The program risks of work integrated learning: A study of Australian university lawyers

Abstract

Work integrated learning (WIL) is a risky business in higher education. The strategic opportunities that WIL presents for universities cannot be achieved without taking on unavoidable legal risks. University lawyers are involved with managing the legal risks as part of their internal delivery of legal services to universities. It is important to identify the risks that potentially arise, so these can then be managed. A case study involving Australian university lawyers reveals the ‘program risks’ of WIL. Program risk is a type of legal risk which relates to the conduct of universities, host organisations and students before, during and after a WIL placement, as well as the personal characteristics of students that can expose the university to legal risk. The research findings may be applied by university lawyers, academic disciplines and university management to evaluate and improve risk management in WIL programs.

Keywords: Risk management; legal risk; university lawyers, work integrated learning

Introduction

Work integrated learning (WIL) is a curriculum design which combines formal learning with student exposure to real professional, work or other practice settings (Smith, 2012; Jackson, 2015). Other terms used to describe WIL include internship, cadetships, cooperative education, placement, practicum, clinical rotations/program/internship/clerkship, sandwich course/year, professional practice, experiential learning and fieldwork (AWPA, 2014; Cooper, Orrell, & Bowden, 2010). In all its various forms, WIL is recognised as having strategic value for universities because it can have a positive influence on student generic skills (Blackwell, Bowes, Harvey, Hesketh, & Knight, 2001), student understanding of the work environment and employer expectations (Wilton, 2012), as well as career awareness, progression and direction (Patrick et al., 2008). These generic and career skills can improve the work-readiness of students on graduation, and are in demand by employers (Freudenberg, Brimble, & Cameron, 2010). It is not surprising that many universities have formally recognised WIL as a strategic objective (Cooper et al., 2010).

Although WIL is a strategic opportunity for universities, it presents a number of legal risks that can have serious financial and reputational consequences. University lawyers, being qualified lawyers employed by universities, deliver legal services which can be instrumental in managing legal risks presented by WIL programs. University lawyers can provide advice about legal risk and risk management in WIL programs, draft and review WIL documents such as agreements and policy, and educate WIL staff through formal and informal arrangements (Cameron & Klopper, 2015).

For the purpose of this article, legal risk is defined as an event or circumstance that exposes the university to the possibility of liability or non-compliance with external or internal rules and regulations. Contract risk and program risk are argued as two specific types of legal risk in WIL programs. Contract risks are associated with contracts involving the entity that hosts the student in the workplace (‘host organisation’), the student and/or the university in WIL programs. A contract is a mechanism which articulates rights and responsibilities for these stakeholders, but it can also be a source of legal risk for
universities. Contract risk is a separate topic of interest which is outside the scope of this article.

Program risks are associated with the operation of the WIL program. More specifically they relate to the conduct of the university, the host organisation and the student before, during and after the student placement with the host organisation (‘WIL placement’), as well as personal characteristics of the student that can expose the university to legal risk.

The purpose of this article is to describe and analyse university lawyers’ experiences of program risks related to WIL. Despite the importance of university lawyers to institutional risk management, their voice is virtually non-existent in prior studies of legal risk in WIL programs. This study reveals the types of program risks that university lawyers manage in relation to WIL programs, expanding the range of program risks identified in prior literature. In a practical sense, the findings of this research can highlight the program risks associated with WIL, and can be applied by stakeholders to evaluate and improve existing frameworks designed to manage legal risk.

The legal risks of WIL

WIL programs impose different legal risks for universities compared to traditional study programs. The factors which distinguish WIL programs from traditional study programs are the participation of a host organisation, and the placement of students in a workplace environment. The WIL programs examined in this study relate to ‘placement-based WIL’ (Smith & Worsfold, 2014): student exposure to real as opposed to simulated settings. Simulated settings include law students completing mock trials in a specifically designed moot court, medical and nursing students with simulated patients on campus or aviation students using a flight simulator. The risk profile of placement-based WIL is evident from empirical studies and reported cases in Australia identifying legal risk (Cameron, forthcoming), which all involved placement-based WIL.

Previous studies have considered legal risks in WIL from the perspective of staff involved with the delivery of WIL programs (‘WIL staff’). Cooper et al. (2010) identified general concerns and specific issues (or risks) to students associated with WIL. Cameron (forthcoming) extended the work of Cooper et al. (2010), presenting a table of legal risks in WIL programs derived from a literature review and an analysis of 12 reported cases in Australia involving student action against the university. The 12 reported cases occurred between 1998 and 2016, with the more recent cases involving student claims of discrimination or students seeking judicial review of an academic decision to award a failing grade for the WIL program and/or to exclude them from the course or university. Cameron (forthcoming) suggests that ‘a strategic expansion of WIL programs may result in more student complaints to internal and external bodies’. An understanding of these legal risks is therefore crucial for university management, WIL staff and university lawyers, all of whom are involved with risk management frameworks at their institution.

University lawyers’ perspective of the legal risks of WIL

Few authors have studied legal risk in WIL programs from the perspective of university lawyers. As risk managers, it is argued that university lawyers can provide valuable insights about legal risks in WIL programs, which may support the existing literature or may identify legal risks that demand further consideration as part of a university’s risk management framework. With the exception of Cameron and Klopper (2015) and Turcotte, Nichols, and Philipps (2016), the association between university lawyers and WIL in the literature is generally limited to a list of matters in which authors have sought
advice from, or have recommended that WIL staff seek advice from, university lawyers. This advice about legal risks includes disciplinary action, insurance, indemnities, confidentiality, student misconduct, student payments, discrimination, workplace health and safety, policy and sexual harassment (Cameron & Klopper, 2015). A survey of Australian university lawyers by Cameron and Klopper (2015) indicated that the leading areas of legal work (a proxy for legal risk) and future legal risk in relation to WIL were contracts, intellectual property, confidentiality and privacy law, university policy and workplace health and safety. Health was the academic discipline that university lawyers received the most inquiries for legal work. The authors suggest that health may be a substantial source of legal risk because WIL programs in this discipline are mandatory, and thus have a significant student participation in WIL. Further, the type of WIL is ‘process-based’ in which students have regular contact with the host organisation’s clients, with potentially serious consequences if harm occurs to the student, host organisation or client.

Turcotte et al. (2016) recently examined the impact of current legal issues on WIL programs in Ontario, Canada. In particular, the authors described legal issues relating to employment, health and safety, human rights, intellectual property, insurance, immigration law, and tax expenditures. However these findings are somewhat limited, as they apply to the perceptions of legal issues by university lawyers, with only two of the 19 interview participants being university lawyers. Furthermore, Turcotte et al. (2016) did not present or analyse the responses of university lawyers in isolation. As a consequence, no conclusions can be drawn about legal risk from a university lawyer perspective alone. The case study reported in this article moves beyond the identification of legal risks by Cameron and Klopper (2015) and Turcotte et al. (2016) to describe and analyse university lawyers’ own experiences with legal risks. By examining a small targeted group of university lawyers, the case study provides an in-depth understanding of legal risk that can be used by stakeholders to evaluate and improve risk management in the context of WIL programs.

Case study design

This research is part of a multiple instrumental case study (Stake, 1995) of risk management by university lawyers with respect to WIL programs. The cases studied were 13 Australian university lawyers from 12 universities. Multiple cases were selected to examine, compare and support an understanding of university lawyers’ experiences in order to answer the research question: what legal risks do university lawyers manage with respect to WIL programs? The interview design, which received university ethics approval, incorporated structured questions relating to demographics, followed by more open-ended questions designed to elicit university lawyer experiences with WIL programs. An important open-ended question was “what are the legal risks that you manage in WIL programs?” The scope of WIL programs addressed during the interviews was limited to WIL placements in Australia, as international WIL programs may pose additional legal risks that are specific to the jurisdiction of the WIL placement (refer Burch, 2010).

To explore multiple perspectives of legal risk, university lawyers were selected from multiple university sites and stratified according to length of experience and position, location of primary university site (by State and Territory in Australia), university type, and size of legal office. Participants had to possess experience in delivering legal services to WIL programs; and have a minimum two years’ experience as a university lawyer. A case typology was maintained throughout the selection process to keep track of these characteristics, with the finalised typology set out at Table 1. Other
demographic information not available during the selection process has also been added to the case typology: university lawyer background, recognised WIL lawyer (Cameron & Klopper, 2015), and office structure, with existing information gleaned from university websites and insiders (position, office size, university lawyer experience) and authenticated by the interview data.

Table 1. Case typology of university lawyers

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

<table>
<thead>
<tr>
<th>Position</th>
<th>N</th>
<th>Recognised WIL lawyer</th>
<th>N</th>
<th>Office structure</th>
<th>N</th>
<th>University lawyer background</th>
</tr>
</thead>
<tbody>
<tr>
<td>University lawyer</td>
<td>9</td>
<td>No</td>
<td>10</td>
<td>Flat</td>
<td>8</td>
<td>Mix</td>
</tr>
<tr>
<td>Manager</td>
<td>4</td>
<td>Yes</td>
<td>3</td>
<td>Hierarchical</td>
<td>5</td>
<td>Private sector</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Public sector</td>
</tr>
</tbody>
</table>

The data collected consisted of face-to-face interviews with university lawyers, e-mail communications for the explicit purpose of obtaining further information and/or clarification following the interviews, and documents referred to by university lawyers during the interview. The data were analysed in four stages: initial reflexivity; eclectic coding (Saldana, 2013); pattern coding (Miles & Huberman, 1994); and data representation. NVivo software facilitated the data analysis by storing and organising the qualitative data in one location. Data analysis and data collection were conducted simultaneously until the pattern coding stage of analysis. The data are presented as a cross-case analysis of program risks managed by university lawyers with respect to WIL programs. To protect anonymity university lawyers were de-identified and assigned an ID number in the case study (UL1 to UL13).

A research limitation of the case study is social desirability bias. University lawyers may downplay or not disclose their experiences with legal risk as to do otherwise may negatively impact them and the university. To minimise this risk, the lead author assured university lawyers at the beginning of the interview that their responses would be de-identified, and that they would have an opportunity to check the interview transcript, as well as the parts of the case study attributable to them, for the purposes of protecting anonymity and to correct any misinterpretations (if any) of their responses. The university lawyers’ views, as reported in the case study findings which follow, are their personal views on legal risk and are not necessarily those of their university employer.
Results

The program risks identified by university lawyers are detailed in Table 2 with the university lawyer’s ID included if they discussed the legal risk. University lawyers who referred to legal risks that have not been covered in previous empirical studies of WIL staff and students, are also identified in the table, as marked by the reference to ‘No’ in the column ‘Previous Studies’. These items advance the existing literature relating to legal risk in WIL programs. Health was the discipline mentioned the most by university lawyers during interviews. This result is consistent with the survey findings of Cameron and Klopper (2015), in which health was the discipline that received the most inquiries from university lawyers relating to WIL programs. Two predominant categories emerged from the program risks discussed by university lawyers – student disability and medical conditions; and hazards in the workplace. Student misuse of social media, another program risk identified by one university lawyer, is also included in the case study analysis. These are outlined in detail below.
<table>
<thead>
<tr>
<th>Legal Risk</th>
<th>Previous Studies</th>
<th>Lawyer ID</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Student disability and medical conditions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>WIL staff discriminate against the student prior to a WIL placement (e.g. asking inappropriate</td>
<td>Yes</td>
<td>3, 10</td>
</tr>
<tr>
<td>questions during the interview process or a WIL placement is not offered to the student)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WIL staff disclose sensitive student information (e.g. disability) to the host organisation or a</td>
<td>Yes</td>
<td>8</td>
</tr>
<tr>
<td>colleague</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The university fails to disclose a student disability or a medical condition to the host organisation</td>
<td>Yes</td>
<td>8, 10</td>
</tr>
<tr>
<td>The university misrepresents student skills and competency</td>
<td>Yes</td>
<td>8</td>
</tr>
<tr>
<td>The student has a disability or a medical condition which can affect the performance of their</td>
<td>Yes</td>
<td>2, 8</td>
</tr>
<tr>
<td>duties and/or expose clients to harm on WIL placement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure by the host organisation and/or university to provide reasonable support / adjustments</td>
<td>Yes</td>
<td>2, 5</td>
</tr>
<tr>
<td>/ accommodations for students with a disability</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure by the student to disclose their disability or a medical condition to the host organisation</td>
<td>Yes</td>
<td>8, 10</td>
</tr>
<tr>
<td>and/or university</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Student incompetence or error which may cause the client harm (injury, property damage or economic</td>
<td>Yes</td>
<td>2, 9</td>
</tr>
<tr>
<td>loss)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Hazards in the workplace</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Host organisation personnel</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual harassment and/or sex discrimination of the student by host organisation personnel (e.g.</td>
<td>Yes</td>
<td>3, 11</td>
</tr>
<tr>
<td>host supervisor)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Verbal abuse (including bullying) or physical abuse of the student by host organisation</td>
<td>Yes</td>
<td>3, 10</td>
</tr>
<tr>
<td>personnel (e.g. host supervisor)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>WIL staff do not comply with university policy when investigating a student complaint of</td>
<td>No</td>
<td>10</td>
</tr>
<tr>
<td>harassment or bullying</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>The workplace environment</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The student experiences stress due to the work environment</td>
<td>Yes</td>
<td>6</td>
</tr>
<tr>
<td>The student suffers physical injury arising from the use of equipment by the student, host</td>
<td>Yes</td>
<td>11</td>
</tr>
<tr>
<td>organisation staff or clients</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The student is exposed to hazardous substances in the workplace (includes needle stick injuries,</td>
<td>Yes</td>
<td>13</td>
</tr>
<tr>
<td>viruses and bodily fluids)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Host organisation supervision and attitude</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Host organisation attitude to the WIL program – student as free labour</td>
<td>No</td>
<td>1, 5</td>
</tr>
<tr>
<td>Poor or no supervision of the student by host supervisors during the WIL placement</td>
<td>Yes</td>
<td>5, 6, 13</td>
</tr>
<tr>
<td><strong>Student misuse of social media</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Publication and posting of workplace and client images on social media</td>
<td>No</td>
<td>2</td>
</tr>
</tbody>
</table>

**Student disability and medical conditions**

Legal risks that can arise from a student’s disability or medical condition include the disclosure or non-disclosure of student characteristics to the host organisation, questions put to students prior to WIL placement that seek disclosure, the failure to provide reasonable adjustments, the competency of the student during the WIL placement, and
the health and safety of clients and students in the workplace (Table 2). University lawyers described the inherent conflict between the legal risks that can arise in this situation. University Lawyer 2 (UL2) encountered this conflict twice in the nursing discipline. One nursing student had an allergy to latex, which meant that she could not wear or be near rubber gloves; another nursing student with dwarfism was significantly hampered in treating patients during rounds in the hospital. UL2 found it very difficult to negotiate these two legal risks – facilitating student participation in the workplace may expose patients to harm, but a failure to provide reasonable adjustments may lead to claims of disability discrimination for the student. On balance, UL2’s position was that patient welfare should take precedence over student rights to participate in WIL programs: ‘I mean it is fine to try to make reasonable adjustments, but the main thing is the patients aren’t put at risk’.

The questions put to students about disability and medical conditions may also expose the university to legal risk. For example, WIL staff, as part of a due diligence process prior to a WIL placement, will ask students questions about disability and medical conditions for the purposes of assessing a student’s suitability for a placement and whether reasonable adjustments to the WIL program are required. The questions are designed to elicit information that supports the university’s duty of care to students and that protects clients of the host organisation from harm, whether that is physical injury, property damage or economic loss. However UL10 noted that care must be taken with phrasing such questions. A direct question about the student’s medical condition or disability may contravene discrimination laws, whereas a question framed in terms of whether there are any issues that may impact on the student’s ability to complete the requirements of the WIL program is more appropriate.

Whilst the questioning of students may comply with discrimination law, it does not necessarily provide the disclosure of disability or medical condition that the university seeks. Such is the experience of UL8, where a student had a medical condition that exposed patients to harm in a hospital. Prior to the WIL placement, the student completed a form which included a question as to whether they had any condition that would prevent them from completing the placement. The student did not disclose their medical condition because, according to UL8, ‘they had every belief that they could do it… so their self-awareness of how they impacted others wasn’t strong’. The framing of the question created a conflict between legal risks. A direct question which elicits the student disability or medical condition may be considered discriminatory. However, a question that requires the student to judge whether their medical condition or disability prevents them from completing the requirements of the WIL placement may not elicit their disability or medical condition, thereby exposing the student and patients to harm.

UL8’s experience highlights the legal risks when a student fails to disclose their medical condition prior to WIL placement. Due to concerns about privacy, disability and discrimination (amongst other things), the student refused to disclose their condition to the host organisation or agree for the university to disclose their medical condition to the host organisation. The host organisation knew there was an issue with the student but could do nothing about it. As UL8 recalls, ‘it got to the point where the host said, “look until we know what’s going on, we can’t have this person here anymore... this is putting lives in danger”’. This was a complex situation – disclosure of the student condition without student consent would expose the university to legal risk associated with privacy law and discrimination, but the subsequent withdrawal of the student from the compulsory WIL placement component of their health degree could jeopardise the student’s ability to graduate. Furthermore UL8 noted that any action which would enable the student to graduate without meeting the inherent requirements of the course may
misrepresent to the health sector that the student was suitably qualified. UL8 attributed this complex situation to poor supervision by university supervisors on-site and poor gatekeeping, that is, the student had not been identified by the academic discipline at the right time as having special needs for the WIL placement.

A similar claim concerning gatekeeping and supervision was made by UL9 in relation to a colleague’s experience with a student suffering from a mental illness. The student had repeatedly failed a WIL placement and was subsequently excluded from the degree following repeated breaches of host organisation policy. WIL staff allowed the student to start a WIL placement ‘when she actually shouldn’t have gone at all’. The exclusion led to protracted conflict between the student, the academic discipline and the legal office. A lesson learnt from this incident was that students may take a ‘scattergun approach’ to resolving situations in their favour by making demands of WIL staff and other university divisions. UL9 remarked that ‘people feel bombarded, and they just give in to the student’s demands, and things happen that shouldn’t happen’.

**Hazards in the workplace**

Another category of program risk is hazards in the workplace. University lawyers deal with a series of hazards in the workplace for students that expose the university to potential legal risk. The hazards described by university lawyers can be classified into three areas: host organisation personnel; the workplace environment and host organisation supervision and attitude. Each area will be discussed in turn.

*Host organisation personnel*

University lawyers discussed how the legal risk of sexual harassment and bullying of students by host organisation personnel are compounded if WIL staff do not handle student complaints appropriately. While universities have harassment and bullying policies which contain procedures for handling student complaints, the responsibility for handling these complaints typically rests with WIL staff. Note it is these policies the university lawyers use as a guide to manage the legal risks associated with WIL. A failure to handle the complaint in accordance with university policy, for example by failing to put the allegations to the alleged perpetrator before making a decision, can support legal action by the student, host organisation or alleged perpetrator against the university. UL10 recalled an allegation of bullying made by a student in which WIL staff did not provide the alleged perpetrator with an opportunity to respond. The alleged perpetrator accused the university of defamation. A subsequent investigation revealed that the allegations were not entirely correct and there was another side to the story – the parties had been in a relationship – which added another layer of complexity to the situation.

University lawyers suggested that a breach of university policy may be due to WIL staff reacting with emotion to a situation rather than with the rationality reflected in university policy. According to UL10, WIL staff can possess ‘a propensity to try and react emotionally as well… to salvage the situation very quickly but not following the procedures and then you get into trouble’. An emotional impulse to resolve the situation can ignore the procedures in place for handling student complaints. Such procedures and policies are there to provide a framework to manage risk. The concept of ‘emotive WIL staff’ was also discussed by UL2 in relation to disciplinary action against a student who took ‘selfies’ of a patient during a health WIL placement. The student was remorseful for her actions, apologised to the host organisation, the action was innocent as opposed to deliberate and there was no reputational or financial consequences for the host organisation. Nevertheless the reaction by WIL staff was to withdraw the student from
the course. Pragmatism prevailed and the student was directed to repeat a part of the WIL program.

*The workplace environment*

The workplace is an authentic learning environment for students but may also expose students to physical and psychological harm. Students have been involved in motor vehicle accidents whilst they were driving to a workplace (UL11), and have suffered needle stick injuries during a clinical placement (UL13). There is also potential psychological harm to students associated with their involvement in workplace incidents. UL6 recalled a medical student who assisted in the treatment of a patient in the emergency section at the hospital. The patient subsequently died and there were concerns about the level of care provided to the patient. An immediate concern for the university was the student’s psychological well-being from exposure to the incident. Whilst the workplace provides a rich learning experience for students by enabling them to interact with clients, it is clear that the nature of the client and the workplace can increase program risk. UL4 provided an example of youth work students on placement interacting with at-risk youth at night. UL4 asserted that this work context is higher risk compared to a student attending an office and working with finance staff as part of a WIL placement in commerce.

*Host organisation supervision and attitude*

Student supervision by the host organisation in the workplace is necessary to minimise the risk of student mistakes which may cause harm to the client or patient of the host organisation (UL10). Poor supervision or lack of supervision can hamper the quality of the student’s learning experience, as well as expose the student and the host organisation to harm. UL6 recalled a WIL placement in a processing facility. The student was allocated decision-making responsibilities which were not appropriate in the circumstances. Issues with the processing facility resulted in physical injury to consumers. This was an example of allocating duties which were the responsibility of host organisation staff and were beyond the learning objectives of the WIL program.

The attitude of the host organisation to the WIL program can also be a hazard in the form of exposing students to harm in the workplace. Host organisations may consider the student as ‘free labour’ and fail to appreciate that the primary purpose of the WIL program is student learning. Academic disciplines in their promotion of the WIL program may be responsible for creating or reinforcing such misunderstanding by a host organisation. For instance UL1 came across promotional documents in a WIL program which had words to the effect of ‘let our students work for you for free’. Also, a host organisation attitude to students as ‘free labour’ was also clear to UL5 by the reaction of a host organisation to a contract proposed by the university: ‘well what are you on about? This is just work for no pay’. According to UL5, the attitude arose because the host organisation could not understand the learning imperative of a WIL placement. As UL5 reflected on the situation, ‘…to me it just seemed like, you know, exploitation. We [the host organisation] get this cannon fodder coming through, we’ll stick them on this project’. The host organisation was looking for students to work for free, contrary to the university expectation that learning was the primary objective of the WIL placement. The host organisation attitude can potentially generate a number of hazards in the workplace, including poor supervision and a workplace environment that condones the exploitation of students as free labour. UL13’s experience with a WIL placement in the education discipline demonstrates the potential impact of host organisation attitude to the WIL program on student supervision. The WIL agreement reviewed by UL13 was not appropriate in the sense that the student was unsupervised and the placement was
effectively free labour for the host organisation, without any corresponding commitment
to supervision as part of the learning experience.

**Student misuse of social media**

Another program risk identified by one university lawyer was misuse of social media. Social media networks such as Facebook, Twitter, Google+ and Instagram may have a loyal following of student users. WIL is likely to represent the student’s first exposure to the workplace environment of their chosen field, and this new experience can be discussed, summarised, criticised, photographed and video recorded with relative ease using web-enabled technologies. Consequently, there is a risk that students may misuse social media on a WIL placement. UL2 had experienced this risk on at least two occasions. UL2 recalled a situation in which a student on placement entered a morgue. Despite the host organisation prohibiting mobile phones in the morgue, the student proceeded to photograph a dead body and posted the photographs on Facebook with inappropriate comments. Another situation involved a nursing student taking self-portraits (selfies) with a patient that the student worked with during the WIL placement, subsequently posting these on Facebook. Despite obtaining patient consent, the conduct was not appropriate and may have violated health and privacy laws. As UL2 acknowledged, ‘there was nothing untoward about it, but the reality is, you just can’t do it. I mean, it’s in the health business… same as taking a photo with a kid… you just can’t do it and put it up on Facebook’. The next section situates the experiences of university lawyers in empirical studies addressing legal risk.

**Discussion**

A number of legal areas underpin the risks associated with student disability and medical
conditions: confidentiality, workplace health and safety, negligence, privacy law and
discrimination. The survey by Cameron and Klopper (2015) found that these areas were
all significant sources of legal work and/or future legal risk. The challenge of managing
these legal risks has been expressed by WIL staff in empirical studies and is shared by
university lawyers in the case study. There can be a tension between student rights,
student competence and workplace safety. Student rights include the provision of
additional support on WIL placement by the university and/or host organisation (known
as reasonable accommodations or adjustments), as well as the right not to disclose their
disability or medical condition. However, competence entails the student’s ability to
perform the tasks required of the WIL placement to an acceptable standard, and their
suitability to practice in their chosen field on graduation. Workplace safety involves the
safety of clients/patients, students and host organisation personnel in the workplace.
Rankin, Nayda, Cocks, and Smith (2010) describe this tension as a ‘dichotomy between
balancing the rights of individuals, disclosure, the organisations involved and their
clients’ (p. 539).

Reeser (1992) and Nolan, Gleeson, Treanor, and Madigan (2015) described the
concern of WIL staff with balancing the safety of the patient or client and providing
appropriate support for students. UL2 also experienced this tension in relation to the
students with dwarfism and the allergy to latex. For UL2, the conflicting legal risks were
the failure to provide reasonable adjustments for two nursing students in the workplace,
and exposing patients to harm by having the student in the workplace. UL2 adopted the
position that patient safety was paramount. The ability of the university and host
organisation to provide appropriate support in the first place is contingent on the student
disclosing their disability or medical condition. Students exercise their right not to disclose for fear of being excluded from the WIL program (Walker, Dearlely, Hargreaves, & Walker, 2013) or being treated differently (Morris & Turnbull, 2006; Nolan et al., 2015). The university cannot compel disclosure by asking direct questions about the student’s disability or medical condition. But the student’s decision not to disclose compromises a safe workplace environment and places the student, host organisation, staff and clients at risk (Rankin et al., 2010). The experience of the host organisation in UL8’s case is insightful concerning the impact of non-disclosure from a client and host organisation perspective. The host organisation’s hands were bound by a series of legal obligations related to student discrimination, privacy, and workplace safety. The host organisation knew the student had an issue which it could not compel the university or student to disclose. Nevertheless the student’s continued participation in the workplace was jeopardising patient safety. The tension here is between the student’s rights to privacy and confidentiality and protecting the public from harm by ensuring the competency of the student in the workplace (Conway & Swain, 2002).

There is also a tension between student rights and competency, more specifically the ability of the student to complete the WIL placement and the suitability of the student to practice in their chosen field on graduation (Gilbert, 1998; Walker et al., 2013; Nolan et al., 2015). Karickhoff and Howley (1997) characterised the two positions as ‘equality’, that education should be an opportunity open to all, versus ‘standards’, that education should be cultivating the skills and knowledge to assure competence to a minimum level of acceptability. An academic discipline that admits students with a disability or medical condition to a WIL program supports their right to equal treatment in higher education. However, the academic discipline is considered a poor gatekeeper to the profession if the student does not have the minimum level of competence required to complete the WIL program or to practice in their chosen field (Gillis & Lewis, 2004). Poor gatekeeping was identified by university lawyers as a legal risk that may lead to the repeated failure of students on WIL placement or removal of the student from the WIL placement. The student may be subsequently excluded from the university, which can lead to protracted legal dispute or to the university enabling the graduation of students who are not suitable for the profession.

University lawyer experiences of workplace bullying, sexual harassment and poor supervision in the case study are shared by WIL staff and students in many empirical studies, as identified by Cameron (2016). In particular, university lawyer experiences with hazards in the workplace are supported by the survey findings of Cameron and Klopper (2015) in which workplace health and safety was a prominent area of legal work, and considered to be the greatest future legal risk to the university with respect to WIL programs. The significant number of empirical studies addressing hazardous workplace environments or work practices generally address three events or circumstances: student exposure to diseases in medical practice, most notably needle-stick injuries; physical injury to students caused by workplace equipment; and musculoskeletal injuries suffered by dental students whilst operating workplace equipment (Cameron, 2016). University lawyers expanded the legal risks identified in the empirical studies by describing personal factors of WIL staff, students and host organisations as the cause or consequence of workplace hazards. An emotional impulse by WIL staff to resolve a program risk such as bullying or sexual assault, without complying with university policy, may itself generate an additional legal risk – a breach of university policy (Table 2). A host organisation attitude that students represent free labour may expose students to an exploitative workplace environment. Further, the psychological impact of student involvement in a
traumatic event such as serious injury or death of a patient can be as significant as the physical injuries described by university lawyers.

UL2’s experiences of students using social media to publish prohibited client and host organisation images is a type of legal risk previously unexplored in empirical studies, but is supported by case law from the United States. Cain and Fink (2010), in a legal review of social media in higher education, found two cases involving student use of MySpace, the popular predecessor to Facebook, during their WIL placement. In *Yoder v University of Louisville*, a nursing student made ‘caustic and profane observations on race, sex, and religion when commenting in MySpace postings about patients she had encountered’ (Cain & Fink, 2010, p. 2). In *Snyder v Millersville University*, a student teacher posted a photograph of herself wearing a pirate hat and holding a plastic cup with the caption ‘drunken pirate’. As social media applications continue to evolve in terms of functionality and remain popular with student users, it is likely that universities will encounter more incidents of student misuse of social media while on WIL placement.

**Key insights from the case study**

The experiences of university lawyers described and analysed in the case study provide new insight about legal risk in relation to WIL programs. The case study confirms an empirical theme of conflicting legal risks pertaining to student disability and medical conditions, expands the range of hazards in the workplace that may be regarded as legal risks, and reveals student misuse of social media as an emerging legal risk. In particular, the actions of WIL staff in response to program risks, poor or non-existent supervision of students, and host organisation attitudes to WIL programs were identified as potential workplace hazards. Emotive WIL staff may not comply with university policy when investigating a student complaint of harassment or bullying in the workplace, whereas a host organisation attitude that students represent free labour may expose students to an exploitative workplace environment with attendant legal and reputational consequences for the university. The misuse of social media by students during the WIL placement may also be a significant future legal risk, given the functionality, growth and popularity of web-enabled technologies and social media applications that disseminate text and images.

This research is also significant by virtue of its practical application for university stakeholders. The program risks identified in Table 2 can be applied by university stakeholders to evaluate risk management with respect to WIL programs. University management, academic disciplines and university lawyers may address the following questions during such an evaluation:

- What are the program risks relevant to the academic discipline delivering the WIL program?;
- What are the current frameworks designed to manage the program risks?; and
- Are the current risk management frameworks satisfactory and how can they be improved?

**Conclusion**

This research advocates that WIL programs are a risky business for universities. The strategic opportunities that WIL presents for the university cannot be achieved without the university taking on unavoidable legal risks. The challenge for universities is to maximise the strategic opportunity of WIL but to minimise the legal risks it entails. In order to meet this challenge, university lawyers, WIL staff and university management
can apply this research to evaluate and improve existing risk management frameworks, as well as educate themselves and their colleagues about legal risk in WIL programs.

References


