

# Minimising risks for South Australia's legal interns

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## Abstract

Australia's legal profession is currently undergoing a long-awaited reckoning as professional representative bodies, law firms and courts craft solutions to the embedded culture of sexual harassment. But what of the other exclusionary and inequitable practices in legal workplaces? This article considers a project to minimise the myriad risks for legal interns in South Australia. By educating both law students and placement hosts about interns' rights, and how lawyers from a range of backgrounds can be supported to succeed, we hope to facilitate equitable and successful participation in legal work experience for a new generation of diverse and inclusive practitioners.

## Keywords

Legal education, equality, diversity, internship, work placement, student supervision

Participating in 'real work' as a volunteer, an intern, or as a work experience participant, can be a meaningful way for students and recent graduates to gain workplace experience to help them secure a job in their chosen field. However, this can lead to a vicious circle, as described by the International Labour Organization (ILO) in 2013:

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.<sup>1</sup>

This is also true in the Australian legal profession, where work experience is becoming increasingly

important in the quest to secure graduate employment. A curriculum vitae (CV) of legal work experience, unpaid or paid, is quasi-mandatory for law students seeking to work as lawyers.<sup>2</sup> Practical legal work is described as 'the key gateway to securing a graduate job at top commercial law firms'.<sup>3</sup> One major Australian legal recruitment company, Burgess Paluch, went so far as to advise graduate lawyers seeking entry into the legal profession to:

[M]ake an effort [to] get some practical experience in the area/s of interest you have. *As much as you can. Actually, more than you were thinking – double it and then a bit more.* Do it paid or unpaid and do it well. It will pay off, massively. Not

<sup>1</sup>International Labour Organization, *Global Employment Trends for Youth 2013: A generation at risk* (2013) 64.

<sup>2</sup>Anne Hewitt et al, 'Weighing the Cost of Expectations that Students Complete Legal Work Experience' (2022) 32(1) *Legal Education Review* 109.

<sup>3</sup>Misa Han and Edmund Tadros, 'Law Students Spend "Multiple Years" Building CV for Clerkship', *Australian Financial Review* (online, 13 July 2017) <https://www.afrc.companies/professional-services/law-students-spend-multiple-years-building-cv-for-clerkship-20170625-gwy9h3>.

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doing it will not pay off. Massively. Try to get clerkships especially, and *as many as you can*.<sup>4</sup>

## Not all students can access or complete legal work experience

However, some cohorts of students, particularly those belonging to equity groups, face additional obstacles in securing or completing practical placements in law firms and workplaces.<sup>5</sup> This is likely to negatively affect their graduate employment prospects, and reinforce disadvantage. More broadly, it risks excluding some groups from the practice of law. If the legal profession wishes to be inclusive, it must do more. This would enable economic benefits which flow from improved decision making and innovation associated with heterogeneous workforces,<sup>6</sup> as well as enhanced capacity to serve a multicultural community. To achieve this the profession must ask itself: how can it ensure that a wider range of students can access, and succeed in, pre-employment legal placements? In other words, discrimination isn't limited to entry into the law degree or graduate recruitment. There is a neglected middle ground which must be considered, in which students from non-majority backgrounds who have secured a position in the law degree are assisted to transition into legal practice.

While there is limited data on race and racism in the Australian legal sector, historically the profession has been dominated by 'white, heterosexual, able-bodied, middle class men'.<sup>7</sup> Despite wider trends towards multiculturalism and inclusion, this status quo in the Australian legal profession has proven difficult to displace.<sup>8</sup> While female representation at various levels of the profession has improved, cultural diversity has not kept pace.<sup>9</sup> As someone who bucked this trend during her own career, Katrina Rathie was quoted as saying that: 'Research shows that law is the whitest profession. The whiteness of law firm leadership in Australia has been same-same for the past 100 years or more.'<sup>10</sup>

People from diverse backgrounds report discrimination and microaggressions as a regular experience in legal workplaces. For example, Molina Asthana noted that:

I have had to work doubly hard to prove myself, my mistakes are picked up and highlighted more so than people of Anglo-Saxon background, my efforts are constantly undermined, I am often spoken over and considered a troublemaker for having a different opinion.<sup>11</sup>

And Zaahir Edries similarly told Australia's multicultural and multilingual broadcaster, Special Broadcasting Service (SBS) that a law firm manager had asked in relation to employees fasting for Ramadan: 'Really? How many of them do we have working here? Perhaps we should keep an eye on them.'<sup>12</sup>

Dealing with these types of comments and attitudes creates additional labour and mental load, making it more difficult to complete work on a day-to-day basis.<sup>13</sup> This may be the case even for those well established in their careers. For those at the very outset, the challenges are, inevitably, exacerbated. In a 2021 autoethnography, a young law graduate from a non-majority background reported the ostracism she experienced. This limited the benefit she might otherwise have obtained from the placement:

I could see the discriminatory treatment of the supervisor. ... I was not given the opportunity to practice some of the difficult tasks, but others would be given the same opportunity. I am sure if I was given a bit more opportunity I would have gained more experience.<sup>14</sup>

While there is anecdotal evidence that interns from minority backgrounds are at increased risk of facing inappropriate behaviours in legal workplaces, the reality is that only very limited research exists about the extent of the issues they experience.

## Responding to the problem

There are two important dimensions to a successful response to this problem. The first is ensuring equitable recruitment strategies which will help students from all backgrounds to be competitive for internship placements. As a profession – in theory, at least – this commitment has

<sup>4</sup>See Paul Burgess, 'Advice for Graduate Lawyers: How to Make Your Application Stand Out', *Burgess Paluch* (Web Page, November 2021) (emphasis added) <https://www.bplr.com.au/advice-for-graduate-lawyers/>.

<sup>5</sup>Damian Oliver et al, 'Unpaid Work Experience is Widespread but Some Are Missing Out: New Study', *The Conversation* (online, 18 January 2017) [https://theconversation.com/unpaid-work-experience-is-widespread-but-some-are-missing-out-new-study-70737#comment\\_1185501](https://theconversation.com/unpaid-work-experience-is-widespread-but-some-are-missing-out-new-study-70737#comment_1185501).

<sup>6</sup>Elizabeth Forma, 'Impact of Workplace Diversity' (2014) 3(1) *Review of Integrative Business and Economics Research* 402; *Fostering Innovation through a Diverse Workforce: Global Diversity and Inclusion* (Forbes Insights, 2011); L E Gomez and Patrick Bernet, 'Diversity improves performance and outcomes' (2019) 11(4) *Journal of the National Medical Association* 383; Vivian Hunt, Dennis Layton and Sara Prince, 'Why Diversity Matters', *McKinsey & Co* (Web Page, 1 January 2015) <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/why-diversity-matters>.

<sup>7</sup>Margaret Thornton, "'Otherness' on the Bench: How Merit Is Gendered' (2007) 29(3) *Sydney Law Review* 391, 394; see also 'Law Firm Leadership: Is It Alright to be All White?', *Johnson Partners* (November 2021) <https://johnsonpartners.co/news/law-firm-leadership-is-it-alright-to-be-all-white/>.

<sup>8</sup>Brian Opeskin, 'Dismantling the Diversity Deficit: Towards a More Inclusive Australian Judiciary' in Gabrielle Appleby and Andrew Lynch (eds) *The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (Cambridge University Press, 2021) 83.

<sup>9</sup>Sam McKeith, 'Building Diversity in the Legal Profession', *LSJ Media* (online, 4 May 2019) <https://lsj.com.au/articles/building-diversity-in-the-legal-profession/>.

<sup>10</sup>'Law Firm Leadership: Is It Alright to be All White?' (n 7).

<sup>11</sup>Jess Feyder, 'How Can We Diversify Australia's Legal Profession?', *Lawyers Weekly* (online, 26 July 2022) <https://www.lawyersweekly.com.au/biglaw/35056-how-can-we-diversify-australia-s-legal-profession>.

<sup>12</sup>Massilia Aili, 'Eighty per cent of Muslims in Australia say they have experienced discrimination', *SBS News* (online, 19 July 2021) <https://www.sbs.com.au/news/article/eighty-per-cent-of-muslims-in-australia-say-they-have-experienced-discrimination/od64j7jmr>.

<sup>13</sup>Justin Bullock et al, 'They Don't See a Lot of People My Color: A Mixed Methods Study of Racial/Ethnic Stereotype Threat Among Medical Students on Core Clerkships' (2020) 95(115) *Academic Medicine* S58.

<sup>14</sup>Hewitt et al (n 2) 125.

already been made. The Law Council of Australia's Diversity and Equality Charter, enthusiastically adopted and widely supported across the industry in 2015, includes a pledge to:

[P]romote and support a strong and fair legal profession comprising, accommodating, encouraging and respecting a diverse range of individuals and views.<sup>15</sup>

Around the same time as the profession was accepting this need for change, there were trials of blind recruitment policies, where names and other details that might point to gender or ethnicity were removed from CVs prior to hiring. The aim of doing so was to remove any bias, unconscious or otherwise. Alarming, early results of this trial suggested that it resulted in a backwards step for diversity.<sup>16</sup> Removing identifying information and opportunities for personal interaction makes it easier to hire the applicant with a perfect academic transcript who has not had to work long hours during their studies to support themselves, or who has completed their degree without balancing caring responsibilities. Without considering the whole person, firms could miss out on candidates with potential for excellence and success beyond those identified by traditional markers such as grade point average.

In 2022 the Honourable Justice Hament Dhanji, the first Australian of Indian descent appointed as a Supreme Court judge in NSW, gave an address at a cultural diversity networking event. He noted that while efforts were laudable to make recruitment processes more equitable, if the system continued to prioritise and elevate traits and values which are inherently based on those long held, and in many cases, outdated views of what makes a 'good lawyer', applicants from particular backgrounds will continue to come out on top.<sup>17</sup>

All this impetus for change is encouraging to see. However, when taking steps to facilitate change, we need to remember to always question the bases for the particular views that are held and reached. Otherwise, at the end of a process designed to facilitate change, you end up legitimising the same kinds of practices and perspectives that undermined diversity in the first place.<sup>18</sup>

It is, therefore, important for the profession, and particularly those engaged in recruitment, to critically engage with conceptualisations of excellence. Adjusting recruitment policies to take a whole-of-person approach is an important first step to improving diversity. In addition, working to ensure staff involved in recruitment are aware

of the impact of unconscious bias and not seeking to recruit only those who fit the mould of the lawyer of the past remains important. Tackling ingrained bias is no easy feat, but change must start somewhere. Together such initiatives may assist applicants from different backgrounds to be regarded as more competitive for legal internships and firms to become more aware of the advantages of a diverse and representative workforce.

However, addressing obstacles to recruitment is not sufficient. In addition, the profession must ensure that students from minority groups who do secure legal internships are protected from harassment and discrimination while in the workplace. In response to experiences of isolation and vulnerability, a range of grassroots associations such as the Asian Australian Lawyer's Association, Muslim Legal Network, and African Australian Legal Network have developed to provide networks and support for lawyers from diverse backgrounds.<sup>19</sup> While these are valuable initiatives, they are not a sufficient response to the problem – in part because they cannot engender structural or cultural change, and also because those at the very start of their legal careers may not be aware of, or could be reluctant to access, the support they can offer. To complement these grassroots organisations, The University of Adelaide Law School has commenced an initiative focused on promoting safer legal placements to support all students in legal work experience. Empowering those experiencing disadvantage and discrimination through education and support is an important tool. However, it is not sufficient to expect the vulnerable to assert their rights when the system remains stacked against them. Another important step is for host organisations to take responsibility to ensure that all workers, including interns, are treated with respect. This is the focus of a current second stage of our project, which has been supported by the Law Foundation of South Australia.<sup>20</sup>

## Safer legal placements project

The Law School's safer legal placements project is multi-stage. In its first stage, the school developed a range of resources to ensure students are equipped to recognise and respond to inappropriate behaviours in the workplace. Further details of this aspect of the project are provided below. As legal academics, we are now working on the second stage of the project – to develop tools and strategies to ensure host firms and supervising solicitors are empowered to support students and junior lawyers, to facilitate positive cultural change within their own workplaces,

<sup>15</sup>'Diversity and Equality Charter', *Law Council of Australia* (2015) <https://www.lawcouncil.asn.au/files/web-pdf/1508-Charter-Diversity-and-Equality-Charter.pdf>.

<sup>16</sup>Henry Belot, 'Blind Recruitment Trial to Boost Gender Equality Making Things Worse, Study Reveals', *ABC News* (online, 30 June 2017) <https://www.abc.net.au/news/2017-06-30/blind-recruitment-trial-to-improve-gender-equality-failing-study/8664888>.

<sup>17</sup>Hament Dhanji, 'Cultural Diversity in the Law: It Is Not Revolution – But We Are Going to Occupy the Buildings' (Speech, Law Society of New South Wales, 27 September 2022) 21–25.

<sup>18</sup>Ibid 25.

<sup>19</sup>See, eg, Asian Australian Lawyers Association [www.aala.org.au](http://www.aala.org.au); Muslim Legal Network [www.muslimlegallawnetwork.com](http://www.muslimlegallawnetwork.com); African Australian Legal Network <https://www.aaln.org.au>; Belot (n 16); see also a list of grassroots organisations at: 'Diversity Legal Associations', *Law Institute of Victoria* (Web Page) <https://www.liv.asn.au/Web/Content/Communities—Networks/Diversity-Associations/Diversity-Associations.aspx>.

<sup>20</sup>Law Foundation of South Australia Grant A596-3.22.

and to maximise the opportunities for success for diverse students and graduates.

To begin, we interrogated the complicated legislative protections to determine which extended to individuals undertaking internships. We developed a summary of the rights extended to:

- students undertaking unpaid placements as a part of their degree;
- students and graduates undertaking unpaid placements which are not a degree requirement, and;
- students and graduates being paid for their placements.

In addition to the rights summary, we created a presentation about workplace rights and protections that can be used in a classroom.

We also reviewed a decade of reviews and reports of investigations regarding inappropriate behaviours in Australian workplaces, including the legal profession. Based on that analysis, we prepared a series of amalgam 'case studies' based on real-life submissions to the various reviews in which we sought to capture a variety of quintessential situations of bullying, harassment and discrimination that junior lawyers might experience. These case studies were designed to be learning resources for educating law students, and also a tool to engage with the profession regarding these issues.

We then requested members of the South Australian legal profession provide commentary on the case studies. In recruiting these commentators, we sought to ensure representation from both junior and senior ranks of the profession, men and women, barristers and solicitors, and participants from diverse racial or ethnic backgrounds. In the end, we filmed interviews with seven members of the profession – three solicitors, three barristers, and one judge – and edited these into accessible video resources. Each video involved responses to the case studies, including reflections on the inappropriateness of the behaviours illustrated, the way it would be regarded within the profession, possible response strategies, and personal advice about how a victim or witness in each scenario could try and navigate the situation.

Finally, we embedded the protections summary, case studies and video resources into the compulsory final year curriculum in the Law School. The resources are integrated in a broad consideration of lawyers' ethical conduct and responsibilities, including:

- the implications of inappropriate behaviours for admission to, and continuity in, the profession;

- analysis of the meaning of the ethical requirement not to bring the profession into disrepute, with a focus on inappropriate behaviours such as sexual harassment and bullying;
- examination of the legal professional conduct rule regarding sexual harassment, and analysis of the Legal Practitioners Conduct Rules;
- discussion of the enforcement mechanisms for discrimination, harassment and bullying in the profession, and consideration of the relevant support and information services that members of the profession can access.

In a video produced for our student resources, one of the solicitor interviewees noted:

[W]e're a multicultural society ... but in terms of the legal profession, it is still predominantly at this stage a male, white, Caucasian type profession. And I know, even for myself, as a junior Asian lawyer trying to speak up in a workplace where there weren't many people that looked like me, or understood my own background, I found it quite hard.<sup>21</sup>

The lack of diversity in the profession can make people feel isolated. This seems to be particularly the case for young women from minority backgrounds. With data showing that over 24 per cent of the Australian population is from a non-European background,<sup>22</sup> and nearly 25 per cent speaking a language other than English at home,<sup>23</sup> there is a significant need to promote diversity and representative equality in the profession. There is also a need to address challenges for those who are first in their family, without existing connections to the profession, and older graduates.<sup>24</sup> While it is important for government and key industry players to work together to bridge legislative gaps, unpaid interns – who may be feeling isolated and vulnerable in a workplace – are unlikely to make a complaint, even if legislative protections were extended.<sup>25</sup> Our resources for students will go some way in helping to empower interns, but they are just a first step. What is needed is a multi-pronged approach.

## Lessons learned and recommendations

For law students wanting to transition into the legal profession in Australia, internships are quasi-mandatory. However, the lack of diversity within legal internships, and within the Australian legal sector more broadly, can mean some students undertaking these internships may experience intersectional disadvantage that leaves them vulnerable to discrimination and harassment. In recent

<sup>21</sup>University of Adelaide, 'Safer Legal Placements' (video resource, 2021).

<sup>22</sup>Australian Human Rights Commission, *Leading for Change: A Blueprint for Cultural Diversity and Inclusive Leadership* (July 2016) 5. 'Non-European' encompasses all European backgrounds including Anglo-Celtic, North-West European, Southern European and Eastern European.

<sup>23</sup>Australian Bureau of Statistics, 'Cultural Diversity: Census', *Australian Bureau of Statistics* (Web Page, 28 June 2022) [https://www.abs.gov.au/statistics/people/people-and-communities/cultural-diversity-census/2021/Cultural\\_diversity\\_data\\_summary.xlsx](https://www.abs.gov.au/statistics/people/people-and-communities/cultural-diversity-census/2021/Cultural_diversity_data_summary.xlsx).

<sup>24</sup>See Hewitt et al (n 2).

<sup>25</sup>Equal Opportunity Commission (SA), *Review of Harassment in the South Australian Legal Profession* (April 2021) 128–129; International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (2019) 84–85; Kate Eastman, 'We Need to Address the Shame Culture of Sexual Harassment' (2020) 69 *Law Society of NSW Journal* 24; Hagar Cohen and Raveen Hunjan, 'Three lawyers speak out with allegations of racism inside Legal Aid', *ABC News* (online, 7 June 2022).

years a light has been shone on a pervasive culture of discrimination and harassment within this same legal sector. Multiple stakeholders have worked together to take steps to address discrimination and harassment based on sex. The same action has not been taken in relation to other bases of discrimination, including race, sexual orientation, LGBTIQ+ status and so on.

While it remains imperative that governments tighten legislative protections, if minority workers remain underrepresented and isolated there will remain barriers to accessing such protections. Various bodies have provided recommendations on how the profession might begin to change this reality, and over and again universities have been called upon to play a central role in orchestrating this shift.

One of the ways in which the profession can begin to meet this challenge is by equipping those at the very outset of their legal career with an awareness of the importance of practical experience, an understanding of what constitutes inappropriate workplace behaviour, and the tools for facing it. However, it is not enough to expect those with the least power to do all the heavy lifting in dealing with these issues. Universities must also partner with those hosting these students on placement to ensure that the workplaces they are entering are as safe as possible.

We have created resources for students in the final year of their degree, and all students going out on work placements. The third and final stage of our project is to create a suite of resources to assist organisations hosting these students, recognising the differences between placements with commercial firms, in public service and community legal centres, etc. These

resources will ensure hosts are aware of students' rights, best practice in running an internship, and supervision techniques to support all placement participants. As legal academics, and members of the profession more generally, we hope that in doing so we can create safer placements, as well as contribute to a turning of the tide within the sector.

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