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What lawyers know about legal risks in WIL

Presented by

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WIL Context in Australia

- Competition: 41+ universities and 100+ higher education providers offering degrees
- Student demand for “real world experience”
- Expansion of WIL is an explicit goal of most Australian universities
- WIL exposes the university to unavoidable legal risk
 - » 12 reported decisions between 1998 and 2016 involving student action against the university concerning WIL programs.

Key Terms

- Work Integrated Learning (WIL):
 - A curriculum design which combines formal learning with student exposure to real professional, work or other practice settings
- Legal risk:
 - An event or circumstance that exposes the university to the possibility of liability or non-compliance with external or internal rules and regulations
- Main players in WIL:
 - Host organisation
 - WIL staff and WIL discipline
 - Services that facilitate risk management and delivery of WIL programs, including university lawyers

Legal risk

- University lawyers manage two types of legal risk: program risk and contract risk
- Program risks: legal risks associated with the day-to-day operation of the WIL program
- Contract risks: legal risks which are associated with contracts involving the host organisation, student and/or university (WIL agreements)

Case study findings: Program risk

Program risk	Have you encountered it?
Student disability and medical conditions	
Workplace hazards (bullying, harassment, workplace environment)	
Host organisation supervision and attitude	
Student misuse of social media	

Contract risk: contract terms

Contract risk	Have you encountered it?
Host Organisation (HO) retains the rights to intellectual property generated by the student	
HO is an inadvertent employer of the student	
HO takes disciplinary action or requires the university to take disciplinary action against the student	
The risk is not insured or underinsured by university or HO	
The university indemnifies HO for losses incurred in connection with the student's involvement during a WIL placement	
The university provides assurances about student competence, character and conduct to HO	

Contract risk: contract practices of the WIL discipline

- The incorrect HO entity is a party to the WIL agreement
- More than one WIL agreement applies to the WIL discipline or a WIL agreement applies to multiple disciplines without the knowledge of all disciplines
- The person signing the WIL agreement does not have authority on behalf of the university
- The WIL agreement is not reviewed by a university lawyer
- The WIL discipline maintains the status quo associated with WIL agreements
- The WIL discipline misuses a university WIL agreement template

University lawyers

- University lawyers have practices, methods and strategies for managing the legal risks mentioned
- Your thoughts:
 - »What is the first thing that comes to mind when I say “lawyer”?
 - »What have been your experiences with university lawyers?
 - »How would you describe your relationship with university lawyers: Non-existent? Collaborative? Hostile?

Key take away messages

1. **Everybody:**

- (a) Love your university lawyer: build the relationship
- (b) Contract is a risk management tool, **and** a source of risk

2. **WIL staff:**

- (a) Approach the legal office prior to finalising a WIL agreement;
- (b) Need for WIL staff to improve legal literacy

3. **University management:** consider education initiatives and policies that encourage WIL staff to involve university lawyers

Further resources and questions

- Craig Cameron (craig.cameron@griffith.edu.au) / also on LinkedIn
 - Require research support or to share your story – I will travel!
- **Comprehensive table of legal risks**
 - » Cameron, C. (2017) The strategic and legal risks of work-integrated learning: An enterprise risk management perspective. *Asia-Pacific Journal of Cooperative Education*. 18(3). pp. 243-256.
- **Program risk**
 - » Cameron, C., Freudenberg, B., Giddings, J., and Klopper, C. (2017) The program risks of work-integrated learning: a study of Australian university lawyers. *Journal of Higher Education Policy and Management*.
<http://dx.doi.org/10.1080/1360080X.2017.1377969>
- **Contract risk**
 - Cameron, C. (forthcoming) The contract risks to universities of work-integrated learning programs. *Australian Business Law Review*

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