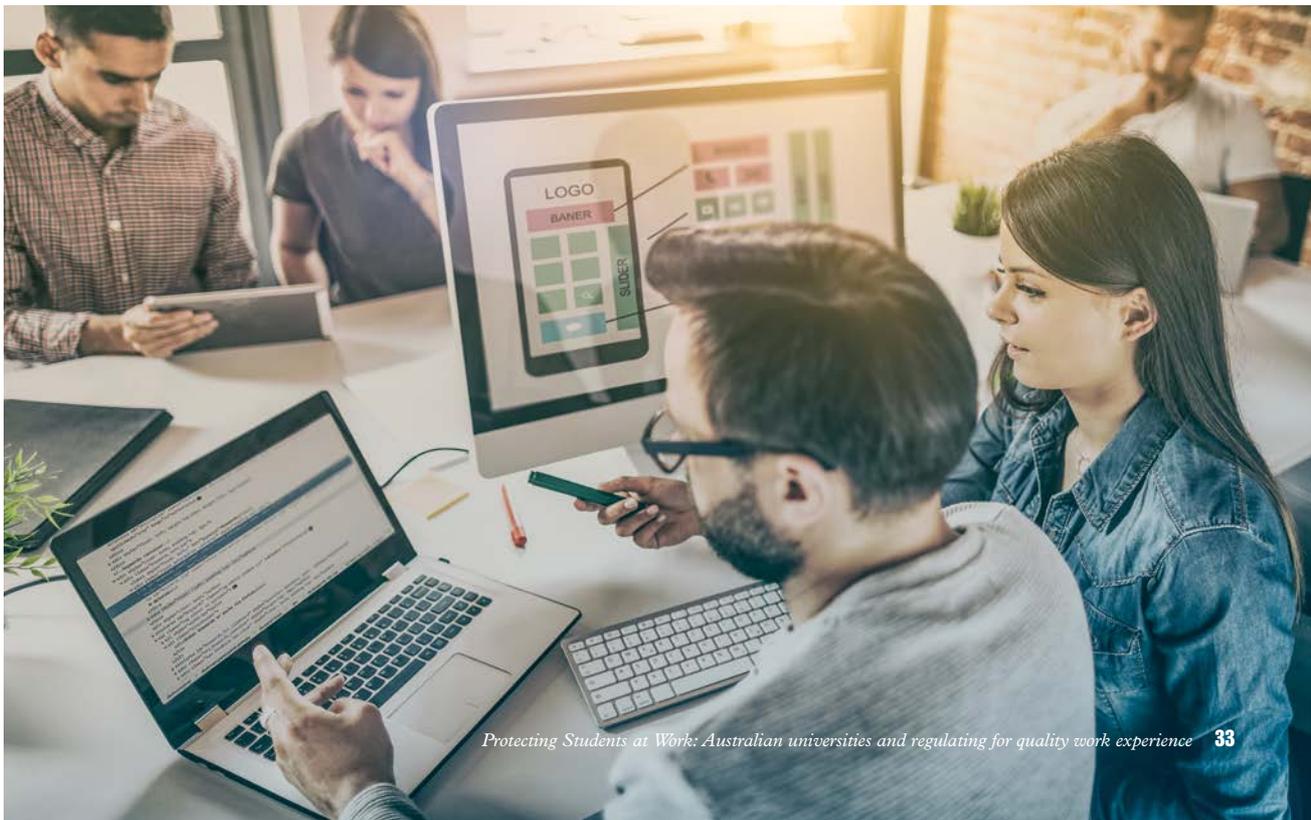
However, less than half said staff managing or supporting work experience received comprehensive or adequate training on legal requirements. Similar results were received when survey respondents were asked about the adequacy of information that was provided about legal requirements. When asked if students undertaking work experience received adequate information about their rights and relevant protections under the Fair Work Act, roughly one quarter said 'always' and half 'sometimes', while another quarter of respondents indicated that was 'never' the case or they 'didn't know'.

Despite these gaps in training and provision of information, 40% of survey respondents were confident there was always general compliance with legal requirements regarding student work experience at their university. 54% believed there was sometimes compliance, and 6% didn't know. Simply believing there is compliance when in fact there may not be is particularly risky because it militates against checking to ensure that it is so.

(b) Institutional attention to labour regulation

We attempted to form a general assessment of the overall approach to legality issues of the 15 universities participating in our research by reference to various criteria. This process was an evaluative one, based on institutional policy documents and our interview data. We looked at the strength of processes for ensuring compliance with the Fair Work Act (beyond individual knowledge) and formed the view that:

- Only **one university** had processes that were likely to ensure a **high** level of attention to compliance with the Fair Work Act across the institution/
- **3 universities** had processes that were likely to ensure a **medium** level of attention to compliance.
- **The remaining 11 universities** had processes that were likely to ensure a **low** level of attention to compliance.

We stress that this was a judgment about each institution's overall approach. In those universities falling into the 'low compliance' category, key personnel often had a good understanding of regulatory issues, and in some areas (especially with those with long-established placement programs) there might be a high level of attention to compliance. What we often focused on, however, was the chances of someone setting up an internship program, in a discipline perhaps not traditionally associated with work placements, having their attention drawn to the possible application of the Fair Work Act and having the tools to address that issue.

Much of the problem here, to return to some of the points already made in Section 4.2(c), lies with attitudes to compliance. A number of participants expressed what could be described as 'policy abstinence'. This is a perception that 'we drown in policies', and as a consequence they were choosing not to engage with those relating to work experience:

> When I was the [coordinator of an internship program], I have to confess that I remained as blissfully ignorant as possible of any rules and regulations that were going to make things harder.

In addition, some who were interviewed described situations that could be described as 'policy ignorance':

> I've been in universities for 10 years and I've come across random academics that you might be in a meeting with and their students go out and do, I guess you would call it work experience, and I'm like, 'Oh great, so who signs off your paperwork?' and they're like, 'What paperwork?'

In a broad sense, many of the interviewees identified tensions between the central university and discipline areas as a significant stumbling block to institution-wide regulatory compliance:

> I see a bit of a push/pull – the discussion is always, 'Well we should have a policy, we should have a procedure, we should get everyone involved.' And then everyone sits down and it's, 'My area is different because …'

In addition, some participants expressed significant dissatisfaction with the development of universally applicable policies and procedures. For example:

> So it looks like there might be a new policy coming, but the creation of that policy, the mechanics of how it was generated seem a little bit vague? … [It was] [a]uthored by a whole bunch of people and they didn't talk to me or anyone else who does [work experience].

The disengagement from formal university policy typified in the quotations above raises questions about the effectiveness of internal university processes to ensure regulatory compliance, regardless of the quality or content of the policy in question.

As a separate exercise, we also evaluated each institution's reluctance to facilitate non-curricular work experience, which as explained in Chapter 2 can potentially be unlawful when not involving properly paid employment or genuine volunteering. We did so, among other ways, by seeking to determine whether the university sought to prohibit or discourage the advertisement or promotion of open market internships not falling into either of those categories. In many instances, we came across policies that sought to discourage that practice:

> We made a decision that if it's not for credit or it's not paid as an employment contract, that we will not get involved in that and we actually advise students to consult Fair Work if they are offered any work outside of their course, to make sure that they are paid the correct wage and things. So we won't even advertise those positions within our jobs board.

> Because of the Fair Work Act … placements outside of the actual course's structure, unless they're paid, is quite illegal so we decided that we'd steer clear of all of that because I know other universities have been in trouble and we don't want our students to be used and abused either.

> So the only unpaid thing that goes up on our listing is volunteer work and that's a legitimate not-for-profit context.

> So we manage a platform and we get hundreds of jobs that come in every day, so some of my team members go through and they check, 'Yes, it's an employer, they've got an ABN number, it's a paid role, yep, it all looks in order' and then they approve it.

Even in institutions with that approach, however, there could also be mixed feelings about taking a hard line on extracurricular, unpaid internships:

> You've got to be a little bit careful because it's very competitive to get a job as well, so it's a real balance of making sure that you are legally compliant and still not compromising the student's opportunities to engage with the workplace; it's just got to be managed very carefully but once it's out of the curriculum, it's really a negotiation between the student and the employer.

Overall, we reached the positive conclusion that:

- **5 universities** had **high** levels of reluctance to promote extracurricular internships.
- **10 universities** had **medium** levels of reluctance.
- **No universities** had **low** levels of reluctance to do this.

A related issue that came up was how institutions viewed the practice of having their own students 'volunteer' to undertake work for the university, for example as part of orientation or promotional events, or in providing research assistance. This could potentially create legal issues for the institution, as at least some interviewees recognised:

We were running an entirely student volunteer part of our orientation program and then that had to go to a model where the student leaders were paid and everyone else was the volunteers and that framework was changed to be compliant with the Fair Work Act.

(c) Monetary payments to students

A particular issue that was discussed in many interviews was the significance of payments to students undertaking work experience. We found varying degrees of knowledge and awareness of the legal significance of pay for work experience. Some interviewees clearly understood this issue:

It is much less confusing from a Fair Work perspective, if they are all unpaid; it makes it much easier for us to be able to oversee to ensure that our students are being given work that is appropriate for an unpaid intern as opposed to someone who is a paid employee. I think it can confuse the relationship in terms of, you know, what you would expect of someone you are paying is very different from what you would expect of someone who is in the organisation for educational purposes.

The interviews also included extensive discussion of how universities could persuade hosts to employ students with pay, or engage in a process of 'finding' course credit that could be awarded so as to manage the legal implications of unpaid work experience under the Fair Work Act. There was also substantial concern about the equity implications of encouraging or requiring students to engage in unpaid work and attempts to find a middle way, for example through provision of 'scholarships' to students.

As we explained earlier, in Section 2.2(d), there is considerable uncertainty as to the legal status of scholarships that effectively pay students to engage in work experience – especially where the money in question is provided by the very external organisation for which the relevant work is to be performed. It is possible that the scholarship payments could be regarded as a form of remuneration, which would take the arrangement outside the legal protection offered by the Fair Work Act's 'vocational placement' exception. All we can definitely say is that more research is needed into the nature and status of such arrangements.[83]

(d) Discrimination, harassment and bullying

Our research found that there are legitimate concerns about discrimination, harassment and bullying of tertiary students undertaking work experience. A number of examples came up in the interviews of students being harassed or bullied and interviewees were generally cognisant of the responsibility of the university in addressing this, even when an external host/partner also had responsibility:

Whilst we wouldn't be liable for the actions of the employees and the host organisation, we would still see that as our legal responsibility … because it's an educational experience. So we would assume legal responsibility for that.

If there was deemed to be something there, we would probably seek to move the student to a different placement, if that were

possible, but we would certainly, certainly report bullying behaviour, sexual harassment behaviour and, again, you know, one of the criteria we have for having a relationship would be t hat they have policies in place to deal with things like bullying and harassment, sexual misconduct, racial discrimination …

I would have to, as a duty of care for future students, find out a bit more about what had actually happened in the organisation because I couldn't possibly put anyone else at risk if that happened and to do that I would probably have to go and talk to the host supervisor and if it was a serious issue then it may have to go further; if, you know, in fact if it was a sexual harassment or a physical abuse or whatever.

Nonetheless, it was also notable that some interviewees recognised that there was a risk that universities sometimes perceive themselves to be conflicted in responding to an allegation of discrimination against a student on a work placement. Reluctance to confront and disrupt a university's ongoing relationship with an organisation providing placement opportunities for students may result in inappropriate responses, ranging from ignoring the situation to resolving it by removal of the student rather than addressing the problem. Such risks are exacerbated by a failure to have in place clear protocols about the procedures to be followed when complaints are made. While most universities did have processes to deal with problems such as harassment or bullying, they were not always in terms neatly transferable to the situation of work experience. Some interviewees recognised that issues of discrimination, harassment or bullying were often systemic, or entrenched in organisational culture. They emphasised the utility of centralised databases in making it easier to recognise recurring issues, and also to bar hosts:

We have red flags if there's been an incident that's happened. It may be that they haven't been particularly supportive of students or there's been bullying or whatever it might be, which again, very minimal that this happens. But then we would have that conversation with the host organisation around our concerns and if there was an opportunity for them – if they were open to changing or making amendments, then we would potentially continue to look at hosting students at that organisation. But we do have the occasional organisation that we just have a blanket 'never again'.

There was also recognition of the possibility of systemic discrimination, which could negatively affect the capacity of some equity groups to access and participate in work experience (for example, students with disabilities and/or international students). While some interviewees reported small-scale initiatives to respond to these problems, these tended to be localised and not to affect large numbers of students.

Survey respondents also reported that there was not universally adequate provision of information to students undertaking work experience about discrimination, harassment and bullying, and that many students complained about these issues.

(e) Conclusion

Our research demonstrated a general awareness of some of the work-related legal issues concerning work experience placements for students. We found this was particularly evident in efforts to channel work experience into for-credit arrangements, paid employment or genuine volunteering. However, few institutions seemed to have taken systematic steps to ensure that both relevant staff and students

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[83] Anne Hewitt and Craig Cameron are currently undertaking a research project funded by ACEN on the risks of payments to students undertaking work experience placements, the results of which are expected to be reported to ACEN in late 2021.

understood the legal position of either the students undertaking work experience or the university. We also found that there was a clear tension within universities between their desire to promote work-based learning and the need to address legal risks. Finding the right balance between these remained a challenge:

I live and breathe internships all the time and I – it's a huge area. I think that it's not well enough regulated; I think there's too many cowboys out there. I think universities are interpreting the law in a whole heap of different ways. I think employers are ripping students off left, right and centre. Students are desperate and they are accepting stuff that they shouldn't do and I think it's a huge mess.

It is a delicate balance. If we lose focus on the need of the student and the educational requirements of the programs then we run he risk of the students being exploited and if that becomes the perception, even if it's not the reality, then that will destroy some very good education programs that do involve legitimate internships.

4.4 Regulating international educational internships

International educational internships are an emerging work and education category that responds to the internationalisation of education and the global movement of workers. Universities, charged with educating and equipping the workers of the future, are now under increasing pressure to be globally focused and offer international experiences and opportunities to their students.

This section introduces the issues associated with 'international educational internships', a term which in this context we use to mean an internship that is undertaken for the purpose of study at a particular institution, but in a different country to the one in which the institution is located. Here, we are concerned with a student enrolled at an Australian university going overseas to undertake work experience, as opposed to an international student coming to Australia to study and doing an internship or placement here as part of their studies, or an Australian student doing the same while enrolled at an overseas institution.

(a) Promotion of international educational internships

Our empirical research on the nature and extent of unpaid work experience in the Australian university sector provided important insights into international educational internships. We found that international educational internships for students enrolled in Australian universities were broadly regarded by interviewees as important for improving students' employability in a global labour market. Many universities appeared to be developing pathways and opportunities for students to be involved in an international internship as part of their degree. A number of the universities involved in the study had established new positions for high-level university administrators and new central divisions incorporating descriptors such as 'Global' or 'Global Mobility'. However, it was striking that international educational internships were not homogenous and could potentially be structured and organised in different ways. The interviewees identified that the lack of homogeneity in how international educational internships were sourced and managed across different areas within universities made it difficult to develop an internally consistent approach. Across each of the university case studies this appeared to be an area that was in a state of flux, with very limited centralised processes for establishing and managing international educational internships. Nonetheless, it was an area that was being promoted in many universities as part of a strategy to promote work experience as well as global experiences for students. Some universities even had specific targets, such as a commitment to ensure a certain percentage of their graduate cohort had had an international work experience.

(b) Regulation and risk management

Some interviewees conveyed a sense that international educational internships were a growth area that was not being adequately regulated, given the myriad administrative challenges in organising and overseeing them. One interviewee said:

Where the student has sourced an international placement that's hard because not only do we not know the partner but they're not even using our law.

Another interviewee reported:

Our students are everywhere overseas; it's just frightening.

A number of interviewees suggested that their university had not yet adequately developed processes for sourcing and managing international educational internships.

In another interview, a university administrator voiced her perception that the strong institutional understanding of the legal requirements around internships in Australian workplaces was not matched by an understanding of labour and employment law requirements in overseas workplaces. She observed:

Probably the greyest area for me are the international-based internships or placements that, you know, that we've got students in a foreign country and there's things that can go wrong and I'm not sure we have that really worked out as well as we could do.

Amongst our interviewees, we did not find any evidence of knowledge of specific workplace regulatory systems in the host country that might be applicable to work experience students. However, across all the institutions we examined, there appeared to be some understanding of the importance of safety, although this was largely interpreted as being about the physical safety of a student travelling to a particular country rather than more specific occupational health and safety issues in a foreign workplace. As one interviewee stated:

There's a great deal of emphasis and support on keeping students safe in travelling, but that's not necessarily associated with work.

A number of institutions appeared to have reasonably developed processes around managing safety, including preventing students from doing internships in countries perceived as high risk. For example:

So if we're approached by an organisation from the Congo for example, I would automatically say 'no' because we're not going to put our students at such a high risk.

Another interviewee stated:

We had a student the other day that wanted to go to North Korea and someone in the school signed off on it … so we interceded on that occasion.

Several universities had protocols in place which involved risk management plans for any overseas placements or exchange, provision for international emergency student air services and a free 24-hour hotline which students could call in emergencies. Typically, universities contracted with third parties to provide overseas support services such as these to their students. One university referred to a mobile tracking service that it used to identify the locations of its students when overseas. Across the universities there seemed to be a strong desire to manage personal safety risks arising from overseas educational internships.

Some, though not all, universities did site visits for international educational internships, which on a few occasions, as described by an interview participant, appeared to take into account workplace issues and not just general safety concerns. However, most of the time it appeared from the interviews that site visits were extremely rare because of the immense resourcing required to undertake them for internships in another country. In some instances, connections with alumni or other persons or institutions on the ground in the overseas country were utilised to source or assess internship opportunities, although this was mentioned by only a few interview participants.

At some universities, there appeared to be an assessment at the central level of whether an overseas internship opportunity was one that should be pursued. In contrast, other universities had more devolved structures, relying on individual disciplines and academics to manage risks arising from international educational internships. For example, one interviewee observed that it had become common at their institution for an academic to travel with students undertaking work experience and to meet with an overseas host and assess their workplace prior to the placement. Despite this, and depending on the nature of the work experience, the workplace, the regulatory system within the host country and the background of the academic, there might be many risks that are not adequately assessed in such a process.

A number of universities conducted pre-departure briefings for students, although again these appeared to focus on safety protocols and, in some cases, advice and training around cultural norms in their destination country, rather than workplace laws, rights, and occupational health and safety.

(c) Use of brokers

A common feature across nearly all the universities in our study was the use of brokering firms to source and manage international educational internships. The absence of regulation of third-party internship providers and migration agents involved in cross-border mobility creates risk for universities as there are no regulatory barriers to entry or external standards which universities can rely upon in selecting the brokers with which to work (McDonald 2020). In the past there have been instances of Australian universities working with or promoting brokers who have clearly let down students. In one well-publicised case, Australian students were repatriated from Singapore in 2015 when a broker, who had arranged internships for them at a not insignificant cost, failed to make arrangements for them to get the appropriate visas to enable them to undertake the work (Taylor 2015).

Interviewees suggested that third-party brokers were essential to developing connections with overseas businesses and organisations to arrange placements. Most interviewees referred to robust processes for selecting brokering firms to manage the risks arising from contracting with a third party to place students overseas. Subsequently, it was common for universities to abdicate all responsibility for sourcing and managing overseas internships to a third party.

However, not all universities used brokers to both source and manage overseas internships. One interviewee referred to using a *'company on the ground that actually finds the placements, but then we take responsibility'*. Another institution had a policy of organising all overseas placements in-house rather than through a third-party broker.

(d) Visa arrangements

Another issue that arose in the interviews pertaining to overseas educational internships was the migration arrangements used to facilitate students' travel and work overseas. This was particularly significant, given the example above. On the whole, there appeared to be a high level of confusion and/or a lack of general awareness of the types of visas that students used whilst on overseas educational internships. It did not appear that universities had systems in place to assist students in identifying and applying for visas. There was a general belief that students relied on tourist visas to travel overseas and work as interns, as these were easy to arrange. Some interviewees acknowledged an awareness that tourist visas generally do not permit visa holders to work in a foreign country.

> *Normally you [students] get a tourist visa, just because if you're going to get a work visa or a business visa, it's a lot more complex, they ask you so many other questions and the process is just much longer and it's more expensive. So if you just get a tourist visa that covers you for a period of time, no questions asked, and you can do whatever you need to do and get out.*

This response typifies the problems that we identified in our research not only in this area but also in relation to other aspects of work experience as promoted and organised by many universities. There appears to be little consideration given to the significant longer-term consequences (including later preclusion from entry to the country) that can arise for a someone who has entered a country with the intent of acting in breach of their visa conditions. However, universities are often so intent on providing and increasing the number of internship opportunities for their students that they go about those tasks which they consider imperative either without identifying, exploring and addressing the risks, or adopting what could only be said to be a 'cavalier approach' to them. Our empirical research demonstrates that, despite the increased interest and growth in international educational internships, there was a high degree of uncertainty within universities about how to manage them, and at most of our selected universities the level of regulatory and oversight processes in place was at best rudimentary and at worst woefully inadequate.

(e) Conclusion

Among our interviewees, we found there to be a consistent lack of understanding of the implications of labour law and migration law when internships are organised abroad. There also appears to be inadequate preparation for students undertaking international educational internships and measures to assess safety and other workplace risks and dangers, and processes for responding when undesirable situations arise. The presence of third parties, and in particular brokers, with a vested interest in promoting international educational internships also poses risks for universities and students. These risks include sending students to overseas workplaces that have not been subject to proper vetting processes or outsourcing visa arrangements and safety management protocols to a broker who may not have adequate procedures in place.

4.5 Compliance with educational regulation

Our research also explored the role of universities in complying with educational regulation concerning the content and quality of work experience. University processes for establishing and running work experience placements can have a critical effect on students' experiences. Our research suggests that employees at our selected

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84 Problems of this nature also occur within Australia. See also an investigation for the Sydney Morning Herald which uncovered exploitation of occupational trainees employed as 'interns' by a luxury hotel chain in regional New South Wales. The hotel chain relied upon unregulated third parties to source and manage the trainees' educational internship in Australia. The trainees paid $6500 for the internship opportunity, a 52-week training contract, provided by a third party, Australian Internships, which profited considerably from arranging the educational internship (Patty 2019a, 2019b, 2019c).

institutions were likely to have been poorly informed about the regulatory framework governing tertiary education and that there was a general failure to embed systems to ensure work experiences were compliant with educational regulation.

Interviewees made little direct reference to the formal educational regulation of work experience discussed in Section 2.8 above. Analysis of the interview data suggested that the scarcity of explicit reference to that framework reflected a general lack of knowledge about it. No participant informed us that they had received specific training regarding relevant educational regulation. On the contrary, most participants had an experience similar to the following:

> *I was sort of put in this position. They said, 'Well, this is your role. This is what you're going to do.' You know, you do get those online modules that you have to do about workplace health and safety, bullying, sexual harassment, all that sort of thing. You do those online. But I didn't get any formal training [on educational regulation], no … And I don't know that the other staff members that are involved in programs would either.*

One participant explained the lack of general knowledge of the education regulation on the basis that ensuring compliance with it was a specialist role within universities, and that 'ordinary' university employees were therefore not required to know about it.

It is true that, if universities implement processes to ensure compliance with the regulatory regime, the individuals undertaking those processes might not be aware they are engaged in compliance. The interview data regarding each university's internal quality assurance processes was analysed to see whether there was any evidence to support this, and the results were mixed. In some universities it seemed that the institution had developed courses and approval processes which addressed the educational regulatory requirements. While these interviews did not explicitly acknowledge any link between the educational regulation and the policies and processes being described, it is certainly possible to see them as an internal process for ensuring compliance with the regulation. This could be described as a method for ensuring 'compliance by design' with the relevant regulatory framework. Only one person interviewed made this overt, however, explaining that the education regulation which underpinned the policy and procedural framework was explicitly referred to in the associated staff training package.

In other universities it was clear the course design and approval processes were generic, and did not explicitly respond to the regulatory requirements regarding work experience:

> *When you introduce a WIL experience there's no extra questionnaire, you're just going through the normal course approval process.*

In a third cohort of universities, policies and processes could be described as 'catching up' to the growth of work experience pedagogies. Interview participants from these institutions made it clear that their policies were being crafted in the wake of a rapid expansion of work experience placements, rather than the work experience being developed in accordance with a policy:

> *We put together a workplace learning website in this faculty and we realised there was no policy to load up onto it, so we are now writing one.*

This spectrum of responses strongly suggests that, at the time the interviews were conducted, not all universities had a robust internal system to ensure that work experience complied with the thresholds established by the regulation. While a number of universities were in the process of policy development or review, which might address this, our analysis raised further questions about how successful this would be, given the general attitudes to policy compliance discussed earlier in Sections 4.2(c) and 4.3(b).

When the interview data regarding compliance with TEQSA, the *Education Services for Overseas Students Act 2000* (Cth) and the *Higher Education Support Act 2003* (Cth) are considered, three critical themes emerge. First, despite education being core business for Australian universities, the data suggest that many of those who

Many of these factors have been broadly recognised in the Queensland University of Technology project on Institutional Quality Assurance of WIL (Campbell et al. 2019), to which reference was made in Section 4.2. Many were also explored in the course of our research. The issue of staff training has already been considered in Section 4.2(f), as have broad issues of regulatory compliance. However, staff workload and other resourcing issues will be considered here.

(a) Academic and professional staff workload

There is a growing body of literature identifying the significant workload implications of developing and maintaining high-quality work experience. There are many explanations for this, from the continuous nature of the workload in a practice-based course, which means it can be more time consuming and resource intensive than traditional university courses (Clark et al. 2016, p. 1055), to the complexity of the educational and legal responsibilities involved (McLennan & Keating 2008, p. 11). Managing work experience courses requires extensive 'planning, negotiating, organising, facilitating, and modelling', as well as maintaining relationships with industry partners, performing administrative tasks and student support (Clark et al. 2016, p. 1056). The boundaries of work experience courses are also often much less constrained than traditional classroom-based study, limiting staff 'down time' between study periods (Rowe et al. 2014). These workload issues may fall on academic or professional staff, according to how responsibility for work experience is managed within a particular institution or course. Regardless of who is responsible for doing the work, if this workload is not properly resourced, that impacts on a university's capacity to manage regulatory risks.

Our qualitative data from Australian universities gave us an opportunity to explore our interviewees' perceptions of whether workload associated with work experience was being appropriately managed. A number of our interviewees indicated that academic and professional workload models underestimated the time required to create and supervise quality work experience opportunities. In addition, interviewees regularly reported that their work in this field was neither recognised nor valued. Where this is the case, or even where academics or administrators perceive it to be the case, there is a concomitant regulatory risk. If corners are cut and work not done properly it risks reducing compliance with policies and procedures even where they are carefully designed. Failure to attend to the design and implementation of work placements as part of educational programs risks not only the provision of something less than high-quality educational work experience, but a failure to ensure that work experience placements do not become another form of exploitative work.

Individual interview participants raised concerns that the creation and supervision of work experience placements seemed to be emerging as a new incarnation of undervalued work. As one of our interview participants remarked, this was often regarded by the employer university as *'all about connectivity and cooperation'* with a focus on *'attend[ing] to relationships and relation work'*. The implication of these statements was that this was not regarded as 'real' academic work and consequentially not valued. One of the responses to this perception is that the creation and management of work experience placements may be delegated to professional staff. However, unless those staff are properly resourced and trained, that does not adequately respond to the regulatory risks posed by a lack of resourcing.

The complexity of creating and supervising work experience placements was explicitly addressed in another interview:

> *So we recognise that delivery of work-integrated learning, or placements in this particular case, is a complex thing. So when I am talking about this to colleagues I say, 'Where you might normally have two partners in a learning relationship, the*

worked within our selected universities were not well (or at all) informed about the regulatory framework governing it. Secondly, it does not appear that all universities were designing processes and policies that would ensure regulatory compliance. Instead, many of the processes and policies for course design and approval appeared generic and did not address the specific regulatory requirements for work experience. Thirdly, while some universities had implemented processes to encourage regulatory 'compliance by design', there were still issues of 'policy abstinence' and 'policy ignorance' which affected the utility of those processes in ensuring all work experience delivered by the institution was compliant with the regulation.

In conclusion on this point, our project found evidence which suggests that at the time of our research there were clear deficiencies in the way in which staff at some universities were aware of, and complying with, the requirements of educational regulation. Amongst our interviewees, we found some were poorly informed about the regulatory framework governing tertiary education and that there appeared to be a general failure to embed systems to ensure work experiences were compliant with educational regulation.

4.6 Resources for managing internships

There is a growing awareness that the resource implications of developing and maintaining high-quality work experience have a bearing on the capacity of universities to be attendant to the regulatory risks associated with managing internships. This is a multifaceted issue, with resources including:

- developing and maintaining appropriate information technology and administrative systems to support work experience,
- provision for, and recognition of, academic and professional staff working in relation to work experience,
- providing appropriate professional development for academic and professional staff involved in work-experience programs, and
- development and enactment of legal and risk management frameworks, compliance procedures and processes.

learner and the teacher or facilitator, in this case you've got three – you've got the university, the students and industry, and each one of those nodes is complex in itself'. So within the university we are working with, as you say, the academics on the ground that are delivering the unit; we're also working with the support staff who manage placements and they are often the people who broker interactions with industry; and then we might have relationships at a whole lot of levels – at person-to-person, someone knows somebody else in industry and that creates a partnership; or you might have a disciplinary-level interaction, this department works with the hospital or this group of schools; and then you've got university-level relationships where we have very deep multidimensional relationships with industry partners. So it's a complex field and there's lots of relationships to manage.

Interviewees also acknowledged that there is a significant time implication of maintaining frequent contact with students to adequately monitor their progress, and identified that successful supervision required the supervisor to develop a relationship of trust with the student participant:

But I do know that the trust or the relationship between the course coordinator and the student is important in terms, if the student feels uncomfortable in any way, for them to let the course coordinator know so that intervention can happen early. And I think that's really important as part of student placement.

This work, interviewees suggested, was *'often invisible and not well recognised or recompensed. But nevertheless, very important'*. A failure to recognise the workload implication of establishing work placements and supervising students engaged in them was a repeated theme, as illustrated in the quotations below:

It's massive, it's massive and I don't think – well everyone has this rhetoric around work-integrated learning and work placements and industry partnerships – actually, we don't take it seriously enough because we don't, no-one gets workload though.

So once again it becomes one element of competing for the academic's time when they're preparing for a lecture … So I think one [problem] is the measurement and two is the recognition as well, it's not there. So like anything, if things don't get measured and if they don't get rewarded sometimes they don't get done irrespective of what promotion is happening out there.

This theme is reflected in the literature. A survey of 49 of Griffith University's academic and professional staff involved in the delivery of WIL courses showed that work that was unique to work experience courses was considered invisible to heads of schools and faculties. This resulted in serious underestimations of staff workload (Bates 2011). Such work included continuous contact and industry-based assessment, workshops and training, professional literacy and codes of conduct, and student intervention (Bates 2011, p. 116).

In this context, many of our interviewees indicated that cumbersome administrative requirements associated with work experience were often 'overlooked' by academics and other placement supervisors: *'Basically the staff feel they're overworked, and this is just another thing they have to worry about'*.

Some universities had sought to address the workload implications of work experience by developing systems to streamline the workload:

So we would have at least 20,000 fieldwork placements a year. So 20,000 – if you don't have an enterprise solution that's systemised, consistent and over-time workflowed and systemised,

you will die under the level of paperwork that you need to maintain that and people get frustrated and work around it. So we absolutely have a corporate view around wanting to embed fieldwork in all learning outcomes, and people demonstrate components of that, but then you need a system to manage it.

However, where they existed, these processes were focused on risk management and accountability, but did not focus on academic content or the time required to manage and supervise placements effectively. This division fails to recognise that a work experience course which is poorly designed in a pedagogical sense, or improperly supervised, may constitute a risk which requires management. For example, as discussed in Section 2.8, the *Higher Education Support Act 2003* (Cth) requires units or topics which incorporate WIL to be directed and meet specific academic criteria as to the quality and nature of the university input, and the TEQSA Guidelines also specify minimum expectations about WIL courses.

In other instances, it appeared that universities were outsourcing some of the workload associated with work experience. For example, many interviewees reported the use of third parties to source placements, or to offer support for students undertaking placements overseas. However, such outsourcing strategies raise a new set of potential risk management and compliance issues.

In addition, interviewees explicitly recognised that some of the workload which fell on staff was not recognised in workload systems, and they were poorly trained or supported:

A part of the problem, if I can add that in now, is that negotiating partnerships with our host organisations, which are fundamental to quality work experiences or work placements for our students, is a real problem for us for a number of reasons – staff are not resourced to do that; there is no workload allocated to it; staff don't know how to do it; staff feel intimidated. I have done a lot of research on that actually, so I know that that is absolutely a fact.

The problems of insufficient workload recognition compared to the time commitment required to develop and supervise work experience properly, with the result that supervisors were poorly resourced or overwhelmed by the supervision responsibilities, was directly linked to students' experiences:

Courses that involve placement and particularly for many courses that don't have placement as a compulsory component, like if placement is an elective, those courses with lower number of students, they're going to be the first to be under-resourced. So what will happen as a consequence of that is that they will lose this direct relationship with course coordinators or an academic supervisor that really is there to protect the student's learning. And I think more and more as we move into the online space we're going to find that that's going to open up a lot of other risk to the students, but you know when you're looking at – if the funding isn't there for them to have academic supervision then that's going to be an increasing problem.

The broad failure of workload models to recognise the work associated with delivering effective work experience courses, the inefficiency of processes to regulate it, and the reports of under-resourcing of work experience within universities constitute a regulatory risk. If university staff are not given adequate time and/or recognition for engaging in the various stages of the virtuous regulatory circle discussed in Section 4.2 above, then the risks of regulatory non-compliance are magnified.

In conclusion, our interviewees indicated that there was a lack of recognition of the time invested by university personnel in relation to work experience. This is at odds with the increasing emphasis placed by universities on ensuring students' access to and opportunities for work experience. The regulatory risks, both educational and workplace, are obvious.

(b) Broader resourcing issues

As well as ensuring adequate staff time can be dedicated to managing work experience, it is necessary to ensure a variety of other resources are available to support delivery of high-quality and compliant placements. In particular, developing and maintaining appropriate information technology and administrative systems to support work experience is critical.

The importance of developing such systems, or purchasing licences and conducting training to use an existing product, was identified as a current project or priority in 15 different interviews. Interviewees stated a variety of reasons for this, from cleaning up 'messy' systems and replacing them with more streamlined ones, to enabling a range of different types of data to be managed and accessed through the same data management system.

> *The governance process that we've developed … we're just sort of trying to systematise it … So, for example, the risk forms are online and they're interactive PDFs or an Excel and so they're messy but people use them. But they're a bit messy, so we're systematising it all at the moment.*

> *[We are] embedding SONIA [software] across the university and we're actually… implementing an online riskware package which will take all of our risk management forms and embed them in and that will be linked into SONIA so that everything is linking in together from the different areas.*

Interviewees indicated that a failure to manage data effectively posed risks for students.

> *Well it's not just the central recording, it's to know where students are and, as I said, the underlying purpose is to ensure that our students aren't vulnerable, that they're well protected.*

The absence of institution-wide accessible data was recognised as problematic in terms of institutional awareness of the work experience that students were undertaking and rectifying this was recognised by interviewees as a means to ensure appropriate risk management and regulatory compliance.

> *We don't have, as yet, one system, so there's no button that you can just hit that will give you a report or, however, we are moving to one system, for instance, on work experience opportunities and we are currently in the process of rolling it out across the organisation. So once we get to that stage it will be easier to monitor that on an ongoing basis.*

> *[D]ata management allows risk to be identified very early "because you might have students placed with a host and they're having great experiences, but you're not hearing about, there might be accounting students in the same host. I think the more data you can pull together the more easily you can identify potential risks at a very early stage and that I think is potentially advantageous. I think there's also a lot to be said for simply tracking students, the institution knowing who is where, at what time. It becomes I think particularly obvious when you think of overseas placements, one goes off in Paris, you kind of want to know who is there like now, not check out – let's not have to contact the Arts Practicum Coordinator and the …, and the …, and the … to find out the university needs to be able to say*

> *we've pulled up our database and we know that these 250 students are in Europe at the moment, any one of those could be in France this weekend, let's shoot them all a text message. I think there's some real strengths in relationship building with students and in risk management that way. But I don't think that that is effective if you do it area by area. You've got to have something – at least something like SONIA where everyone can access it.*

A failure to record data across an institution was also perceived to pose a risk, as information could be 'siloed' in one discipline area, and not accessible in other areas. As a result, information about problems with particular host organisations or work experience placements may not be accessible, and the institution could unwittingly continue to expose students to the same problematic environments.

> *There would be a lot of intelligence that could be gained if that was all shared. I know the university is putting a proposal together to get a CRM [customer relationship management system] up and running but everyone in WIL is pretty much using spreadsheets … it's just Excel that you have and I can't see; so you might be making comments but I would be none the wiser if this manager or this team has problems and it's not worth putting an engineer in because the working conditions are too stressful or too what have you to make a go of it …*

Our research indicated that some institutions were increasing funding and support to address this problem: *'We are better resourced in the employability space than we used to be'*. Many of the institutions at which we conducted interviews were in the process of upgrading their data management systems for WIL. However, the cost of such infrastructure was recognised as significant, and a potential barrier to investment or a cause of delay.

> *[I]t's funding that is released actually through ITS annually to support strategic projects relating to, you know, for which technology and systems development is required. And I sponsored a project which hasn't really again got off the ground yet but it has been, you know, it has been approved, looking at an enterprise solution for the recording and tracking of placements. So we don't have such a thing at the moment.*

> *The University has also recently, this year, invested in a system that will create some common templates across reporting and how programs are managed … So it's been quite a large investment.*

Where institution-wide data management was in place or being developed, it was perceived to have broad institutional benefits, not only in terms of ensuring efficiency and safety for students but also in terms of managing relationships with host organisations.

> *So at the moment, you know, this is all recorded in different parts of the university at the local level and sometimes very local and not connected up and one of the things that I hear along the grapevine is, you know, sometimes employers perhaps gently complain that they are being approached by different parts of the institution who have no knowledge that this is happening – they think they are the only part that perhaps is, you know, engaging with an employer, asking very much for the same kind of arrangement, wanting to explore partnership but actually couldn't we do this better in a joined-up way. And one of the essential foundations of, you know, facilitating that is to have a joined-up system or record which will tell us who we are engaging with, in what way with the placements, work experience and to track, which would give us also the ability to track students' progress through, you know, the experience as well and monitor that.*

CHAPTER 5
THE FUTURE OF WORK EXPERIENCE: INCREASING THE REGULATORY CHALLENGE?

The research that informs this report has been conducted over a number of years, with research commencing in 2015 and data collection in 2017–18. However, while the precise position of particular universities and courses may have changed, the issues that emerged from our research remain broadly relevant. In addition, during our data collection and analysis, we saw a number of new issues and trends emerging, which are perhaps even more relevant today than when our project commenced.

This chapter will introduce some of those issues, and briefly explore what they might mean for the future regulation of work experience.

In 2012, the ILO drew attention to the importance of both promoting internships as a means of moving from education to work and regulating such arrangements to ensure they do not become a means of exploiting desperate young job seekers. These views were expressed in a Resolution of the International Labour Conference (2012), which painted a grim picture of the impact of the 2008–09 global financial and economic crisis on youth employment around the world and the long-lasting effects this situation was likely to have unless drastic action was taken. Since then, the ILO's focus on the role and regulation of internships has continued to be grounded in its concerns to address the 'youth employment challenge' (see e.g. Jeannet-Milanovic et al. 2017). The EU's 2014 adoption of a Quality Framework for Traineeships was likewise closely linked to various initiatives designed to address persistently high youth unemployment rates (EU Council 2014; see also EU Council 2013, p. 1).

A decade on, the world is facing a new economic crisis, brought on by the COVID-19 pandemic and the restrictions imposed to curtail its spread. ILO analysis suggests that young people have been even more disproportionately affected this time around. To the general susceptibility of youth employment to economic downturns must now be added at least three further factors which are making things worse for young people: (a) disruptions to education and training as the result of lockdown measures; (b) the concentration of young workers in economic sectors which have been particularly hard hit by the economic effects of the COVID-19 pandemic and accompanying lockdown measures; and (c) the increasing concentration of young people in less protected forms of employment (ILO 2020b). It is possible we may see a 'lockdown generation' who will be 'scarred throughout their working lives' (ILO 2020a, p. 2).

When the pandemic first hit in 2020, and as a number of surveys have revealed, many internship programs were interrupted or cancelled (see e.g. Fair Internship Initiative 2020; National Association of Colleges and Employers 2020; Yello 2020). According to the ILO (2021, p. 31), a 2020 survey found that:

> The provision of internships/traineeships has been heavily impacted by the COVID-19 pandemic. In total, 83 per cent of enterprises either partially or completely suspended their internships/traineeships programmes…Whereas a quarter of respondents reported internships/traineeships being only partially interrupted, almost 58 per cent reported these programmes as having stopped completely. Only 17 per cent experienced no interruptions.

But some arrangements continued on a 'virtual' basis, with interns working remotely and interacting with their supervisors (if at all) online. Even before COVID-19, some firms and universities had started offering the opportunity to gain experience in this way (see e.g. Virtual Internships 2020). For example, at The University of Adelaide undergraduate students in the Faculty of the Professions can enrol in a 'virtual internship' course. The course description (University of Adelaide 2021) states:

> The Virtual Internship partners students with an overseas company to work on a range of projects in the digital marketing and business development fields. Students are provided with a mentor and work in small teams and through an online platform. The Internship runs for 7 weeks and gives students an opportunity to apply their discipline knowledge to real projects. The Virtual Internship will give students an insight into what it is like to work on projects regardless of geographical location.

Other internship brokers, unsurprisingly, are now reorienting their businesses in this direction (see e.g. Australian Internships 2021). For example, CISAustralia (2021) states on its website that a 'virtual internship allows you to gain professional work experience with an international company – without the costs f airfare, visas or extra travel expenses – making this an affordable and exciting opportunity!' The organisation offers virtual placements in China, Hong Kong, South Africa, Spain and the United States of America, ranging in cost from $1799–$2299 plus GST, and a $95 application fee.

The transition to online or virtual work experience potentially gives rise to a new set of complications for students, universities and hosts. For example, while remote placements may resolve some problems for students who previously had to relocate to the site of the host organisation, it raises issues of 'digital poverty' for those without the hardware, software or internet connections to enable remote engagement (Baker 2020). This issue was reflected in the results of a 2020 ILO survey on the impacts of the pandemic on training, with 45% of respondents identifying limited or lack of digital equipment or internet connection as an issue to the provision of online internship experiences (ILO 2021 p. 34). Similarly, the transition to remote placements gives rise to a new potential range of health and safety issues, as students work from their bedrooms or informal offices. The nature of potential harassment and bullying behaviours also changes in a remote placement, with the complications of remote interaction and communication. It must also be acknowledged that developing and implementing a remote work experience placement which engages students in a positive learning environment with real outcomes will bring its own unique challenges.[85]

A further possibility is that we will see new types of intermediary emerging to facilitate work experience arrangements, especially if they involve work that can be performed online. It is now common for consumers or businesses to use digital platforms like Airtasker or Uber to find workers who are prepared to complete particular tasks or 'gigs'.[86] Such arrangements pose significant challenges to regulators, not least because the workers concerned are generally

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[85] Scholars are already turning their attention to the impact of COVID-19 on learning through work experience: see the articles in the special issues of the *International Journal of Work-Integrated Learning* on 'Responding to COVID-19: Understanding and conceptualizing challenges for work-integrated learning' (vol. 21, no. 4) and 'Responding to COVID-19: Exploration and expansion of good practice of work-integrated learning' (vol. 21, no. 5).

[86] As to the prevalence of such arrangements in Australia, see McDonald et al. 2020.

treated as 'independent contractors' or 'freelancers', rather than as employees (Stewart & Stanford 2017; James 2020). There are already signs in the US of platforms being used in a similar way to facilitate the completion by college students of paid, short-term assignments which are presented as 'micro-internships' (Fisher 2019). While such arrangements can potentially expand access to work experience opportunities to students otherwise disadvantaged by their lack of networks or contacts, they may also 'normalize the gig economy for students and risk providing employers with a large supply of cheap labor' (Hora et al. 2020, p. 7). This is a practice, we suggest, that Australian universities should be wary of embracing or promoting. At the very least, they should be aware of the risks posed by it.

The same can be said of the trend towards organising forms of work experience that seek to prepare students not (or not just) for future employment with established businesses or other organisations, but to be entrepreneurs who can build businesses of their own. The perception that universities should be doing this was one we certainly encountered in our research. As one interviewee put it:

> *The next stage of work will be students will be coming to university knowing they're never going to work as in they want to start their own business and be their own boss. So how does a work placement for somebody who is going to be a CEO of their own company, their own boss, fit in, because they're entrepreneurial anyway.*

Students themselves can often be excited by the potential that new entrepreneurial ventures can offer in the way of work experience. It is little wonder that a number of our interviewees mentioned the challenges of placing students with start-up businesses, as well as the pressure to expand work experience to embrace activities such as 'hackathons' or the competitive pitching of ideas to business. One commented:

> *The message is, 'Look young people … nobody is going to create a job for you anymore; you are going to have to create your own job' … I think there will be an increasing tendency to send students off to start-ups, potentially and start-ups are probably the highest risk place you could send a student because they won't have all that health and safety infrastructure; maybe they won't have a good understanding about things like discriminating against them, bullying them, all those sorts of things. So that's where we would be particularly worried where they're sent to very small businesses or start-ups that don't have that employment infrastructure.*

Returning to more immediate challenges, it seems likely that many policy makers will see a role for work-based learning as part of the 'urgent, large-scale and targeted employment policy responses' that the ILO (2020b, p. 14) suggests are 'needed to prevent lost opportunities and greater youth exclusion'. Some countries have already started down this path. In April 2020, the Canadian government announced that it would provide funding to support up to 20,000 post-secondary students to obtain paid work experience related to their field of study (Department of Finance Canada 2020). In Singapore, a government bailout package has assisted the National University of Singapore and the Nanyang Technological University to offer paid traineeships (Sharma 2020). But if social distancing and travel restrictions remain in place for an extended period some, or perhaps most, of these arrangements will need to be implemented virtually.

Indeed, it is quite possible that some of the variations to working patterns established during the COVID-19 lockdowns may result in lasting changes to internships, along with many other features of the labour market. The ILO (2020b, p. 15) is already highlighting the possibility for 'virtual work-based learning opportunities [to] help young people to gain valuable work experience even if movement restrictions are in place'. It has called for steps to be implemented to 'narrow the digital divide, including digital gender gap, and prevent inadequate digital infrastructure excluding disadvantaged groups from skills development opportunities' (ILO 2021, p. 41). However, the challenges associated with developing and offering effective digital or remote work-based learning opportunities are extensive (OECD 2021).

The raft of potential new regulatory and quality assurance issues posed by a boom in online work experience for tertiary students is more than a little concerning in the context of a sector already struggling to meet demand and maintain excellence and compliance. If nothing else, it underscores the importance of understanding how and why work experience has come to play the role it does in our tertiary landscape, and thinking about how work experience placements might be sensibly regulated broadly and by universities themselves.

CHAPTER 6
RETHINKING THE REGULATION AND PRACTICE OF WORK EXPERIENCE FOR AUSTRALIA'S UNIVERSITY STUDENTS

This report has identified many issues relating to the regulation and management of work experience arrangements, some systemic in nature, others focused on the context of a specific placement or internship. In this chapter of the report, we will respond to some of those issues by framing a series of recommendations which could affect policy and practice in the university sector. These recommendations are divided into two sections.

First, we consider adjustments to the various forms of state (governmental) regulation outlined in Chapter 2. Implementing these recommendations is beyond the power of the tertiary education sector in isolation, as they would require legislative amendment and/or changes to the practice of regulators. However, individual universities, sectoral representatives such as Universities Australia and professional accreditation bodies, as well as the business community, are well placed to advocate for the changes we identify as desirable.

Secondly, we explore a number of changes to the implementation and practice of creating and managing work experience opportunities for students that we believe universities can, and should, implement themselves.

6.1 Reforming the laws regulating work experience

In their 2013 report for the FWO, Stewart and Owens (2013, para. 9.46) concluded as follows:

> It has not been part of this project to focus on the question of changing the law. Nevertheless, we are bound to say that we believe it would be advisable for Parliament to lay down clearer rules on the legality of unpaid trials, internships and other forms of work experience … As it is, many organisations are unable to be sure whether it is lawful to adopt arrangements (whether connected to an education or training course or not) that they regard as unexceptionable. It is also possible that certain types of work experience that we would regard as highly questionable, especially in terms of maintaining the integrity of the labour standards established by the Fair Work Act, may turn out to be lawful if managed in a certain way. We hope that in any debate prompted by this or other research, consideration is given to laying down much clearer ground rules as to the distinction between experience and exploitation at work.

Eight years on, the legal position is no clearer. As we explained in Chapter 2, work health and safety obligations generally apply to any type of work for a business or undertaking, regardless of the legal basis on which the work is performed, and whether it is paid or unpaid. By contrast, minimum standards on matters such as pay, working hours or superannuation generally apply only to employment relationships. The same will ordinarily be true of the application of workers compensation schemes. But there may be considerable room for debate as to whether unpaid work experience in particular should be treated as a form of employment. The FWO has made it clear that arrangements for productive work that do not fall within the Fair Work Act's vocational placement exception can and should be treated as employment contracts. In accordance with that view, it has taken action against businesses for not properly paying their interns. But recent cases have not fully tested the correctness of its stance. It remains possible that organisations who contrive to have students, graduates or other job seekers 'volunteer' to work without pay, in the name of gaining experience or contacts that may improve their employability, could successfully argue that there is no employment relationship and hence no obligation to observe most labour standards.

This uncertainty may and should be an issue of concern for universities in at least three different ways. First, universities may require or permit work experience to be undertaken as part of an educational program in circumstances which do not attract the operation of the vocational placement exception. In theory, the exception should provide a 'safe haven' for curricular forms of work experience. But as we noted in Section 2.2(d), the exception is not well drafted and there are a number of potential uncertainties over its scope. And even if it is interpreted broadly, as it presently is by the FWO, there is still a risk that, if some form of remuneration is provided to the student, the exception may not apply. The exception cannot in any event apply to placements with non-national system employers covered by State industrial laws which lack an equivalent exception.

Secondly, universities are routinely asked by external organisations to advertise or even facilitate extracurricular forms of work experience for their students and recent graduates. As we noted in Section 4.3(b), many of the universities we studied were highly alert to both the risks and undesirability of promoting what might be unlawful or exploitative arrangements. But not all had necessarily adopted policies prohibiting it, or the procedures necessary to prevent that happening across their institutions, or the education of staff to ensure it did not happen.

Thirdly, it is not unusual, as discussed in Section 4.3(b), for students to be given extracurricular opportunities to gain useful experience by performing work for their own institution, including by undertaking research assistance or lab work, or 'volunteering' at university events. We heard about a number of such situations during our interviews. Some of these arrangements will be easy to categorise, but others may fall into the legal grey zone we have described.

In each of these contexts, it would be far easier for universities to assess and manage the risks of being associated (whether directly or indirectly) with a possible breach of labour standards if the scope and applicability of the relevant laws were much clearer than they currently are. As has recently been emphasised in relation to 'on-demand' work facilitated by digital labour platforms there is a larger problem here – the lack of a clear definition of employment (James 2020, ch. 7). There would also be sense in addressing the often-tricky distinction between employment and volunteering. But regardless of whether or not the matter is tackled as part of a broader attempt to clarify the status of work relationships, action is badly needed to provide clearer guidance on the classification of work experience arrangements.

Recommendation 1: Parliaments should amend laws applicable to employment arrangements to clarify whether and to what extent work experience arrangements should be treated as a form of employment, including when undertaken as a formal part of education or training programs.

We support the general idea that there should be some exemption from labour standards for placements undertaken to satisfy the requirements of an authorised education or training program, or for credit in such a program. At the same time, however, we strongly believe that the regulatory regime should recognise and respond to the dual vulnerability of students engaged in work experience. That

vulnerability is both within the workplace – potentially exposed to the risks of exploitation, mistreatment or injury – and as learners at risk of engaging in a potentially costly placement with little value to their learning. There are a range of ways that this could be achieved. The French approach, discussed in Section 2.9, is one example. However, while the French model has the advantage of ensuring integrated regulation of both the 'work' and 'learning' aspects of work experience, less extensive measures could make a difference in the Australian context. Some of these are discussed further below: for example, increasing transparency regarding the mechanisms which ensure that students who engage in work experience achieve appropriate learning outcomes, either by universities themselves or through the national regulator, TEQSA. But another regulatory reform which could facilitate this is by amending the 'vocational placement' exception in the Fair Work Act, or equivalent provisions in other regimes, to impose certain limits or requirements.[87] These would all be intended to ensure that curricular forms of work experience both achieve appropriate learning outcomes and do not become vehicles for exploitation.

Recommendation 2: Any 'vocational placement' exception to the operation of labour standards, whether in the Fair Work Act or elsewhere, should apply only to placements undertaken as part of a course or program offered by a recognised educational institution or training provider, and for which:

   (a) a written agreement has been made between the student or trainee, the institution or provider, and the organisation hosting the placement;

   (b) the placement is designed to achieve learning outcomes specified in the agreement;

   (c) appropriate supervision and support are provided to the student or trainee; and

   (d) the placement does not extend beyond a specified duration without the student or trainee being appropriately remunerated.

Amending the 'vocational placement' exception within the Fair Work Act (or any other law) to require specific learning outcomes to be achieved during a placement would ensure that the exception does not apply to individuals who should not be categorised as 'learners'. This would potentially extend additional protections to others within the workplace. It is also time that prohibitions against discrimination and harassment should be extended to students engaged in work experience, as the AHRC (2020, p. 470) has recently recommended in relation to the Sex Discrimination Act 1984 (Cth). Such a step would be consistent with the protective function of labour law (Hewitt et al. 2017). The concept of dignity can also potentially justify the extension of protections offered by the law (whether conventionally understood as labour law or anti-discrimination law) to those at work, whether as students or more traditional workers. Expanding employment benefits and protections to students engaged in work experience would potentially reduce the chances of them being exposed to discrimination, harassment or exploitation, which could negatively affect their learning, as well as providing a form of redress for any such wrongs.

Recommendation 3: Federal, State and Territory prohibitions of discrimination and harassment should be explicitly extended to cover students or others engaged in work experience.

Many stakeholders would benefit from these reforms. Poor-quality work experience placements would be less common, and students more likely to have satisfactory work experiences with rich learning

outcomes. As a consequence, industry and government could reap the rewards of better educated 'work-ready' graduates. And universities would enjoy the reputational advantages associated with excellent education. These are important regulatory objectives and initiatives worth adopting.

A further change worth considering is to the treatment of work experience for the purposes of migration rules. There is a sound basis for making it clear that work experience is not included in the fortnightly work hours restriction in international student visas. This clarification is important to ensure that international students are not at a disadvantage in accessing work experience placements and that engaging in work experience does not reduce the hours available to them to work in paid employment during their tertiary studies.

Recommendation 4: Work experience placements for tertiary students should not count towards the 40 work hours per fortnight limit under condition 8105 in international student visas.

Without transparency and rigorous oversight, it is questionable whether enthusiasm from the higher education sector to guarantee a minimum quality of all work experience placements will be sufficient to effect positive change. For this reason, we recommend the sector regulator, TEQSA, should take a more active role to encourage regulatory compliance and provision of high-quality work experience placements and opportunities for tertiary students. We recommend this on the basis that a more robust and effective enforcement process would encourage universities to develop and consistently implement more stringent compliance processes.

Recommendation 5: TEQSA should engage in more active and effective enforcement of educational regulation relating to work experience.

Individual universities are undeniably well placed to evaluate the effectiveness of work experience programs within their educational context and for their students. If the manner in which this was done was more transparent it could increase incentives for institutions to deliver quality work experiences and minimise issues of information asymmetry, thereby allowing more students to access high-quality work experiences. This would help ensure that students engaging in work experience achieve positive learning outcomes and would simultaneously minimise the risks of student exploitation and reduce (although not necessarily eliminate) concerns about equity and access. For example, transparency regarding the processes utilised by a university to screen potential work experience hosts would, inter alia, ensure systems were utilised to identify those workplaces that had proper structures in place to ensure non-discriminatory treatment of students on work experience placement. Similarly, publication of information regarding supervision standards in different work experience programs would both assist students to choose an appropriate experience which minimises their risk of exploitation and maximises the learning outcomes they could achieve, and simultaneously create opportunities for the development of benchmark supervision standards across disciplines and between universities. This could be achieved by institutions releasing standardised information about their work experience offerings. Alternatively, to facilitate inter-institutional comparison, TEQSA could provide comparative data.

Recommendation 6: TEQSA should collect and publish standardised information about the curricular work experience opportunities offered to students by each university, including information about their duration, assessment, supervision and student satisfaction.

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[87] For earlier proposals to similar effect, see Cameron 2013. By contrast, it was proposed in 2011 by then ACEN National Director Judie Kay that the vocational placement exception be broadened to include some extracurricular forms of work experience, if 'approved' by a university and kept to a short duration (Stewart & Owens 2013, para. 3.46).

6.2 Improving university policy and practice

Despite the regulatory complexity that affects work experience placements, and the need for regulatory reforms discussed above, there are a range of measures that the higher education sector can, and should, implement independently to improve the management of students' work experiences. A range of recommendations regarding intra-university policy and practice are set out below. These can be adopted by every Australian university. In addition, other stakeholders (academic and professional staff, host organisations and students) could also usefully be involved in many of these processes. While a range of specific recommendations is set out below, if we were forced to summarise the most critical step, it would be for each institution, and the sector more broadly, to discuss the risks of work experience and identify best practices with which respond to those challenges.

A critical starting point is to address the 'silo' approach to the management of work experience within many universities. A variety of informed experts within each institution have valuable pedagogical, regulatory, policy, legal and risk insights into work experience. However, our research has demonstrated that these areas of expertise are often separated, and rarely brought together, with a potentially detrimental effect on regulatory compliance and the quality of students' experiences. It is within universities' power to implement responses to address this problem, and we recommend that each institution should do so.

Recommendation 7: Universities should develop internal systems to ensure better sharing of information about the range of issues relevant to the internal management of work experience.

In addition, our research has revealed a failure at many institutions to create and embed systems to ensure work experience placements are compliant with a variety of forms of regulation. This necessarily increases the risks for tertiary students undertaking work experience placements, and the legal, reputational and other risks for hosts and institutions facilitating such placements. As Craig Cameron (2019a, p. 31) points out:

> Risk management in WIL programs is an important issue for universities, bearing in mind the strategic value of WIL, the legal risks of WIL and the costs arising from the materialisation of a legal risk. Not only does risk management make good business sense for universities, but it is also mandatory in the prevailing regulatory environment.

The tertiary education sector could respond to many of the risks we have identified by improving systems and processes to ensure compliance. The development of institutional or discipline-based processes to ensure 'compliance by design' has the added benefit that it ensures that not all individuals within the tertiary education sector need to acquire additional regulatory knowledge to ensure compliance.

Internal course design and approval processes can be designed to ensure compliance for work experience programs. However, this rarely (if ever) happens without explicit thought and attention being dedicated to developing a comprehensive awareness of the regulatory requirements and designing a system which will ensure compliance. Processes should be reviewed with regulatory compliance in mind on a semi-regular basis (or as regulatory changes come into effect) and amended to consistently ensure compliance by design.

Recommendation 8: University systems and processes should be reviewed and amended so as to ensure regulatory compliance.

In a great many universities, our research suggests there may be a significant knowledge gap regarding the specifics of work experience placements that students are undertaking. Many of the administrators in our study were unable to identify which courses included work experience placements, or how many students were taking them, let alone where those students were or what they were

doing. In others the information existed but was stored via means that were not easily accessible. This lack of comprehensive and accessible data is a regulatory and practical risk. Universities should know in detail what work experience opportunities are integrated into the university curricula. Relevant questions include: What courses involve work experience placements? Where are the students? For how long? What documentation has been collected regarding each placement? Is there a contract in place and has a site check been performed? Who are the students' supervisors within the host organisation and the university? What induction have they received? Who last checked in on the student, when, and what did they report? Once data are collected and maintained it is also important to ensure that the data are accessible to identify and respond to risks. For example, information about negative experiences with a particular host organisation reported by students in one discipline are often relevant to decisions about whether to post students from a different discipline with the same host. If the data is stored and accessible only at discipline level, there is a real risk that trends will be overlooked, and students put at risk.

Recommendation 9: Universities should develop and consistently utilise systems to capture data about work experience. This should include information about student experiences (positive and negative) and partner organisations, as well as placement documentation. This information should be accessible to all relevant staff across the institution.

We also discovered significant gaps in the awareness of a range of forms of regulation among university staff in a wide variety of roles involved in work experience. Many staff were unaware of the details of internal university policy and practice regarding work experience placements. Even more staff had limited, if any, understanding of the broader regulatory context affecting work experience. This is a significant regulatory risk. Universities must prioritise proper training of all the key players in designing, supervising, and assessing work experience. That training should be sufficient to ensure roles are performed consistently with the relevant regulatory requirements.

It is clearly critical that whoever designs the compliance regime within a university has a comprehensive understanding of the legal issues pertaining to work experience. If that regime is well designed, those who have to use and apply it need not themselves have that same level of knowledge. It will be enough that they understand the rules and procedures laid down to promote compliance with the law. Nevertheless, some degree of legal knowledge is still desirable. If people understand why they are required to do something, then the chances are they will be much more likely to comply. This is especially so in an environment, such as a university, where people 'don't like rules'.

Recommendation 10: Universities should ensure academic and professional staff creating and managing work experience placements have adequate training about relevant discipline-specific and university policies and practices.

Recommendation 11: Universities should ensure academic and professional staff creating and managing work experience placements have sufficient training with regard to the regulatory framework to allow them to identify and address compliance issues as appropriate.

Our research clearly suggests that a poorly designed, implemented or supported policy regarding work experience can lead to policy abstinence or ignorance. An effective and efficient policy or process is one which ensures compliance is not overly burdensome or time consuming, is sufficiently flexible to accommodate local idiosyncrasies (for example, specific requirements of work experience placements required for admission to practice in a particular profession by an accrediting authority) and also ensures consistent

consideration and responses to critical regulatory, quality and ethical issues. Each institution should aim to have in place policies and risk management processes which satisfy these goals and are consistently applied across the institution.

Recommendation 12: Universities should identify and address practical barriers and obstacles to ensuring policies and risk management processes for work experience are effective, efficient and consistently applied.

To satisfy the educational regulations, each student engaging in a for-credit work experience placement should be provided with clear information about the placement itself, including its duration, expectations, supervision arrangements, assessment scheme, and how the placement and assessment will relate to relevant learning outcomes. In addition, students should be informed about a range of issues unique to work placements, such as their rights and responsibilities at work. There should also be clear support structures in place, of which the student is informed in a timely way, in case something goes wrong while they are on placement, whether that be sexual harassment or injury, being asked to perform unethical work or work outside the agreed parameters of the placement, a lack of supervision, or any other issue.

Recommendation 13: Universities should ensure that processes and practices regarding work experience arrangements consistently equip students with sufficient knowledge to ensure regulatory requirements are met.

A university cannot ensure quality learning experiences for its students or regulatory compliance if it does not have proper processes in place to manage the involvement of work experience hosts and third-party brokers. In each instance any third-party organisations should be 'vetted' according to criteria determined by the institution to determine if the relationship is one that should be established or maintained, and records should be kept of this. Clear lines of communication should be established with all third parties, which include setting well-defined expectations of their obligations to work experience students, and how any issues should be raised with the university.

Recommendation 14: Universities should implement and apply rigorous systems to manage relationships with third parties to ensure delivery of quality work experience placements and regulatory compliance.

There are areas within each university with enormous depth of knowledge regarding work experience. Each university should consider how specialist knowledge is shared (whether by communities of practice, seminar programs, formal training opportunities or 'match-making' services) and also consider systems to ensure that specialist teams (such as legal teams, risk management departments and WIL specialists) contribute to the design, implementation and management of work experience programs.

Recommendation 15: Universities should develop internal systems to share expertise on work experience and facilitate efficient access to specialist advice as required.

Requirements that students engage in work placements can have significant equity and access implications for large numbers of students. For example, those with caring responsibilities or disabilities may find it challenging to complete a placement. Students without personal contacts in an industry, for example those who are first in family to attend university, from overseas, or from regional or remote areas, may not have the contacts to locate good-quality work experience placements. Students without family support or independent means may find it challenging or impossible to forgo paid work for the duration of a placement, or to fund travel and accommodation to undertake a placement remote from where

they usually live. International students often face many of the aforementioned challenges applicable to local students, as well as the reluctance of some employers to engage students who are on a temporary visa because of a perception that they will depart Australia after their studies. Each university should be alive to these challenges and ensure that a variety of tailored and appropriate systems are in place to support all students to locate, access and complete high-quality work experience placements. These systems should include, but not be limited to, formal equity groups (Department of Employment, Education and Training 1990).

Recommendation 16: Universities should investigate and respond to the equity and access implications of work placements for their students.

As discussed above, there are equity and access issues for many students in locating and completing high-quality work experience placements. In order to manage these each university should actively engage with the professional accreditation bodies relevant to the professional qualifications it offers, with regard to any work experience requirements for admission to the relevant profession. This engagement should focus on identifying equity and access issues and developing profession-wide responses to ameliorate them.

Recommendation 17: Universities should work with professional accreditation bodies to identify equity and access issues associated with requirements for students to engage in work experience and develop and implement strategies to eliminate or minimise those issues.

International research confirms that not all work experience placements are created equal, with participants gaining significantly more from participation in high-quality placements (O'Higgins & Pinedo Caro 2021; Hunt & Scott 2020). For this reason, setting ambitious targets, for example that every student will have a work experience placement, may not have the positive outcomes intended. If vast numbers of placements must be organised, there is a risk that a substantial number of them will be of poorer quality. In addition, increasing the numbers of work experience placements with which students engage increases the challenges of adequate supervision and of regulatory compliance. While it is not impossible to increase the quantity of work experience placements without sacrificing quality, this does pose specific challenges to which universities must be alert.

Recommendation 18: Universities should consider and manage the quality, equity and regulatory risks associated with increasing numbers of work experience placements.

Regardless of whether the number of work experience placements undertaken by students at a university is in the tens, the hundreds or the thousands, and regardless of whether that number is shrinking or growing, it is imperative that each placement is properly resourced. A lack of resourcing necessarily compromises institutional capacity to maintain quality in supervision, assessment, feedback and support, and capacity to respond effectively to problems that may arise. Alongside a rigorous consideration of the risks associated with rampant growth in work experience placements, each university must ensure that its existing placements are properly resourced to ensure educational quality, student safety and regulatory compliance.

Recommendation 19: Universities should ensure all work experience programs are adequately resourced to ensure educational quality, student safety and regulatory compliance.

Students are at obvious risk of being injured, or for that matter causing injury, while undertaking work experience. The importance then of universities negotiating insurance arrangements that are 'fit for purpose' in relation to the wide range of activities and circumstances that work experience for university students may present cannot be understated. That said, insurance contracts are almost always 'contracts of adhesion' – that is, the conditions and

exemptions they contain are usually presented by the insurer to their client on a 'take it or leave it' basis. Only rarely are there likely to be real negotiations to determine the scope and detail of insurance cover.

Within the limits of what is commercially possible, nevertheless, it is important for universities to review insurance contracts/arrangements to be clear about the scope of protection they offer to the university in relation to work experience arrangements (including any overseas placements) and hence to students who may experience (or indeed inflict) some hurt or injury while on placements. The review should also assess the impact of these contracts on the allocation of responsibility between the university and stakeholders providing or facilitating work experience.

It might be useful for that purpose to undertake an audit of existing work experience programs/courses/practices undertaken by students under the auspices of the university or with university encouragement to assess the adequacy of the coverage of university insurance. It is especially important to be clear as to the circumstances in which insurance is available to students undertaking extracurricular work experience. Where current arrangements are found to be inadequate, the university should either

• seek to renegotiate their insurance contracts to ensure they provide adequate protection; or

• where renegotiation is not possible, undertake a risk assessment of programs/courses/practices to determine whether change is required or whether the university is willing to underwrite any costs that would otherwise arise.

It is also important for there to be clarity between the university and stakeholders providing or facilitating work experience placements about who bears responsibility and liability for any injury, loss or damage, and for this to be captured in written agreements with those stakeholders.

All relevant staff should be informed about the coverage of university insurance regarding work experience, so that they will bear this in mind when designing and supervising work experience. Information provided to students and other stakeholders also needs to be accurate and enable them to make their own judgments about any associated risks, as well as understanding their own responsibilities regarding behaviour on work experience.

Recommendation 20: Universities should review their insurance arrangements to ensure:

(a) there is adequate cover for students injured or causing injury while undertaking approved work experience;

(b) students, host organisations and other stakeholders are aware of their respective rights and responsibilities; and

(c) to the extent that insurance cover is limited or not available, appropriate risk assessments are undertaken.

International educational internships require additional resources and closer attention to issues of regulatory compliance, equity, access and quality to ensure they are well-managed and that students are supported when placed overseas. There are additional aspects to arrange such as pre-departure briefings, safety and risk management protocols, visa issues and debriefing once the student has returned home. A lack of resourcing limits the opportunity for international educational internships to be effective vehicles of student learning in a global world.

Recommendation 21: Universities should ensure there are additional resources and processes for managing international educational internships which address the risks associated with arranging work experience abroad.

6.3 Conclusion and summary of recommendations

The pressures on the tertiary education sector are growing, which can lead to a tendency to focus attention reactively, rather than proactively. This is the 'if it ain't broke, don't fix it' phenomenon, to which all of us who have been time poor can relate. However, our research demonstrates that, in each of the 15 universities involved in this research, there were areas of continued risk, or in which practice was falling short of aspirations.

The regulatory challenges that we have discussed in this report are significant and the risks are equivalently substantial. As one interview participant, who also happened to have a legal background, stated:

> *I don't walk around the house at night worrying about interns and work-integrated learning. Every time I hear the word though the lawyer in me just goes phewww [makes sound] because I know, I mean I know we've got so much risk just swinging in the trees out there and I've known that for 5–10 years … I still remember the worst experience I ever had and this was when I went down to [a faculty] and they said no, no, no we don't collect any information because we don't want to know because it scares us. And I was pretty sure that that was not going to be a good defence if something happened.*

Rather than waiting for these issues to reach 'urgent' status, which could be achieved by a disastrous student experience being reported in the news or a regulatory authority responding to (and possibly publicising) an infringement, it is worth each institution finding the time and the resources to proactively consider work experience and evaluate the processes and practices in place to identify regulatory and educational successes and failures, and to implement change, with the aspiration of achieving a 'virtuous circle' of regulation.

Summary of recommendations

(a) Regulatory recommendations

1. Parliaments should amend laws applicable to employment arrangements to clarify whether and to what extent work experience arrangements should be treated as a form of employment, including when undertaken as a formal part of education or training programs.

2. Any 'vocational placement' exception to the operation of labour standards, whether in the Fair Work Act or elsewhere, should apply only to placements undertaken as part of a course or program offered by a recognised educational institution or training provider, and for which:
   (a) a written agreement has been made between the student or trainee, the institution or provider, and the organisation hosting the placement;
   (b) the placement is designed to achieve learning outcomes specified in the agreement;
   (c) appropriate supervision and support are provided to the student or trainee; and
   (d) the placement does not extend beyond a specified duration without the student or trainee being appropriately remunerated.

3. Federal, State and Territory prohibitions of discrimination and harassment should be explicitly extended to cover students or others engaged in work experience.

4. Work experience placements for tertiary students should not count towards the 40 work hours per fortnight limit under condition 8105 in international student visas.

5. TEQSA should engage in more active and effective enforcement of educational regulation relating to work experience.

6. TEQSA should collect and publish standardised information about the curricular work experience opportunities offered to students by each university, including information about their duration, assessment, supervision and student satisfaction.

(b) University policy and practice recommendations

7. Universities should develop internal systems to ensure better sharing of information about the range of issues relevant to the internal management of work experience.

8. University systems and processes should be reviewed and amended so as to ensure regulatory compliance.

9. Universities should develop and consistently utilise systems to capture data about work experience. This should include information about student experiences (positive and negative) and partner organisations, as well as placement documentation. This information should be accessible to all relevant staff across the institution.

10. Universities should ensure academic and professional staff creating and managing work experience placements have adequate training about relevant discipline-specific and university policies and practices.

11. Universities should ensure academic and professional staff creating and managing work experience placements have sufficient training with regard to the regulatory framework to allow them to identify and address compliance issues as appropriate.

12. Universities should identify and address practical barriers and obstacles to ensuring policies and risk management processes for work experience are effective, efficient and consistently applied.

13. Universities should ensure that processes and practices regarding work experience arrangements consistently equip students with sufficient knowledge to ensure regulatory requirements are met.

14. Universities should implement and apply rigorous systems to manage relationships with third parties to ensure delivery of quality work experience placements and regulatory compliance.

15. Universities should develop internal systems to share expertise on work experience and facilitate efficient access to specialist advice as required.

16. Universities should investigate and respond to the equity and access implications of work placements for their students.

17. Universities should work with professional accreditation bodies to identify equity and access issues associated with requirements for students to engage in work experience and develop and implement strategies to eliminate or minimise those issues.

18. Universities should consider and manage the quality, equity and regulatory risks associated with increasing numbers of work experience placements.

19. Universities should ensure all work experience programs are adequately resourced to ensure educational quality, student safety and regulatory compliance.

20. Universities should review their insurance arrangements to ensure:
    (a) there is adequate cover for students injured or causing injury while undertaking approved work experience;
    (b) students, host organisations and other stakeholders are aware of their respective rights and responsibilities; and
    (c) to the extent that insurance cover is limited or not available, appropriate risk assessments are undertaken.

21. Universities should ensure there are additional resources and processes for managing international educational internships which address the risks associated with arranging work experience abroad.

APPENDICES

APPENDIX A: PUBLICATIONS AND PRESENTATIONS ARISING FROM THIS RESEARCH PROJECT

Books

1. Andrew Stewart, Rosemary Owens, Niall O'Higgins & Anne Hewitt (eds) 2021, *Internships, employability and the search for decent work experience*, Edward Elgar, Cheltenham, UK and ILO, Geneva, Switzerland. Available via Open Access at https://www.e-elgar.com/shop/gbp/internships-employability-and-the-search-for-decent-work-experience-9781800885035.html.

Book chapters

2. Andrew Stewart, Rosemary Owens, Niall O'Higgins & Anne Hewitt 2021, 'Internships: a policy challenge' in Andrew Stewart, Rosemary Owens, Niall O'Higgins & Anne Hewitt (eds), *Internships, employability and the search for decent work experience*, Edward Elgar, Cheltenham, UK, pp. 2–16.

3. Andrew Stewart 2021, 'The nature and prevalence of internships' in Andrew Stewart, Rosemary Owens, Niall O'Higgins & Anne Hewitt (eds), *Internships, employability and the search for decent work experience*, Edward Elgar, Cheltenham, UK, pp. 17–34.

4. Rosemary Owens 2021, 'Internships, the contract of employment and the scope of labour law' in Andrew Stewart, Rosemary Owens, Niall O'Higgins & Anne Hewitt (eds), *Internships, employability and the search for decent work experience*, Edward Elgar, Cheltenham, UK, pp. 189–207.

5. Joanna Howe 2021, 'Regulating international educational internships: opportunities and challenges' in Andrew Stewart, Rosemary Owens, Niall O'Higgins & Anne Hewitt (eds), *Internships, employability and the search for decent work experience*, Edward Elgar, Cheltenham, UK, pp 208–222.

6. Anne Hewitt 2021, 'Universities as internship regulators: evidence from Australia' in Andrew Stewart, Rosemary Owens, Niall O'Higgins & Anne Hewitt (eds), *Internships, employability and the search for decent work experience*, Edward Elgar, Cheltenham, UK, pp. 223–238.

7. Irene Nikoloudakis 2021, 'Regulating internships in active labour market programmes: a comparative perspective' in Andrew Stewart, Rosemary Owens, Niall O'Higgins & Anne Hewitt (eds), *Internships, employability and the search for decent work experience*, Edward Elgar, Cheltenham, UK, pp. 239–254.

8. Andrew Stewart, Rosemary Owens, Niall O'Higgins & Anne Hewitt 2021, 'Developing new standards for internships' in Andrew Stewart, Rosemary Owens, Niall O'Higgins & Anne Hewitt (eds), *Internships, employability and the search for decent work experience*, Edward Elgar, Cheltenham, UK, pp. 335-348.

9. Anne Hewitt, Rosemary Owens, Andrew Stewart & Joanna Howe 2017, 'At the intersection of education and work: young people, equality and the regulation of the labour market' in John Howe, Anna Chapman & Ingrid Landau (eds), *The evolving project of labour law: a workshop to celebrate 21 years of the Centre for Employment and Labour Relations Law*, Federation Press, Sydney, pp. 102–116.

10. Rosemary Owens, Andrew Stewart, Anne Hewitt & Joanna Howe 2017, 'Labour regulation, work experience and youth: lessons from the scholarship of Ann Numhauser-Henning' in Mia Rönnmar & Jenny Julen-Votinius (eds), *Festskrift till Ann Numhauser-Henning*, Juristförlaget i Lund, Sweden, pp. 643–659.

Journal articles

11. Anne Hewitt 2022, 'Is legislation governing tertiary work experience effective? Exploring the regulatory role played by Australian universities', *Federal Law Review*, vol. 50, no. 1 (forthcoming).

12. Anne Hewitt, Rosemary Owens, Andrew Stewart & Joanna Howe 2021, 'Are work experience participants protected against sex discrimination or sexual harassment?' *Alternative Law Journal*, vol. 46, no. 2, pp. 115–119.

13. Anne Hewitt 2018, 'Avoiding the trap of exploitative work: a national approach to making work-integrated learning effective, equitable and safe', *Australian Journal of Labour Law*, vol. 31, no. 2, pp. 101–130.

14. Joanna Howe, Andrew Stewart & Rosemary Owens 2018, 'Unpaid work and temporary migrant labour in Australia', *Sydney Law Review*, vol. 40, no. 2, pp. 183–211.

15. Anne Hewitt, Rosemary Owens & Andrew Stewart 2018, 'Mind the gap: is the regulation of work-integrated learning in higher education working?', *Monash University Law Review*, vol. 44, pp. 234–266.

16. Rosemary Owens & Andrew Stewart 2016, 'Regulating for decent work experience: meeting the challenge of the rise of the intern', *International Labour Review*, vol. 155, pp. 679–709. Also published in French, 'Face á la prolifération des stages: quel encadrement pour des pratiques aux principes du travail décent?' in *Revue Internationale du Travail*; and in Spanish as 'La proliferación de las pasantías y el reto de reglamentar en favor de una experiencia laboral decente' in *Revista Internacional del Trabajo*.

Reports

17. Andrew Stewart, Rosemary Owens, Anne Hewitt & Irene Nikoloudakis 2018, *The regulation of internships: A comparative study*, Employment Working Paper No. 240, International Labour Organization, Geneva, Switzerland.

Selected conference presentations

18. Anne Hewitt 2021, 'Academics building bridges to the profession: academic workload implications of work integrated learning in law', paper presented at the Australasian Law Academics Association Annual Conference, Sydney, Australia, 5 July.

19. Anne Hewitt & Annika Rosin 2021, 'Is equality part of the regulatory agenda? Awareness of equality implications of internships among university staff in Australia and Finland', paper presented at the 19th ILERA World Congress: Making and Breaking Boundaries in Work and Employment Relations in special session Inequitable internships? Regulation, equity and the implications for internships as an accessible path to employment, Lund, Sweden, 22 June (online presentation).

20. Anne Hewitt 2020, 'Work experience in higher education: responding to regulation and managing risks', keynote address at KAPLAN Annual Symposium, Adelaide, Australia, 4 March.

21. Rosemary Owens & Anne Hewitt 2019, 'Responding to the challenges of regulating internships in higher education', paper presented at From Education to Employment: How Internships and Traineeships are Challenging Labour Regulation, International Labour Organization, Geneva, Switzerland, 11 July.

22. Joanna Howe 2019, 'Regulating international educational internships: opportunities and challenges', paper presented at From Education to Employment: How Internships and Traineeships are Challenging Labour Regulation, International Labour Organization, Geneva, Switzerland, 11 July.

23. Rosemary Owens 2019, 'Internships, the contract of employment and the scope of labour law', paper presented at From Education to Employment: How Internships and Traineeships are Challenging Labour Regulation, International Labour Organization, Geneva, Switzerland, 12 July.

24. Andrew Stewart 2019, 'The nature and prevalence of internships and traineeships', paper presented at From Education to Employment: How Internships and Traineeships are Challenging Labour Regulation, International Labour Organization, Geneva, Switzerland, 11 July.

25. Andrew Stewart 2019, 'The challenges of regulating work experience', paper presented at National Symposium: How Australian Universities are Regulating Work Experience, Adelaide, Australia, 8 November.

26. Rosemary Owens 2019, 'Work experience – making university regulatory structures and mechanisms effective', paper presented at National Symposium: How Australian Universities are Regulating Work Experience, Adelaide, Australia, 8 November.

27. Andrew Stewart 2019, 'Regulating work experience: particular challenges for universities', paper presented at National Symposium: How Australian Universities are Regulating Work Experience, Adelaide, Australia, 8 November.

28. Joanna Howe 2019, 'The great global mobility challenge – regulatory issues arising from internships overseas and those in Australia for international students', paper presented at National Symposium: How Australian Universities are Regulating Work Experience, Adelaide, Australia, 8 November.

29. Anne Hewitt 2019, 'Regulating work placements as education – TEQSA, ESOS and the tertiary sector', paper presented at National Symposium: How Australian Universities are Regulating Work Experience, Adelaide, Australia, 8 November.

30. Anne Hewitt, Joanna Howe, Rosemary Owens & Andrew Stewart 2019, 'Labour law at the intersection of education and work: the role of Australian universities in the regulation of work experience', paper presented at the AIRAANZ 33rd Annual Conference: Doing Things Differently: IR Practices and Research Beyond 2020, Melbourne, Australia, 12–14 February

31. Andrew Stewart, Rosemary Owens, Anne Hewitt & Irene Nikoloudakis 2018, 'Securing decent work for interns: a comparative perspective on the regulation of "open market" internships', paper presented at the AIRAANZ Conference: Jobs and Change in Uncertain Times, Adelaide, Australia, 7 February.

32. Andrew Stewart, Rosemary Owens, Anne Hewitt & Irene Nikoloudakis 2018, 'Work integrated learning: what role for labour regulation?', paper presented at the AIRAANZ Conference: Jobs and Change in Uncertain Times, Adelaide, Australia, 9 February.

33. Andrew Stewart, Rosemary Owens & Anne Hewitt 2017, 'Securing decent work for interns: how far should labour regulation extend?', paper presented at the Labour Law Research Network 3 Conference, Toronto, Canada, 26 June.

34. Andrew Stewart, Rosemary Owens & Anne Hewitt 2017, 'Securing decent work for interns: how far should labour regulation extend?', paper presented at the Regulating Decent Work Conference 2017: The Future of Work, Geneva, Switzerland, 3–5 July.

35. Rosemary Owens & Anne Hewitt 2016, 'At the intersection of education and work: young people, equality and the regulation of labour', paper presented at the Evolving Project of Labour Law: A Workshop to Celebrate 21 Years of the Centre for Employment and Labour Relations Law, Melbourne, Australia, 4–5 February.

36. Anne Hewitt & Rosemary Owens, Andrew Stewart & Joanna Howe 2016, 'At the intersection of education and work: young people, equality and the regulation of the labour market', paper presented at the Evolving Project of Labour Law: A Workshop to Celebrate 21 Years of the Centre for Employment and Labour Relations Law, Melbourne, Australia, 4–5 February.

37. Andrew Stewart 2016, 'Regulating unpaid internships: why it matters and how different countries are doing it', paper presented at the Labour Law Network Seminar, International Labour Organization, Geneva, Switzerland, March.

38. Andrew Stewart 2016, 'Regulating unpaid internships: why it matters and how different countries are doing it', paper presented at the Centre for Employment and Labour Relations Law, Melbourne, Australia, April

39. Rosemary Owens 2016, 'Young people and the future of work: the regulatory challenges of unpaid work at the intersection of education and work', Phillipa Weeks Annual Lecture, Canberra, Australia, 12 October

40. Andrew Stewart, Rosemary Owens, Anne Hewitt & Joanna Howe 2016, 'Internships, vocational placements and the legality of unpaid work experience', paper presented at the Australian Labour Law Association Conference, Melbourne, Australia, November.

41. oanna Howe, Andrew Stewart, Rosemary Owens & Anne Hewitt 2016, 'Unpaid work and temporary migrant labour in Australia', paper presented at the Employability Workshop, Brisbane, Australia, November.

42. Rosemary Owens & Andrew Stewart 2015, 'Regulating for decent work experience: meeting the challenge of the rise of the interns', paper presented at the Regulating Decent Work Conference, ILO, Geneva, Switzerland, 8–10 July.

43. Rosemary Owens 2015, 'Are all internships created equal? Mapping the internships minefield from different perspectives', paper presented at the AIEC Conference, International Education – Global, Sustainable and Responsible, Adelaide, Australia, 6–9 October.

44. Anne Hewitt 2015, 'Work integrated learning: educational panacea or poisoned chalice?', paper presented at the Law and Society Association of Australia and New Zealand Conference, Adelaide, Australia, 30 November – 3 December.

Symposia organised

45. From Education to Employment: How Internships and Traineeships are Challenging Labour Regulation, International Labour Organization, Geneva, Switzerland, 11–12 July 2019.

46. How Australian Universities are Regulating Work Experience, Adelaide, Australia, 8 November 2019.

Submissions on law reform

47. Anne Hewitt, Rosemary Owens, Andrew Stewart & Joanna Howe 2019, 'Issues of sexual harassment in unpaid work', Submission to the Australian Human Rights Commission, *National Inquiry into Sexual Harassment in Australian Workplaces*, <https://humanrights.gov.au/sites/default/files/2019-05/submission_263_-_a._prof_hewitt_prof_owens_prof_stewart_and_a._prof_howe.pdf>.

48. Anne Hewitt, contributing author, Discrimination Law Experts Group 2018, Submission to the Department of Attorney-General and Justice Northern Territory, *Inquiry: Modernisation of the Anti-Discrimination Act*.

APPENDIX B: RESEARCH METHODOLOGY

Research design

'[I]f legal realists were the pioneers, we are all empiricists now', declare Ho and Kramer (2013, p. 1202) in their introduction to *Stanford Law Review*'s special issue on the accelerating 'empirical turn' in legal research. Empirical research is 'based on observations of the world', with only '*purely* normative or theoretical' legal scholarship falling outside of this (Epstein & King 2002, pp. 2–3, emphasis in original). The nexus between law and empirical social science has its (modern) roots in the late nineteenth and early twentieth centuries, from Durkheim and Weber, through to modern scholars such as Friedman, arriving at the current state of 'intellectually maturity' that has given rise to 'emerging movements', and in particular 'empirical legal studies … and new legal realism' (Suchman & Mertz 2010, p. 556).

Empirical work, including interviews, participant observation, clinical experiments and surveys, 'grounds and refines … [researchers'] conjectures' (Ho & Kramer 2013, p. 1202). It is essential for the credibility of results that researchers articulate their research design, including how they selected, collected and analysed data from the social domain (Creswell 2018b). At the outset they must weigh up the pros and cons of various sampling strategies and participant recruitment methods, to ensure that the data collected can help answer their research questions, and that higher order abstractions can be developed systematically and confidently. In addition, researchers need to be mindful of the 'pervasive and unavoidable theoretical challenges' of empirical research, which are related to 'interpretation, generalisation, subjectivity and situatedness' (Bell 2016, p. 267).

A well-explicated design enables other researchers both to assess the quality of the method (as happens in systematic literature reviews or meta-studies of a topic, for example), and to build upon subject-specific knowledge bases, 'providing insights into current practice and enabling recommendations to support the planning, operationalization and reporting of future research' (Saunders & Townsend 2016, p. 837). However, methodological description still is not necessarily common practice (Saunders & Townsend 2016). This concern echoes the lack of 'sustained, self-conscious attention to methodology' and 'little awareness of, much less compliance with, the rules of inference that guide empirical research in the natural and social sciences' found in an earlier extensive legal literature review (Epstein & King 2002, p. 6).

Our study's empirical component incorporated some elements of the 'mixed-methods' approach in that it collected both qualitative and quantitative data (Guetterman et al. 2017).[88] However, for reasons that will be explained later, we did not integrate these two kinds of data, and therefore we do not claim it to be a mixed-methods study per se. The primary data set was qualitative 'languaged data' (Polkinghorne 2005, p. 137) comprising interview responses; the secondary data set was quantitative, consisting of survey responses.

Our mode of inquiry was informed by grounded theory, a structured, iterative constellation of methods of qualitative data collection and analysis in which researchers build emergent categories of analysis from the ground up, rather than starting with predetermined categories, themes and/or hypotheses (Charmaz 2014; Creswell 2018b). Grounded theory methods comprise a 'systematic approach to qualitative inquiry for the purpose of theory construction' (Charmaz 2017, pp. 1–2). Like other forms of qualitative research, grounded theory uses 'inductive reasoning (that is, developing explanations from information) rather than the deductive (that is, using theory to predict outcomes based on information) to draw conclusions from data' (Olson et al. 2016, p. 27). Later we will summarise how we employed grounded theory methods to analyse the interview material.

If 'knowledge is socially constructed', then 'shared meaning' or the 'construction of meaning at the individual/group nexus' can be enhanced through regular dialogue among co-researchers (Paulus, Woodside & Ziegler 2008, p. 230). Moreover, the design of *'credible empirical work must be informed by substantive, institutional knowledge'*, with empiricism unable to be 'divorced from substance' (Ho & Kramer 2013, p. 1201, emphasis in original). In this instance, the four lead researchers brought to the project a diverse range of subject matter expertise. Consequently, our critical focus on labour law, regulation, pedagogy and related areas of anti-discrimination, work health and safety, and migrant work enabled a rich multi-perspectival interpretation of the empirical data. This is an example of 'investigator triangulation', one of the types of triangulation 'used to strengthen research through the combining of multiple methods, measures, researchers, theories, and perspectives' (Beitin 2012, p. 248).

Participant recruitment and sampling strategy

The co-researchers worked with a social scientist to develop a sampling strategy to guide how they would select specific universities from which to recruit interview participants, and the type and number of participants they would seek from each institution. Hence, they made key decisions about the sample universe, selection criteria, sample size, sample strategy and the participant recruitment method (Robinson 2014).

(a) Sample universe

The study's sample universe was Australian universities, of which there were 40 (TEQSA, n.d.).[89] Within this domain we included public and private universities. We excluded both offshore campuses of Australian universities, and Australian campuses of overseas universities.

(b) Selection criteria (university type)

As we wanted to find out whether there might be a connection between work experience and university type, we identified eight categories of university to approach. These are summarised in Table B.1. We ensured that we had 1 or 2 universities from each category. These categories could overlap in some institutions; for example, a university both might be regional (Ru) and have campuses in outer suburbs of cities in that region (O).

TABLE B.1: KEY TO UNIVERSITY CATEGORIES

ATN	Member of the Australian Technology Network of Universities
D	Distance education (only where the university offers a significant amount of choices in work experience for distance students)
Go8	Member of the Group of Eight
IRU	Innovative research university
M	Multi-state campuses
O	University either with its main base located in outer suburbs, or with campuses in outer suburbs
P	Private university (default criteria is public university)
Ru	Rural/regional university

(c) Sample size

What is a reasonable sample size? A systematic literature review of the number of interview participants in organisational and workplace research revealed 'an overall norm of between approximately 15 and 60 participants for qualitative interviews within O&W studies', which was 'both more varied and greater than the 15−30 participants suggested by empirically justified guidance' (Saunders & Townsend 2016, p. 849). Although 'sufficient participants need to be identified and chosen to provide the breadth, depth and saliency of data', surprisingly few papers examined in their study justified their choice of the number and type of participants, yet such detail offered 'opportunity for others to assess authenticity and credibility' of the research (Saunders & Townsend 2016, pp. 836, 847). Another overview of 'optimal sample size' for interview-based studies uncovered various suggestions: from 2 to 10, 6 to 12, and 5 to 25 (Beitin 2012, p. 244). With a view to transparency, and for those interested in comparable studies, we will outline our sample size and sample selection process below.

We anticipated that a sample size of between 60 to 75 interviewees from a total of 15 universities would return a wealth of material and be manageable both timewise and resource-wise. We aimed to interview four participants from each university, with the option to add one or more extra participants per institution depending on interview participants' referrals of key personnel in their institutions or new information about work experience programs or policies.

(d) Sample strategy

Purposive sampling strategies are 'non-random ways of ensuring that particular categories of cases within a sampling universe are represented in the final sample of a project' (Robinson 2014, p. 32). We used one type of purposive sampling strategy, a stratified sample, to guide how we selected whom to interview:

> In a stratified sample, the researcher first selects the particular categories or groups of cases that he/she considers should be purposively included in the final sample. The sample is then divided up or 'stratified' according to these categories and a target number of participants is allocated to each one … the only requirement is that there is a clear theoretical rationale for assuming that the resulting groups will differ in some meaningful way. (Robinson 2014, p. 32)

As it was beyond the scope of our study to interview personnel at each of the 40 Australian universities, we identified a series of categories to guide the selection of which universities to include, and which divisions and job roles within them. Following is a brief rationale for our choice of each category type, and associated inclusions and exclusions.

- selected Australian states (n = 5)
  - inclusions: New South Wales, Queensland, South Australia, Victoria, Western Australia
  - exclusions: Tasmania; all Australian territories
  - rationale: time; cost; particularity (accounts in excluded regions would be *sui generis*).
- selected key universities within the 5 states (n = 15)
  - inclusions: member of the Group of Eight, member of the Australian Technology Network of Universities, research, rural/regional, outer-suburban based or contains a significant suburban campus, private, multi-campus
  - rationale: crucial that institution types are varied; each university meets at least one of the selection criteria; many have interesting work experience programs; project team members have existing relationships with some key people to facilitate access and introductions; only one private university because the private model is not representative of the Australian university sector.
- higher-level university groups/divisions involved with work experience (n = 4)
  - inclusions: **policy, legal and risk** (senior management level); **education** (academic or professional staff coordinating work experience programs); **careers and volunteering** (careers advice and support); **international services** (oversight or support of international programs)
  - rationale: Each of these areas is involved with work experience, through administering programs and/or regulation.
  - exclusions: education (teaching), medicine and dentistry (but not necessarily other health sciences)
  - rationale: Both education (teaching) and medicine and dentistry placements have a long history of implementation and regulation, and have been well-researched.

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[89] Two additional institutions have been granted the status of Australian University since the study was undertaken; Avondale University College Ltd (on 28 August 2019) and University of Divinity (on 1 July 2021). Neither were included in the sample universe for this research project.

TABLE B.2: STRATIFIED SAMPLE SHOWING UNIVERSITY LOCATION, UNIVERSITY TYPE AND NUMBERS WITHIN EACH INTERVIEW PARTICIPANT COHORT

Uni ID	State	Uni type	# of interview participants			
			Cohort A: policy, legal & risk	Cohort B: education	Cohort C: careers & volunteering	Cohort D: international services
01	AA	O; IRU	1	1	2	1
02	AA	Go8	1	1	1	1
03	AA	ATN	1	2	1	1
04	AA	IRU; D	1	1	1	1
05	BB	O; IRU	1	1	1	1
06	BB	Go8	1	1	1	1
07	CC	Go8	2	2	1	1
08	CC	ATN	2	1	1	1
09	DD	Go8	1	1	1	1
10	DD	O; D	1	1	1	1
11	DD	O	2	0	2	1
12	DD	ATN	1	2	1	1
13	EE	Go8	2	1	1	0
14	EE	ATN	2	2	1	0
15	n/a	P; M	1	1	1	1
			n = 20	**n = 18**	**n = 17**	**n = 13**

(e) Sourcing sample

An assistant familiar with university administration and governance structures undertook desk research on the 15 selected universities to identify work experience policies, programs and key personnel to invite as interviewees, collating the information into a dossier for each institution. Subsequently, an initial approach was made by email, with follow-up email or phone contact. Sometimes personnel who appeared from the websites to be an appropriate contact suggested colleagues whom they considered would be more suitable participants.

(f) Order of qualitative and quantitative data collection

In mixed-methods studies researchers start with either qualitative or quantitative data collection and analysis, with each sequential option having its own benefits (Creswell 2018a). In some instances, researchers first analyse interview responses and then design a survey to test emergent hunches or hypotheses against a larger and/or broader sample of participants. In other cases, the survey is administered first, and its findings used to shape the interview questionnaire, enabling patterns, trends or apparently common experiences and concerns to be explored more deeply in the interview setting.

In this project we came to realise that the limited number of planned interviews might give us a picture that was too truncated or partial, notwithstanding that the total was well within accepted qualitative research practice, as mentioned previously. Although we had not

included a survey in our initial research design, both the desk research and interview participants' comments revealed that many disciplines in universities now offer work experience. Consequently, to get a fuller picture of work experience, we decided to canvass the views of a broader range of academics through a survey. In late 2018, working with external consultants, we distributed the survey to the universities in which we had conducted the interviews. However, due to various limitations, including a technical problem with distribution, small response rate (122 usable responses were received) and little to no participation by some invited institutions, we decided we would not integrate the survey results into our final analysis. Nevertheless, the survey responses generally confirmed the patterns and issues that our interview analysis suggested.

The interviews

We collected and analysed the information, perceptions and experiences of people employed in various roles in academia. All interviews were conducted on an individual basis. We devised an interview protocol to ensure consistency of the interviewers' approach, and a file management protocol. We used the same interview instrument with only slight variations for each cohort within the academic stakeholder set. The interview questions were based on the team's existing collective knowledge of the subject matter, and findings from relevant studies such as the study conducted by Andrew Stewart and Rosemary Owens (2013) for the FWO in 2013.

We conducted 68 semi-structured interviews over a period of 9 months from May 2017 to January 2018. Each researcher was assigned between 2 and 6 of the 15 universities in which to conduct interviews; factors determining these assignments were availability to travel interstate, and personnel time allocated to the project under the Australian Research Council grant that funded this research. Prior to the interviews, we consulted the information dossiers to acquaint ourselves with how the university presented itself publicly in terms of work experience. The semi-structured form of interview enabled us to elicit grounded accounts of participants' perceptions and lived experiences of work experience. The duration of interviews varied, with most lasting between 45 and 60 minutes. The interviews were recorded using a digital voice recorder, professionally transcribed and then de-identified.

The four participant cohorts within academia – policy, legal and risk; education; careers and volunteering; and international services – were asked the same basic questions. The education, careers and international cohorts had 5 additional questions related to education or host organisations, and the education participants were also asked to provide a vignette of a typical work experience opportunity in their school or discipline. Appendix C sets out the questions asked in interviews with participants in the education cohort, which is the most comprehensive interview protocol. The questions were categorised under four themes: warm-up (participant's job role and general questions about work experience in their institution); work experience: strategies, policies, procedures and practices; risks of work experience; concluding (related issues that participants might want to comment on or ask about). **Table B.3** (following page) shows examples from these themes.

Interview data analysis

Data analysis occurred simultaneously with the data collection phase, which is a typical method in a grounded theory approach. We used the qualitative data analysis software NVivo to organise and manually code the interview transcripts. The NVivo 'project' file was stored on a secure university server, with researchers accessing it in turn (rather than working on separate NVivo project files to be merged later). The advantage of this 'round-robin' method was that all researchers had access to the analysed data as it developed. We used a shared spreadsheet to track the progress of interviews and analysis.

TABLE B.3: SAMPLE QUESTIONS FROM THE INTERVIEW INSTRUMENT

THEME	SAMPLE QUESTIONS
Warm-up	Does your university require or encourage students to undertake work experience?
Work experience: strategies, policies, procedures and practices	[If there are work experience policies/procedures] Can you tell us a bit more about how the policies and procedures were developed and who was involved in that?
	What (if anything) is done to ensure compliance with workplace laws (such as laws governing pay, working time, discrimination and harassment, or health and safety) when students undertake work experience?
	Do you or your school/faculty link with other partners and/or external providers in delivering work experience, including internationally?
Risks of work experience	Are you aware of any student having been injured, sexually harassed or racially vilified while undertaking work experience? Or raising any other workplace (as opposed to educational) issues about their placement?
	Who is (or would be) responsible for such matters – in the workplace and/or in the university?
	Are there any special risks in relation to particular students (for example, international students, students with a disability) or particular locations of work experience (for example, overseas work experience)?
Concluding	Is there anything about work experience or its regulation that you might not have considered before that has occurred to you during this interview?

Grounded theory employs a 'systematic approach to review participant views collected from an experience in order to allow patterns and themes to emerge over *multiple passes through the data*' (Olson et al. 2016, p. 27, emphasis added). At the heart of this approach is the 'constant comparative method' developed by one of the theory's pioneers, Anselm L Strauss. The researchers developed codes while reviewing transcripts or other verbatim data to identify constructs, and iteratively compared texts identified with the same code to ensure they were representative of the same construct. Connections observed between constructs were described as patterns, and generalisations drawn from patterns observed in case studies were described as themes. A synthesis of the information resulted in an exploratory model (Olson et al. 2016, p. 27).

In our project, first we coded the answers to each question, a 'mechanical' process that does not require any critical analysis of the material. Next, each researcher conducted the first pass of data analysis of those university personnel whom they themselves had interviewed, coding sections of the transcripts against themes that were emerging from the material. As researchers added new themes to the NVivo project, they also added the theme's definition in the software, to help ensure inter-coder reliability. Finally, each researcher conducted a second round of thematic analysis, this time on participants whom they had not interviewed themselves, bringing to bear their own subject matter expertise on multiple institutions. This approach ensured that 'analysis remained within the collaborative domain and did not develop as one person's individual interpretation' (Ford, Oberski & Higgins 2000, p. 5).

During the two stages of thematic coding, themes and sub-themes emerged, changed and coalesced, and these changes were captured in a codebook exported from the software after each coding session. In addition, the team met periodically to review and discuss the emergent themes, including apparent commonalities and differences among the various institutional approaches. At the end of the analysis we had identified 31 main themes, and 28 sub-themes (see Appendix G).

The survey

A sample of 122 academics and professional staff completed the survey in the present study, representing 13 universities located across Australia in five states. A total of 55% of respondents were employed as academic staff members, and the remainder were employed as professional staff members. The respondents came from a variety of disciplines and fields. The majority reported that they worked in medicine, psychology and engineering and technology.

(a) Demographics

As noted above, the respondents answered a series of questions relating to where they worked. The first question asked, 'At which university do you work?' and respondents were given a choice of all the universities in Australia. The second question asked them whether they were employed as academic staff members or professional staff members. The third and final question asked them which discipline/field they worked in or for which they were responsible.

(b) Procedure

First, we conducted a pilot study using a convenience sample to test the questionnaire. This pilot sample involved approximately 10 respondents and slight changes were made to the questionnaire for ease of reading after the piloting.

For the study proper, respondents were recruited during the period of 10 October to 9 November 2018 through Qualtrics, an online survey service. First, ethics approval from the University of Adelaide was obtained (Amendment H-2016-254). The respondents were then sent an invitation letter (with the permission of their head of school/section/discipline) which set out the details of the study as well as details of the ethics clearance. The letter accompanying the questionnaire informed respondents what the study was about and made it clear that participation was completely anonymous and voluntary. Thus, the voluntary completion of the study involved embedded consent. All respondents were aged 18 years and over and received the same questionnaire with the questions in the same order as the procedure section above. The survey took approximately 15 minutes to complete. A copy of the survey instrument is set out in Appendix D.

APPENDIX C: INTERVIEW INSTRUMENT

The most comprehensive interview instrument was for Group B (education) and it is set out below.

A note about terminology

Prior to each interview the interviewer explained to the participant that the interview would mostly use the term 'work experience', which (for the purposes of this project) was defined as any period of time spent in a workplace, or otherwise working for a specific organisation, to develop skills and gain experience, other than by way of paid employment. This could include a compulsory or optional part of a course or program at university, or it may be facilitated or encouraged in other ways by the university.

Interview instrument for Group B (education)

Warm-up questions

1. What is your job title at [university name] and what is your role in relation to work experience?

2. Does your university require or encourage students to undertake work experience?

    2.1. Can you give me a couple of examples? For instance, are there any degrees that require students to do a work placement, or are internship opportunities posted on bulletin boards?

3. Do you have any idea (roughly) about what proportion of your students undertake work experience as a formal part of their studies (whether for course credit or otherwise)?

    3.1. What about informally – do you have any idea (roughly) about what proportion of students undertake for example internships outside their formal studies?

Strategies, policies, procedures and practices

4. Are there higher-level strategies in your university that require or encourage work experience (whether for course credit or otherwise)?

5. Does your university have any institution-wide policies or procedures about work experience?

6. What about discipline-specific or local policies or procedures?

    6.1. [If there are specific or local policies and procedures] Are we able to access a copy of those?

7. [If there are policies/procedures] Can you tell us a bit more about how the policies and procedures were developed and who was involved in that?

7.1. How does your university promote awareness of those policies and procedures to relevant staff, students or external organisations that host or organise student placements?

7.2. To what extent in practice do you think that those policies and procedures are understood and applied?

7.3. Are you responsible for ensuring compliance with policies and procedures about work experience when you are integrating these experiences into courses and assessments, or is there a process for ensuring compliance which specifically considers this? [For example, does the process of approval of learning activities/assessments, or course reviews, specifically consider policies around work experience?]

8. We are interested in understanding how universities tackle the issue of 'fit' with external regulation in relation to education and work when developing and promoting work experience opportunities. For example, what (if anything) is done to ensure compliance with workplace laws (such as laws governing pay, working time, discrimination and harassment, or health and safety) when students undertake work experience?

9. Are you aware of the work of the Fair Work Ombudsman (FWO)? Both generally, in enforcing workplace laws, and specifically, in relation to the regulation of work experience?

10. Do people holding roles such as Work Experience Coordinator, Internship Placement Officer, Careers Advisor, or academic staff running courses that have a work experience component, receive any training or guidance in external regulatory requirements (say, TEQSA or workplace regulation)?

    10.1. Can you tell us a bit about that training or guidance? (for example, who delivers it)

    10.2. Is there any mechanism or structure in the university that brings these people together to share their knowledge internally?

    10.3. Could give me a brief vignette or summary of a typical work experience opportunity for a student in your [area/school/discipline/program]? What does the student experience? [For example, do they have to locate their own placement? What help is there available with that? Is there any orientation or briefing before the work experience commences? What does it cover? What sorts of supervision/contact can they expect while on placement? What kinds of assessment do they undertake? Is there a de-brief when they return?]

11. In your area are all work experience opportunities promoted to students? In other words, does your area post all information you receive about work experience opportunities (including 'volunteering' for business or commercial enterprises)?

11.1. If you do restrict information for certain opportunities, on what basis do you do that?

12. Do you or your school/faculty link with other partners and/ or external providers in delivering work experience, including internationally? For example, host businesses and organisations, commercial internship/work experience brokering firms, etc.

12.1. If yes, how do you choose these partners?

12.2. How is the relationship with these partners monitored?

Risks of work experience

13. Are you aware of any student having been injured, sexually harassed or racially vilified while undertaking work experience? Or raising any other workplace (as opposed to educational) issues about their placement?

13.1. Who is (or would be) responsible for such matters – in the workplace and/or in the university?

13.2. Would that be the same if an incident happened in another country?

13.3. Has the university ever stopped working with a work experience provider/employer because of a negative student experience?

14. Are there any special risks in relation to particular students (for example, international students, students with a disability) or particular locations of work experience (for example, overseas work experience)?

14.1. If so, does the university have any special protocols to identify and manage such risks, or how has it responded to these risks?

15. Does the university offer insurance cover for students who are undertaking work experience? Could you tell me briefly how that works? [Note: In which circumstances? For example, either when work experience is undertaken as part of a course, or when it's on campus, in another country, or otherwise. What are students covered for? For example, for work-related injuries, harassment, etc. Does the university assist with insurance for work experience that is undertaken outside of formal course or program requirements?]

Concluding questions

16. Is there anything about work experience or its regulation that you might not have considered before that has occurred to you during this interview?

17. Is there anything you would like to ask me?

APPENDIX D: SURVEY INSTRUMENT

Q1 At which university do you work? If you work at multiple universities, please indicate your primary institution.

☐ check box list of institutions provided]

Q2 Are you employed as:

☐ An academic staff member   ☐ A professional staff member

Q3 In which discipline/field do you work, or for which discipline/field are you responsible? Tick all that apply

☐ Agriculture and agricultural sciences   ☐ Anthropology   ☐ Arts (Performing)   ☐ Arts (Visual)

☐ Biology   ☐ Chemistry   ☐ Computer Science   ☐ Earth Sciences

☐ Economics   ☐ Education   ☐ Engineering and technology   ☐ Geography

☐ History   ☐ Languages and literature   ☐ Law   ☐ Mathematics

☐ Medicine and health sciences   ☐ Philosophy   ☐ Physics   ☐ Political Science

☐ Psychology   ☐ Sociology   ☐ Space sciences   ☐ Statistics

☐ Theology   ☐ Central Area Managing Multiple Discipline Fields   ☐ All of the above

Please answer all the questions below in relation to the student work experience with which you have had the **most involvement in the last 3 years**.

Work experience for this purpose means any period of time spent in a workplace, or otherwise working for a specific organisation, to develop skills and gain experience other than by way of paid employment. It may be a compulsory or optional part of a course or program at university, or it may be facilitated or encouraged in other ways by the university.

Q4 Which of the following describe your role or roles in relation to student work experience with which you have had the most involvement in the last 3 years (please mark all boxes that apply):

☐ Coordinating students undertaking work experience   ☐ Finding work experience placements for students

☐ Placing students in work experience   ☐ Teaching or training students undertaking work experience

☐ Providing information to students regarding work experience   ☐ Providing information to staff regarding student work experience

☐ Providing advice or support to students regarding work experience   ☐ Providing advice or support to staff involved with work experience

☐ Formulating policies or procedures related to student work experience   ☐ Administering policies or procedures related to student work experience

☐ Assessing student work   ☐ None of the above

Please indicate if the work experience with which you have had the **most involvement in the last 3 years**:

Q5 Was undertaken as a compulsory or optional part of a course or program

☐ Compulsory ☐ Optional ☐ Don't know

Q6 Involved placement at an external organisation, your university, or both

☐ The university ☐ External organisation ☐ Both ☐ Don't know

Q7 Was undertaken

☐ On campus ☐ Off campus ☐ Both ☐ Don't know

Q8 Was undertaken

☐ In Australia ☐ Overseas ☐ Both ☐ Don't know

Q9 Involved students being

☐ Paid a salary for their work ☐ Students being paid a stipend or scholarship ☐ Students not being paid
☐ Both paid and unpaid ☐ Don't know

Q10 Was covered by insurance against loss or injury suffered by the student

☐ Was covered ☐ Was not covered ☐ Was partially covered ☐ Don't know

The next set of questions ask about both university-wide policies and procedures, and those specific to your localised unit of operation. This could be a faculty, college, school, discipline, administrative group, etc. Due to the variety of terms, these questions will use 'section' to refer to these subdivisions.

Q11 Does your university have policies, procedures and requirements regarding work experience?

☐ Yes ☐ No

Q12 Does your section have policies, procedures and requirements regarding work experience?

☐ Yes ☐ No

Q13 How familiar are you with

	Very familiar (1)	Moderately familiar (2)	Slightly familiar (3)	Not at all familiar (4)	NA (5)
The university's policies, procedures and requirements regarding student work experience?	☐	☐	☐	☐	☐
Your section's policies, procedures and requirements regarding student work experience?	☐	☐	☐	☐	☐

Q14 How familiar are you with

	Very familiar (1)	Moderately familiar (2)	Slightly familiar (3)	Not at all familiar (4)	NA (5)
Legal requirements regarding student work experience (concerning student pay, health and safety, etc.)?	☐	☐	☐	☐	☐

Q15 From what you have observed, do staff coordinating, managing, or supporting student work experience receive adequate training about

	Comprehensive training (1)	Adequate training (2)	Some training but not enough (3)	No training (4)	Don't know (5)	NA (6)
The university's policies, procedures and requirements regarding student work experience?	☐	☐	☐	☐	☐	☐

Q16 From what you have observed, do staff coordinating, managing, or supporting student work experience receive adequate training about

	Comprehensive training (1)	Adequate training (2)	Some training but not enough (3)	No training (4)
Legal requirements regarding student work experience (concerning pay, health and safety, etc)?	☐	☐	☐	☐

Q17 From what you have observed, do staff coordinating, managing, or supporting student work experience receive adequate information about

	Comprehensive information (1)	Adequate information (2)	Some information but not enough (3)	No information (4)	Don't know (5)	NA (6)
The university's policies, procedures and requirements regarding student work experience?	☐	☐	☐	☐	☐	☐
Your section's policies, procedures and requirements regarding student work experience?	☐	☐	☐	☐	☐	☐

Q18 From what you have observed, do staff coordinating, managing or supporting student work experience receive adequate information about

	Comprehensive information (1)	Adequate information (2)	Some information but not enough (3)	No information (4)	Don't know (5)
Legal requirements regarding student work experience (concerning pay, health and safety, etc)?	☐	☐	☐	☐	☐

Q19 Did you personally receive adequate training about

	I received comprehensive training (1)	I received adequate training (2)	I received some training but not enough (3)	No training (4)	NA (5)
The university's policies, procedures and requirements regarding student work experience?	☐	☐	☐	☐	☐
Your section's policies, procedures and requirements regarding student work experience?	☐	☐	☐	☐	☐

Q20 Did you personally receive adequate training about

	I received comprehensive training (1)	I received adequate training (2)	I received some training but not enough (3)	No training (4)
Legal requirements regarding student work experience (concerning pay, health and safety, etc.)?	☐	☐	☐	☐

Q21 Did you personally receive adequate information about

	I received comprehensive information (1)	I received adequate information (2)	I received some information but not enough (3)	No information (4)	NA (5)
The university's policies, procedures and requirements regarding student work experience?	☐	☐	☐	☐	☐
Your section's policies, procedures and requirements regarding student work experience?	☐	☐	☐	☐	☐

Q22 Did you personally receive adequate information about

	I received comprehensive information (1)	I received adequate information (2)	I received some information but not enough (3)	No information (4)
Legal requirements regarding student work experience (concerning pay, health and safety, etc)?	☐	☐	☐	☐

Q23 How confident are you that there is general compliance with

	Always (1)	Sometimes (2)	Never (3)	Don't know (4)	NA (5)
The university's policies, procedures and requirements regarding student work experience?		☐	☐	☐	☐
Your section's policies, procedures and requirements regarding student work experience?		☐	☐	☐	☐

Q24 How confident are you that there is general compliance with

	Always (1)	Sometimes (2)	Never (3)	Don't know (4)
Legal requirements regarding student work experience (concerning pay, health and safety, etc)?	☐	☐	☐	☐

Q25 How confident are you that students undertaking work experience receive adequate information about

	Always (1)	Sometimes (2)	Never (3)	Don't know (4)
Appropriate workplace expectations and behaviours	☐	☐	☐	☐
Supervision arrangements and expectations	☐	☐	☐	☐
Rights and protections under the Fair Work Act	☐	☐	☐	☐
Discrimination, harassment or bullying	☐	☐	☐	☐
Work health and safety	☐	☐	☐	☐
Intellectual property rights	☐	☐	☐	☐
What to do if something goes wrong in their placement	☐	☐	☐	☐

Q26 Do students undertaking work experience ever complain about:

	Always (1)	Sometimes (2)	Never (3)	Don't know (4)
Pay	☐	☐	☐	☐
Hours of work	☐	☐	☐	☐
Discrimination or harassment	☐	☐	☐	☐
Bullying	☐	☐	☐	☐
Other work health and safety issues	☐	☐	☐	☐
Supervision	☐	☐	☐	☐
Relevance of work tasks to their education	☐	☐	☐	☐

	Always (1)	Sometimes (2)	Never (3)	Don't know (4)
Vet or approve organisations hosting or arranging student work experience as a compulsory or optional part of a course or program?	☐	☐	☐	☐
Vet or approve the advertisement of work experience arrangements not connected with a course or program?	☐	☐	☐	☐
Enter into a formal agreement with organisations hosting or arranging student work experience?	☐	☐	☐	☐
Organise or encourage staff to visit students while undertaking work experience off campus?	☐	☐	☐	☐
Require students to provide feedback on their work experience?	☐	☐	☐	☐

Q28 Do you have any suggestions about how the regulation of student work experience, or the management of risks associated with student work experience, could be improved, either at your university or more generally?

Q29 Please click the 'next' arrow to complete this survey and be directed to another website where you can enter your details to be in the running to win one of five $150 Coles Myer vouchers.

NEXT ➔

APPENDIX E: SURVEY DATA

Individuals working with work experience in a wide range of capacities completed the survey described in Section 3.3, as Figure E.1 indicates.

## FIGURE E.1: PARTICIPANTS' ROLE OR ROLES
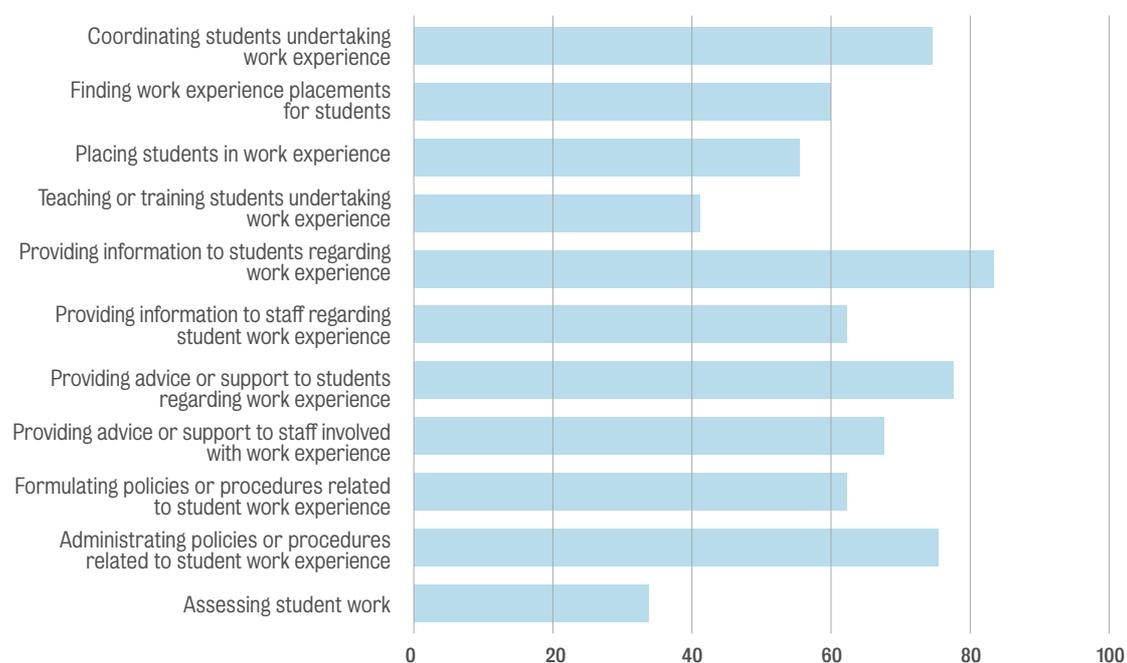
A mix of compulsory and optional work experience placements were represented, which were undertaken with the university and with external host organisations.

## FIGURE E.2: PLACEMENT AT AN EXTERNAL ORGANISATION, YOUR UNIVERSITY OR BOTH
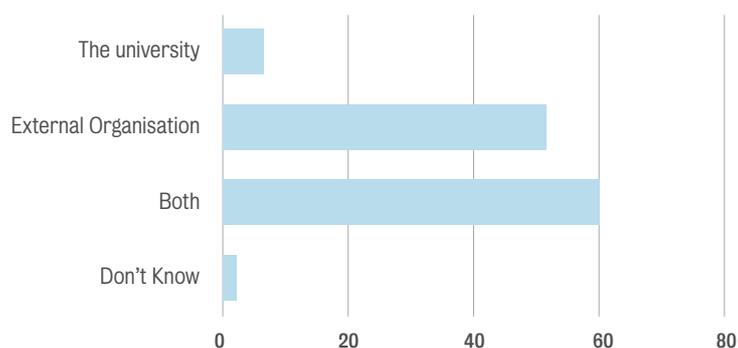
The survey responses indicated variation as to whether students are paid while undertaking work experience (see Figure E.3).

FIGURE E.3: WHETHER STUDENTS INVOLVED IN WORK EXPERIENCE WERE PAID A SALARY
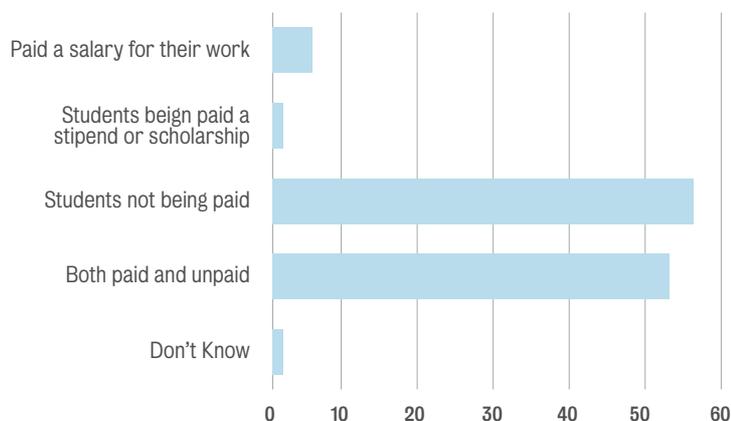
Information regarding student complaints regarding salary was sought (Figure E.4).

FIGURE E.4: DO STUDENTS UNDERTAKING WORK EXPERIENCE EVER COMPLAIN ABOUT PAY?
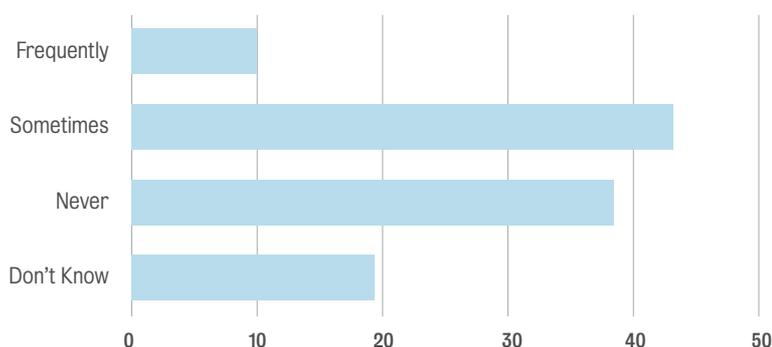
The survey data showed that complaints from students relating to work experience placements occurred across all areas: pay, hours, discrimination, bullying, health and safety, supervision, and relevance of tasks. The highest number of complaints concerned supervision, relevance of work performed and hours of work, while the lowest number of complaints related to bullying.

A lack of legal knowledge was revealed in the survey data. When asked how familiar they were with legal requirements for student work experience, 41% of respondents claimed to be very familiar, 47% moderately familiar, 9% slightly familiar and 3% not at all familiar themselves. However, less than half said staff managing or supporting work experience received comprehensive (7%) or adequate (40%) training on legal requirements. Similar results were received when survey respondents were asked about the adequacy of information about legal requirements, with 9% indicating it was comprehensive, 43% adequate, 40% some but not enough, and 5% that no information was provided.

The data consistently suggested that respondents were both more aware of, and more familiar with, localised policies and procedures, rather than central university policies and procedures. There was also a consistently significantly lower awareness of or familiarity with external legal requirements.

Similarly, the adequacy of information and training for staff was perceived to be slightly better in relation to local policies than in relation to external legal requirements. Respondents were asked to evaluate the adequacy of information and training they personally had received; their response was much more likely to indicate it was non-existent or at the lower end of the spectrum. This was especially so in relation to external legal requirements.

FIGURE E.5: RESPONDENTS' FAMILIARITY WITH LEGAL REQUIREMENTS
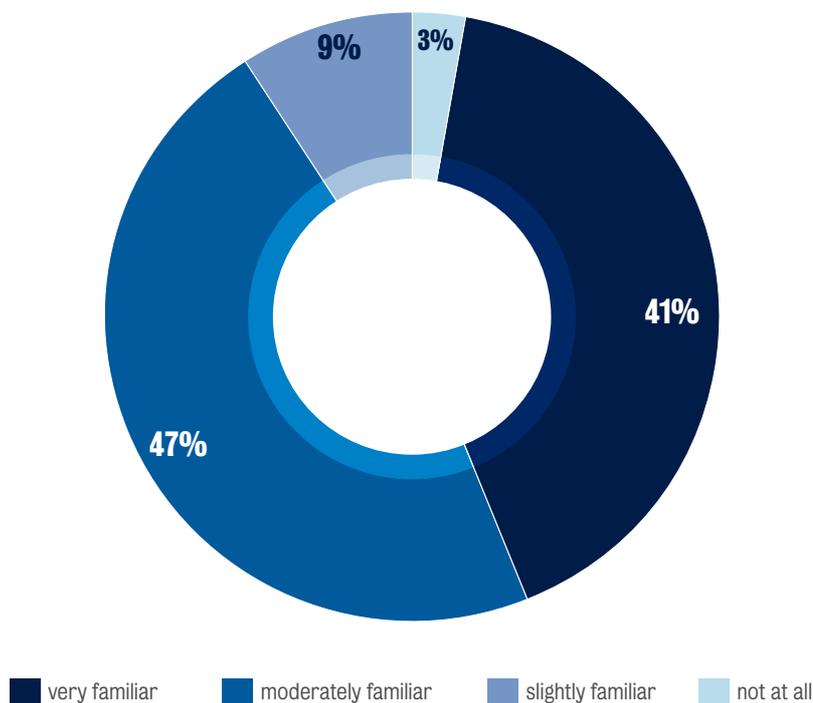
very familiar   moderately familiar   slightly familiar   not at all

When asked if students undertaking work experience received adequate information about their rights and relevant protections under the Fair Work Act, 27% of respondents indicated that was always the case, 50% said sometimes. However, 12% of respondents indicated students never received such information and a further 11% were unable to answer the question. Survey respondents reported students undertaking work experience always (37%) or sometimes (50%) received adequate information about discrimination, harassment or bullying. But they also reported students:

- sometimes (45%) or frequently (2%) complained of discrimination or harassment; and

- sometimes (39%) or frequently (3%) complained of bullying.

Similarly, survey respondents reported students undertaking work experience always (41%) or sometimes (48%) received adequate information about work health and safety, and that they sometimes (47%) or frequently (2%) complained about work health and safety issues (other than discrimination, harassment or bullying).

Only 40% of survey respondents were confident there was always general compliance with legal requirements regarding student work experience at their university, 54% believed there was sometimes compliance, while 6% did not know. This lack of certainty may be linked to the patchy provision of information and training about the relevant laws, or perhaps to institutional processes regarding work experience opportunities. For example, 39% of respondents said their university always vetted or approved non-curricular work experience opportunities before they were advertised to students, while 29% said this sometimes happened, and 9% of respondents indicated this never occurred.

APPENDIX F: SUMMARY OF WORKSHOP DISCUSSIONS

As explained in Section 3.4, we convened a workshop in November 2019 to present and discuss some of the findings from our research.

This summary is based on handwritten notes recorded by the participants themselves on each table during the workshop, supplemented by the researchers' own notes. While not comprehensive, it provides useful insights into stakeholder perspectives, which have informed the researchers' subsequent analysis and recommendations.

1. What have been the most effective strategies in your institution in developing effective regulation of work experience?

• Identifying a clear WIL strategy, the more centralised the better.

• Developing a WIL-focused committee or advisory group which specialises in understanding the implications of work experience, the regulatory context, and advising on how high-quality work experience which complies with regulation can be developed.

2. What problems are most intractable when trying to institute effective regulation of work experience in your university? What has made them so difficult and what is needed to overcome this?

• Lack of centralised processes, for example to collate and respond to student feedback, or to develop and manage work experience placements. Increased consistency makes it easier, but is difficult to achieve.

• Resourcing issues.

• Frequent disconnects between responsibility, accountability, power and resources.

3. Do universities need more assistance from external regulators (e.g. FWO or AHRC) or organisations (e.g. Universities Australia) to deal with work experience? What assistance is needed? How can it be most effectively delivered?

• FWO tools/hotlines/online resources that are accessible to institutions to seek specific advice regarding work experience obligations would be beneficial in addition to the more generic guidance currently available.

• Increased inter-university cooperation/communication to create sector wide policies/codes of conduct would be efficient.

• It would be useful if legislation regarding the rights of students undertaking work experience was more explicit, for example if there were legislated rates of pay; rules about the maximum length of a work experience placement; and rules about the maximum number of workers or percentage of a workforce who can be students undertaking work experience.

4. How well do you think staff at your institution understand the legal obligations and risks relating to work experience, with particular reference to

a) the Fair Work Act,

b) work health and safety laws, and

c) anti-discrimination and equal opportunity laws?

• Awareness of workplace health and safety regulation is higher than that regarding the Fair Work Act, but even workplace safety knowledge is not necessarily filtering down to all levels and staff involved in work experience.

• There is insufficient attention paid to, and knowledge about, compliance with these legislative frameworks.

5. How well do you think that the businesses or organisations that host students or graduates undertaking work experience understand those obligations or risks?

• This depended on the size/sophistication of the business hosting students but was generally low.

6. To what extent do you feel universities are aware of the regulatory challenges (both from a migration law and labour law perspective) in establishing and managing international educational internships?

• Pockets of knowledge but insufficient general knowledge.

• Problem of industry partners not wanting to take on international students.

7. What have been the most successful strategies you have seen to address the vulnerabilities of educational interns in overseas labour markets?

• The move to using third party providers and the need for a process to assess those providers and ensure proper due diligence is being performed.

8. Do you think universities are developing better strategies for managing challenges arising from international students as interns?

• Some of the strategies being developed include provision of additional support for international students such as peer mentors, workplace cultural awareness training and social resources.

9. To what extent do you feel universities and those working with WIL are aware of the educational regulatory regime relating to internships?

• There is greater understanding at higher levels, but much less 'at the coalface'.

10. What strategies do you think facilitate regulatory compliance while still enabling variety in WIL between disciplines?

• Bringing together professional and academic staff, empowering them to develop appropriate work experience schemes for their discipline areas, but making it clear that they are accountable and responsible for compliance in the design and delivery.

11. Do you think there is adequate transparency in the educational regulatory system? If not, how could it be improved?

• Increased clarity around what is compliant would be useful.

APPENDIX G: THEMES AND SUB-THEMES FROM INTERVIEW DATA ANALYSIS

THEME	DESCRIPTION
Academic supervision	Supervision of student on work experience (WE) placement in academic sense, i.e., management of pedagogy, assignments and student learning including site visits.
Access and equity	Issues of access and equity in WE (health, low SES, cost, caring responsibilities, conflict with existing work, international, Indigenous, etc.).
Geography	*What impact does geography have on students' ability to access WE, or if they are required to travel long distances to gain WE? Impacts on students who must undertake WE in isolated environments, including ability of institutions to monitor quality, etc.*
Stresses on students	*Impact of complex and multiple demands on students.*
Attitudes towards university legal, insurance and educational requirements	Positive and negative attitudes of academic/professional staff working with WE towards the legal and risk forms, paperwork, processes, insurance requirements, educational policies, time frames, etc. Can include data re work-arounds of official processes.
Complexity in management	Systems or individuals must be able to manage complexity – the numbers of students and placement businesses and their differences (some are also staff, some also alumni, some sourced own placement, some online, some geographically a long distance away, etc.).
Integration & focus of university resources & networks	*This indicates whether universities are integrating all that they do and relationships to maximise impacts on WE potential. Include also aspects of universities impacting the way they manage WE, e.g. campus in regional location, multiple campuses. Also comments about the 'culture' of universities which impact on the way WE is managed. Likewise, under this heading there might be examples where there is little or no coordination.*
Outsourcing management and risk of WE by universities	*Universities are often getting third parties to take responsibility for aspects of WE, including management and organisation*
Use of technology to manage WE	*Some universities have sophisticated integrated systems to manage all aspects of WE.*
Compliance with workplace laws	Including Fair Work Act and state equivalents, OH+S, workers' compensation, discrimination and harassment. Include also reliance on self-regulation and compliance assertions by industry.
Boundaries – reality vs regulatory assumptions	Often there are assumptions about what regulation requires that are incorrect, e.g. WE cannot be more than 100 hours, or there must be no benefit at all to the host organisation.
Other regulatory intersections, e.g. tax law	*There are developments in other regulatory areas that impact WE, e.g. tax office treatment of 'scholarships', visa requirements for international students.*
Regulation – additional issues	*Issues relating to regulation of WE that have not come up elsewhere or are not adequately highlighted under existing questions. There may be strong compliance or attention to other regulatory areas, e.g. child protection laws.*
Special compliance problems & gaps	*E.g. some hosts – religious schools/hospitals – may be operating with exemptions from discrimination laws. An interesting disjuncture might appear between an 'inherent requirement' from a workplace point of view and the equivalent issue in an educational sense.*
Use of contracts to ensure compliance	*The adoption by universities of contracts to manage WE; uniformity of contractual arrangements across the institution; procedures for variations in different areas.*

THEME	DESCRIPTION
Curricular WE	Whether WE is/should be embedded within curriculum or not. Evidence of WE pushed into the WIL category (perhaps to ensure quality education/perhaps to ensure no breach of workplace legislation). Also include influence of changing work, or work practices, on how academic tasks are created for students.
Data capture and management re WE	Capturing and managing data re student placements (i.e. where they are, their quality), host organisations (availability of placements, quality of supervision and student experiences), mobility (where students are overseas), etc.
Disabilities	Issues or processes for students/interns with disabilities.
Drivers of WE growth	
Accreditation bodies	*Accreditation bodies setting WE thresholds for admission to professions as drivers for more WE.*
Government	*Government policy as driver for more WE.*
Growth impacts on education	*The way growth in demand for WE places pressure on education; are there enough placements available?*
Industry	*Industry as driver for more WE.*
Students	*Students as drivers for more WE.*
University	*How does the university perceive its own role in initiating an agenda in this space or responding to external drivers? This includes individuals within the university who initiate WE opportunities.*
WE used to distinguish the institution from competitors	*Competition between institutions as a driver for developing/promoting WE opportunities for students.*
Educational quality assurance processes	University-wide and or faculty/area processes, rules and structures for ensuring quality of WE within for-credit courses, i.e. course approvals, assessment rules, supervision requirements, i.e. limits on number of students one person can supervise or requirements re site visits, regular contact, etc. Also includes provision for compliance with TEQSA requirements.
Attention to TEQSA	*Specific individual or institutional focus on compliance with TEQSA regulation.*
Costs of ensuring quality placements	*Various issues of resourcing to run a high-quality placement program.*
Quality assurance for online students & courses	*Particular issues and provision for ensuring quality & regulatory compliance for online students and courses.*
Employment outcomes of WE	Links between participation in WE (within curriculum or extracurricular) and employment. The perceived importance of education providing 'employability'.
Soft skills	*Comments relating to the need of young people to develop 'soft skills' – for work and life.*
Inconsistencies	Inconsistencies intra institution (i.e. between different approaches, or between formal policies and actual practice) or between institutions.
Interest in project reports and/or workshop	Participant expressed interest in being provided with final report and/or attending workshop.
International aspects	Issues relating to international WE and international students, e.g. students from O/S universities doing WE in Australia. Also comments about particular issues faced by international students.
Use of brokering firms	*Data re use of brokering firms to organise WE especially when it is overseas.*
Use of support provision service for international placements	*3rd party provision of support for students/staff involved in remote locations or overseas.*
International students	Particular issues for international students related to WE.
Law reform	Desirability of changing the laws regulating WE.
Learning outcomes of WE	The perceived benefits to students from engaging in WE, and the learning outcomes for WE embedded into courses. Includes how achievement of learning outcomes in formal WE courses is monitored and assessed. Roles of academics, students and employers and interactions between them.
Legal office	Role of legal office in setting or reviewing policies and procedures, answering queries, etc., including whether proactive or reactive.
Length of WE placement	Information regarding the duration of placements, whether in hours, days or weeks.

THEME	DESCRIPTION
Locating WE placements	Information on how students locate WE placements and what (if any) support the university offers them in that process, and if/how/when the university organises placements for students.
Non-traditional forms of WE *Future of work*	Data regarding new and non-traditional forms of WE that may raise new regulatory issues. For example, industry projects, working with start-ups, web-based placements, working with companies remotely, etc. Capacity of WE to prepare students for new world of work. *In the new world of work students may need to be prepared for jobs, etc. or work structures that do not exist now; how the university envisages this.*
Payments to students	Issues of payment to students of wages or stipends from hosts, cadetships, scholarships, etc., from other organisations or payments from universities. Also issues of payments for hosts/supervisors who take on a work experience student.
Students paying for WE	Payments made by students might include covering costs or payments to agencies.
Quality assurance issues	Identification of issues associated with quality assurance of WE. Could be either positive quality assurance approaches or issues with quality assurance. Includes both student experience and workplace safety as well as educational outcomes.
Review of work experience	A review of WE process and documentation or work experience programs.
Staff workload issues	Staff managing WE identifying workload issues (academic re supervision, assessment, etc.; bureaucratic re legal and risk compliance; and administrative re managing placements). Also incentives for staff to devote time to WE supervision given what is valued in universities.
Support to students undertaking WE	Assistance in developing skills prior to engagement in WE, i.e. classes or workshops on workplace etiquette, organisational structures, OH+S, risk management, etc. Monitoring of experience while student is undertaking WE whether via phone, site visits, etc. Availability of assistance to student in case of issues arising, i.e. capacity to contact academic or professional support person within university.
Terminology issues	Explicit acknowledgment that there are issues of inconsistent terminology in the work experience space.
University governance and responsibility structures *Incentives (e.g. promotion)*	Sometimes structures within universities are changing so frequently that nobody knows who is responsible for what. *The nature of universities is changing – once academic/pure knowledge focus, now more focus on employability; constant changes within universities – endless reviews and restructures, impact on length of time people have in a role and capacity to build knowledge, changing roles of staff, highly individualistic structures (e.g. promotion) clashing with attempts to build corporate approach.*
Volunteering	Discussion of regulation of volunteering, volunteering programs, distinction between work experience and volunteering, etc.
WE documentation and processes	Documentation, templates, checklists, etc. used to make decisions re curricular and extracurricular WE, or WE providers.
WIL & other WE *Intersections work and learning* *Volunteering*	Does the institution or interview participant acknowledge the distinction between WIL and other WE? How does the institution or participant distinguish between the two in its policies or other action or activities? Is there any intersection between WIL and other WE? *Intersections between work and learning not elsewhere captured.* *Distinction between volunteering and unpaid work experience.*

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