

# GETTING A FOOT IN THE DOOR: INTERNSHIPS AND THE LEGAL PROFESSION

**LAURA GRENFELL, ASSOCIATE PROFESSOR IN LAW AND CORNELIA KOCH, SENIOR LECTURER IN LAW, UNIVERSITY OF ADELAIDE**

Equity in entering the legal profession is a vexed issue. Law Schools work hard to ensure that students are given equal opportunities to flourish in their studies and to assist students in their workplace transition. Research indicates that to transition to graduate positions, students need to gain some work experience because “the lack of such experience constitutes a major obstacle for first-time jobseekers”.<sup>1</sup> Equity means work experience is secured on the basis of capacity, rather than personal contacts, and law schools are well placed to facilitate this experience in such a manner.

We believe there are two main barriers to equity in undertaking work experience. The first inequity is that prior personal contacts are often instrumental in securing paid and unpaid work opportunities when the legal profession is close-knit. In a 2013 Fair Work Ombudsman report authored by Stewart and Owens, one student described performing unpaid work as “[a]lmost necessary without the right contacts in the legal industry”.<sup>2</sup>

The second inequity is that while law students are sometimes keen to perform unpaid work, often firms or barristers then charge their clients for this work. Stewart and Owens have expressed concern regarding this potentially exploitative practice, stating there was evidence of such practice within Adelaide’s legal profession. Based on a survey of final year students conducted by Stewart and Owens at three different Australian law schools, including

Adelaide Law School, they observed that there was “a fairly clear picture of unpaid and extracurricular work experience being common for those law students not fortunate enough to secure paid work opportunities at the larger commercial firms or in government departments”.<sup>3</sup> One survey participant made a pointed comment about equity concerns:

*I don't understand how people can afford to [work unpaid]. Studying at Uni is a big enough expense. I also don't understand ethically how businesses can ask for that. ... I don't get paid to work, yet the firm still charges me out at \$150/hour. The firm is gaining a considerable financial advantage from me being there. For me, giving up my own time is a big deal as I work 20+ hours at another job & study full time. I will be disappointed if this placement doesn't increase my employability.*<sup>4</sup>

Ross Perlin, author of *Intern Nation*, has persuasively argued that unpaid internships (outside of structured courses) risk promoting “inequalities of opportunity that we have been striving diligently to reduce in courts, schools and communities”.<sup>5</sup> Without addressing the equity issues, he fears unpaid internships become accessible only to the “upper-middle class and the super-rich”.<sup>6</sup> In the UK the Low Pay Commission has similarly observed that unpaid internships for university graduates (not students) have a “potentially damaging impact ... on social mobility by inhibiting labour market access

for particular groups who cannot afford to undertake [unpaid internships]”.<sup>7</sup>

Gaining work experience while studying is a means of minimising some of the risks posed by unpaid internships. At universities, internships are part of the increasingly popular pedagogical tool of “work-integrated learning”, designed to boost student employability. In the US, law school “externships” are regulated by the American Bar Association to ensure the quality of internship experiences.<sup>8</sup> Without this regulation it is important for the legal profession to reflect on the risks relating to unpaid work, including unpaid internships, and how it can better support equity in entering the profession.

Since 2003, the Adelaide Law School has been offering students academic credit for undertaking internships as part of a structured program of supervision and assessment. In terms of law electives, the Adelaide Law School began with a Human Rights Internship Programme and in 2009 it added two more internship electives, the Public Law Internship and the Native Title Internship. The former has now expanded into being a “Law and Justice Internship” (offering up to 35 internship placements annually). These electives are centred on fields of law which either fail to feature directly on law students’ radar (such as in public law or native title) or which are difficult to enter because they are unlikely to be a prominent part of a law careers fair, such as careers in the field of human rights. They complement clinical legal education





initiatives that, today, are part of the staples of almost all law school curricula. While our internships involve unpaid work under the supervision of members of the legal profession, they are lawful under the *Fair Work Act 2009* (Cth) because they operate within a structured academic program where students are guided by “intentional learning goals” and they include a component of “active” reflection.<sup>9</sup> They can be distinguished from unpaid clerkships where in some cases, but not all, having “the right contacts” is important, and they take place in a less pressured context which involves supervision by both the host in conjunction with the Adelaide Law School lecturer.

### INTERNSHIPS IN THE NOT-FOR-PROFIT SECTOR

Our three internship electives take place in the not-for-profit sector where the host organisation does not charge the client for legal advice.<sup>10</sup> This means that the internship programs minimise the inequities of unpaid work as they do not condone and further the practice of law firms charging clients for unpaid intern work. Often the work undertaken by our students aims to contribute to justice for vulnerable groups or to further the public good through public institutions.

Through scholarships funded by the South Australian legal profession, in particular the Law Foundation of SA Inc,<sup>11</sup> we have tried to mitigate some of the financial impact on students, especially

when their internship requires them to leave Adelaide. Without this assistance, these internships would not be viable for many of our students, most of whom still need to take out personal or government loans and to put their part-time/casual employment on hold. Those students with significant caring responsibilities or ongoing paid employment commitments are limited to Adelaide-based internships, but even these internships can attach financial stress.

Equity is also important in setting entry requirements for internships. Entry into our three internship programs varies. Placements in the largest internship program, Law and Justice, are allocated on the basis of the student’s grade point average and demonstrated passion for undertaking an internship with their host organisation, while selection into the Native Title Internship is carefully calibrated through the Aurora Project, a national body which selects and places interns in native title or Aboriginal justice organisations around Australia. These two internship programs have established placements and competitive entry unlike the Human Rights Internship which is a student-organised placement scheme with no formal entry barriers: all students need is a strong passion for human rights and the drive to secure a placement that matches this passion. The main barrier for this internship is that it generally involves 8-12 weeks of unpaid work with a human rights organisation overseas.

### INTERN VOICES

Many of the benefits of, and equity issues relating to, internships can only be a matter of anecdote and speculation unless we can evaluate a sizable group of intern voices and experiences. In 2017, we conducted a survey in which 60 past interns from all three internship electives participated.<sup>12</sup> The survey indicated that most students (75%) who undertake a law school internship are Caucasian women; 10% identified as being Asian/having Asian background.<sup>13</sup>

We evaluated why the students had chosen to undertake the internships and how, in hindsight, they perceived their possible long-term benefits. The most overwhelmingly common reason given for doing the internship was predictably the desire “to learn practical skills relevant to a career in the field of my internship” (97%), with the second being the desire “to apply the skills I had learned in my law degree” (85%). The internships are thus a means for students to test out their legal skills and whether they can see themselves as legal practitioners. Of the skills they believed had been improved through the internship, problem solving, self-direction and interpersonal skills rated the highest. Participants also specified improving skills in research and interviewing, as well as “career confidence”.

Experiences that law schools cannot offer are without doubt a key to the importance of internship experiences: one survey participant commented that the

internship enabled them to look “more at policy and implementation rather than legislation and case analysis like we do in class”. Another said the internship was beneficial because they had “wanted to see public law in action”. A former human rights intern mentioned the insights gained from working in a newly independent country with its “village chief law”.

The third most common reason for undertaking an internship was the hope that it “would help me to decide what I wanted to do as a career” (80%). More than a third of participants believed the internship had helped them to secure paid work in their chosen area while two thirds said that they had been asked about their internship in an interview situation, with one saying that “it’s always been a stand out on my resume, even though it happened years ago”. Others agreed, with some saying that their internship experience was of interest even to commercial law firms and that it was “a foot in the door”.

The opportunities to improve their professional network and to meet like-minded people were important reasons for doing the internship for 70% and 60% of former interns respectively. Some responses reflected the particular fields of the internships and the roadblocks faced in entering these fields as a graduate. For example, in the field of human rights law most UN agencies and leading NGOs consider a Masters degree in combination with previous field experience essential. Consequently, after undertaking their internship in this field, 40% of participants said the internship influenced their decision to pursue postgraduate study with seven saying that the internship assisted them to secure a Masters scholarship. For this group, the internship was one of the steps they had taken to secure positions with UN agencies or NGOs. One commented that:

*the main tangible benefits of my internship were: 1) making me realise that a career in human rights/public international law could*

*be a realistic goal, rather than a pipe dream; (2) providing a crucial advantage for my next internship opportunity ... which resulted in ongoing paid employment in public international law.*

Financial concerns were a recurrent feature in our survey results: 43 of the 60 participants indicated that they had needed to finance their internship (in addition to the usual financing of their studies). Scholarship assistance was received by 75% of participants answering this question while 80% responded that they had needed to draw on personal savings. For the 75% of those participants who did receive a scholarship, the funding was “extremely important” or “very important”. On the final question of whether they would recommend the internship experience to others, 90% of participants recommended it without reservation. Of the remaining 10%, two said that future interns heading overseas should be aware of the financial implications while a further two had reservations relating to their particular host organisations, indicating that poor internship experiences are very much the exception.

The 2017 survey results show that internships are highly successful in opening students’ eyes to alternative careers in law and in helping them to realise their “pipe dreams”. As internship hosts, the South Australian legal profession has done much to support student equity. The profession is committed to being inclusive and to reflecting the breadth of the community. For this reason, we need to support equity initiatives that aim to give law students an equal chance to enter the legal profession and to pursue alternative legal careers. Unpaid student work experience must be structured with student equity in mind so as to foremost benefit students. Furthermore, where clients are charged for students’ work, students must be paid; the profession needs to avoid being tarnished by claims of exploitation. **B**

## Endnotes

- 1 ILO, *Global Employment Trends for Youth 2013: A Generation at Risk* (ILO 2013) 64.
- 2 Ibid, para 3.63.
- 3 Andrew Stewart and Rosemary Owens, *Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia* para 3.64
- 4 Ibid.
- 5 *Intern Nation: Earning nothing and learning little in the brave new economy* (2012 revised edition), xv.
- 6 62.
- 7 *National Minimum Wage: Low Pay Commission Report 2012 Cm8302* (2012) 88.
- 8 See American Bar Association Standards, Rules of Procedure for Approval of Law Schools, Chapter 304.
- 9 According to the Fair Work Ombudsman’s website, “[u]npaid work can occur in the workforce in different forms - from vocational placements to unpaid job placements, internships, work experience and trials. ... Not paying the person doing the work in some of these arrangements can be lawful. For example, for defined vocational placements ...” <https://www.fairwork.gov.au/pay/unpaid-work>
- 10 Where students undertake unpaid law internships in private legal offices, hosts should be required not to charge clients for student work, Bernadette Feeley: ‘Examining the Use of For-Profit Placements in Law School Externship Programs’ (2007-08) 14 *Clinical Law Review* 37 -60.
- 11 Since 2003, the Law Foundation of SA Inc has provided scholarships for students undertaking human rights internships in every corner of the world. Since 2012, it has offered native title internship scholarships to assist students traveling as far as the Torres Strait to work with Aboriginal organisations. In 2014 the SA Chapter of the AIAL funded two interns to undertake internships with the Office of the Australian Information Commissioner. In addition, in 2015 and 2017 the Department of Foreign Affairs offered a limited number of short term mobility grants and New Colombo Plan scholarships for human rights internships in Asia.
- 12 The Survey was conducted with the assistance of former intern Caitlyn Georgeson. HREC No. H-2016-273. This number of participants represented approximately half of the past interns we contacted.
- 13 No participant identified as being Aboriginal despite the native title internship aiming to draw in Aboriginal and Torres Strait Islander law students. This may reflect that fact that there is some recognition that unpaid internships are not ideal for Aboriginal law students, with the Federal Government’s Indigenous Cadetship Program offering a better and more viable scheme for boosting employability skills <https://www.humanservices.gov.au/organisations/about-us/careers/employment-programs/indigenous-cadetship-program>



**Harris, Hargovan & Adams**  
6<sup>th</sup> ed LexisNexis Butterworths 2018  
PB \$111.00

### AUSTRALIAN CORPORATE LAW

Abstract from LexisNexis

Now in its sixth edition, *Australian Corporate Law* has been designed specifically for students undertaking corporations law as part of their business or commerce degree. This text aims to reduce the complexity of corporations law for students by providing

clear explanation of legal principles and explaining how corporate law operates within the broader business context. It does this within a specifically designed learning framework that will enhance student learning and understanding of the presented material.



**Kenny, Blissenden & Villios**  
LexisNexis Butterworths 2018  
PB \$142

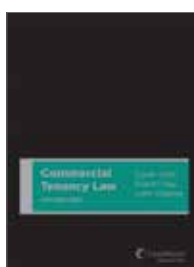
### AUSTRALIAN TAX 2018

Abstract from LexisNexis

*Australian Tax 2018* ... is an introductory level text offering a straightforward explanation of Australia's tax laws by using the unique tax pyramid method. This modern step-by-step process helps to

simplify and explain Australia's complex tax laws and provides a framework for students to carry their knowledge into practice.

*Australian Tax 2018* is designed for both international and domestic business students.



**Croft, Hay & Virgona**  
4<sup>th</sup> ed LexisNexis Butterworths 2018  
HB \$320

### COMMERCIAL TENANCY LAW

Abstract from LexisNexis

*Commercial Tenancy Law*, 4th edition is a comprehensive and authoritative treatment of the law in Australia relating to all aspects of commercial leases. Commercial leases

are still primarily governed by the common law, even where leases are subject to retail or shop lease legislation, as the various states' legislation tends to supplement and rely upon the common law.



**Williams, Brennan & Lynch**  
7<sup>th</sup> ed The Federation Press 2018  
PB \$155

### BLACKSHIELD AND WILLIAMS AUSTRALIAN CONSTITUTIONAL LAW AND THEORY: COMMENTARY AND MATERIALS

Abstract from The Federation Press

This is the new and fully updated edition of the acclaimed and authoritative book on Australian constitutional law. Fresh material reflects the contemporary approach of the High Court including its emphasis on statutory interpretation as a tool of constitutional analysis. The book has also been fully revised and updated for

major High Court and overseas decisions, including *McCloy v New South Wales*, *Williams v Commonwealth (No 2)*, the *Brexit Case* and *Plaintiff M68/2015 v Minister for Immigration*. Always 'much more than a casebook' as Sir Anthony Mason said of a previous edition, the book also presents carefully selected extracts from a broad range of writers and commentators.