

VIEWPOINT

Proposed Mechanism to Enable Paid WIL Internships for Engineering, Business and Law in Australia

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The University Accord was released in March 2024 which calls for students doing a compulsory WIL placement to be paid. There is no current mechanism to enable this with two general approaches to address this problem proposed. The first being to ask industry to pay students at award rates inappropriate for experience and role, and the second is to suggest changes to the *Fair Work Act*. So far there has been little or no progress implementing either of these approaches. This article proposes a new solution to this problem which can be implemented immediately by the Universities with the help of the National Tertiary Education Union. This approach could see a significant amount of WIL Internships become paid as early as 2025 and would create a strong basis for getting all WIL internships to be paid.

Keywords: paid, work integrated learning, internships, legislation

Introduction

Undertaking a WIL activity is mandatory for most undergraduate degrees awarded in Australia. Currently, research from 2016 showed 58% of 18–29-year-old students undertake an internship that is unpaid (Commonwealth Department of Employment, 2016). Many of these activities require students to take time off paid work, travel, make alternative caring commitments and sometimes temporarily relocate, with the student taking on these costs as well, resulting in financial hardship and placement poverty. These factors are a consideration in leaving/course attrition.

In reaction to the University Accord released in March 2024 (Department of Education, 2023) there are calls for students to be paid by “the institutions” when undertaking these mandatory WIL activities which are a barrier to graduation and are part of the industry endorsed course accreditation. For sectors like engineering, business and law, industry is expected to fund these WIL activities whilst other more government supported sectors like health is expected to be funded directly by the Federal or State Government. Currently there is no government plan as to how to implement this recommendation despite years of discussion.

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Discussion

The most constraining factor of paid WIL activities is the *Fair Work Act* due to the definition of an employment relationship (Department of Employment and Workplace Relations, 2009). The guidance by the Fair Work Ombudsman is:

Unpaid work experience or internships can be okay if:

- they're a student or vocational placement, or
- there's no employment relationship.

A person and a business can make an employment contract in writing or verbally. However, they can also make a contract when the person does activities for the business that look like work. This even includes arrangements when both the person and the business:

- say it's not employment, or
- agree the business won't pay the person for their work.

Unlike unpaid work, people in employment relationships are employees of a business and entitled to:

- a minimum wage
- the National Employment Standards
- the terms of any applicable award or registered agreement.

To work out if a person is an employee or not depends on a number of things. One of the most important is whether the arrangement involves creating an employment contract. (Fair Work Ombudsman, Work experience and internships, para 3-7)

Looking at the definition of a WIL experience from the Routledge International Handbook of Work-Integrated Learning, a student is expected to undertake “work-like” activities (Zegwaard et al., 2023). For a WIL internship, the student therefore undertakes activities that look like work, which if paid arguably constitutes an employment contract which entitles the students to the relevant employment Award or EBA conditions.

If we examine the proposed solutions for payment of WIL activities, they fall into two major categories:

- Make industry employ students under their Awards/EBAs
- Change the *Fair Work Act* definition of an employment relationship.

Looking at the first option, industry do not choose to employ students on their WIL Internship due to cost. During their WIL internship, although the student is not qualified, they will undertake activities that align with defined roles within the Awards and EBAs and legally should be paid accordingly. This makes students very expensive. For example, an engineering student doing a paid WIL Internship at Queensland University of Technology (QUT) is entitled

to a HEW4.1 under the EBA which is \$37.36 per hour or equivalent to \$70,680 per annum. The student also requires additional supervision and training by an ongoing academic, a short-term contract and other resources. Because the student is employed at a HEW 4.1, QUT can demand the student produce meaningful work outcomes consistent with a HEW4.1 rather than performing training activities for their future qualification. This makes employing a student expensive but also creates a risk as to whether they will be doing an actual WIL activity for their future qualification or creating commercial outcomes for their current employment status.

To address the high cost of employing students, it has been suggested that industry should create an “internship” paygrade within their Award or EBA specifically for tertiary WIL placements. This is naive as there are currently over 120 Awards in Australia and 9,797 current Enterprise Bargain Agreements as of September 2023 (Department of Employment and Workplace Relations, 2023). Changing a number of these, changing them consistently, and all within a similar timeframe is unlikely to happen as in engineering alone there are 86 active EBAs as of December 2023. To get a uniform, consistent definition and set of work entitlements for a WIL placement even for one sector is logistically improbable. This approach is also risky as these Awards and EBAs are not bound to follow the principles of WIL and therefore could effectively create a “low-paid worker” rather than a paygrade to support WIL activity students. Furthermore, this solution fails to address the other costs of paid WIL activities which include costs of administration of short-term contracts, provision of supervision, and other resources.

Looking at the second solution of changing the *Fair Work Act* to either eliminate unpaid “internships” or create a special condition for WIL activities. Currently the definition of an “internship” by Fair Work has no reference to WIL as this is a phrase coined by the tertiary sector to cover internships, placements, projects and in-curriculum activities. Instead, WIL activities can be done as an “internship” due to the training/teaching aspect of the placement. Changing the *Fair Work Act* therefore would either entail changing all internships to become paid, or, creating a new employment type specifically for WIL activities. This is legally difficult as internships are undertaken by a range of non-university affiliated situations such as high-school work experience, employee return to work training, trialling for workers changing careers, introduction to new fields/companies, and expanding skills base/experience. Changing the definition on an internship to be paid would therefore have significant impact on the wider economy and could create loss of critical opportunities for other Australian workers.

The second option would be to change the *Fair Work Act* to have a special new definition for a WIL activity. This change would make these WIL activities either subject to the existing Award and EBA rates or require the creation of a defined Award specifically for WIL activities. This does not address the administration burden on industry, or the legal burden on the Government which is significant. Whatever the path, each one of these options is risky as any changes could either impact all workers and open up the possibility of Australian workers being exploited by being classed as ‘interns’ rather than as workers or give university students undertaking WIL special status not afforded to normal Australians while creating an administrative and legal burden to both hosting organisations and education providers. The

difficulty of changing the *Fair Work Act* is evident as there currently is no leading proposal on how to change the wording of the *Act*.

Currently in the university system, students can be remunerated by industry through scholarships or bursaries, but they are not fit-for-purpose to support WIL activities for large student cohorts. A bursary is specifically a payment made to students to cover costs of a specific activity and has an upper financial limit of \$2000 to ensure it is not misinterpreted as an employment relationship. Scholarships can be for higher amounts than \$2000 but come with other issues. Scholarships or competitive funding must have a selection process meaning that for WIL activities, the same high performing students would be chosen repeatedly. Even if specific criteria are stipulated (diversity, hardship, etc.) this only ensures a smaller pool of select candidates. Additionally, the university would have to facilitate a selection process with scholarships able to be paid at a rate below minimum wage.

Proposed Solution

The proposed solution is that the current 42 University EBAs are changed to create a new pay grade for WIL activities. This solution importantly can enshrine the purpose of WIL into the EBA through the paygrade role definition, protecting students and the purpose of WIL. By creating a paygrade with a defined role description, this will ensure WIL is a learning experience and that students are protected by the university and the NTEU. This solution also shifts the burden/costs of short-term contracts to the universities which already have the infrastructure to deal with the scale of contracts given they are one of the most casualised industries in Australia. For the universities the win lies in enabling them to more directly interface with industry, to protect their students, and to ensure high quality learning outcomes and compliance.

The conditions of this proposed new paygrade, called here HE-WIL, are:

1. The employee must be enrolled in an undergraduate degree in the institution and actively studying during the term of the contract.
2. The employee must be undertaking WIL activity relevant to their current undergraduate enrolment at a recognised national tertiary institution.
3. The duties of this role are for the employee to complete Work Integrated Learning as described in this contract relevant to their undergraduate degree (project, placement, etc.).
4. The employee shall not be undertaking any duties relevant to the business of the university including any duties of a HEW or Academic Level A-E as described in their award. This includes teaching, research, technical services, administration, general tasks, etc.
5. The employee will retain all IP granting the university a royalty free licence to the university and the WIL placement partner.
6. The only causes for cessation of the contract are failure to comply with university policy and procedures, failure to complete legal paperwork, failure to comply with legal requirements and/or failure to engage in WIL opportunity.

7. The employee will be paid at or above the Federally determined minimum wage of the day, and be for the prescribed hours of the placement requiring timesheets signoff.
8. HE-WIL is not affected or included in the enterprise bargaining wage negotiations for HEW and Academic Levels A-E.
9. The university can charge a fixed overhead/oncosts fee of 10% for the servicing of each WIL placement contract to the industry partner.

Under this model, industry/government would pay the university, then the university would employ the student who works onsite with industry. In terms of insurance of students off campus, students on WIL placements are already insured by the university meaning no change or additional burden is created. This solution would also ensure tracking student placement hours for accreditation purposes is far more reliably done than current system which request this information from each industry partner or from the student. Importantly, this model would see WIL remain a learning activity.

One of the current issues with paid WIL activities is how to finance them. It has already been flagged that industries such as engineering, business and law are expected to pay interns themselves, whilst industries such as health are expected to be partially or wholly government funded, as seen in the 2024 Federal Government Budget which announced Practical Placement Payment for nursing, teaching and social work students. Given there is no clear plan ahead for other sectors, it is important to take a staged approach such as:

- **2024-2025:** All university EBAs are amended to include the HE-WIL paygrade. This will allow industry to voluntarily pay for WIL activities and universities to scale up administrative support.
- **2026:** Industries with high capability and high uptake of paid WIL activities will transition to all interns being paid. This will require the support of their governing and accreditation bodies such as Engineers Australia, the Law Society, etc. Negotiations acting as 'job brokers' with industries with low take up of paid internships will be undertaken.
- **2027+:** Roll out of government support to specific industry internship sectors to ensure all WIL placements are paid.

Paying students undertaking WIL activities costs money and although some industries can absorb that cost, others will struggle. Currently the government has flagged a review of the HELP scheme identifying that graduates in higher earning degrees may end up paying more. This mechanism could be used with a portion of the increase in HECS from the higher earning degrees being redirected towards funding WIL activities in these other sectors. This could then be topped up by State Governments so the financial burden of WIL activities is shouldered by all of those who will come to rely on professions such as teachers, nurses, social workers, etc. The proposed solution also provides an equitable and inclusive approach for all students regardless of ability, citizenship or socio-economic status.

Conclusion

Although unpaid WIL activities have been an issue for decades, very little progress has been made. Much of the discussion has been directed at industry and the Government to solve the issue. The proposed solution demonstrates that the university sector and the NTEU could solve a large part of this problem themselves through the EBAs across the university sector. The solution offered also ensures consistency and the preservation of the principles of a WIL experience, reduction of burden on industry and creates direct connections between industry and the universities. Since the implementation of the EBAs, the university sector has had the means to solve this issue. In 2024 the burden of completing an unpaid WIL internship is remarkably higher than in previous years, therefore it is time for the NTEU and the university sector to step up and start to solve this issue themselves rather than wait for government intervention.

References

- Commonwealth Department of Employment (2016), *Unpaid Work Experience in Australia*.
<https://www.dewr.gov.au/workplace-relations-australia/resources/unpaid-work-experience-australia-report-december-2016#:~:text=On%2022%20December%202016%2C%20the,experience%20is%20common%20in%20Australia.>
- Department of Education. (2023). *Australian University Accord*.
<https://www.education.gov.au/australian-universities-accord/resources/final-report>
- Department of Employment and Workplace Relations. (2009). *Fair Work Act 2009*.
<https://www.legislation.gov.au/C2009A00028/2023-07-01/text>
- Department of Employment and Workplace Relations. (2023). *Trends in Federal Enterprise Bargaining – September 2023*. <https://www.dewr.gov.au/enterprise-agreements-data/resources/trends-federal-enterprise-bargaining-september-2023>
- Fair Work Ombudsman. (n.d.). Work Experience and Internships.
<https://www.fairwork.gov.au/starting-employment/unpaid-work/work-experience-and-internships#tools-and-resources>. Accessed 20 August 2024.
- Zegwaard, K.E., Pretti, T.J., Rowe, A.D., and Fern, S.J. (2023). Defining work-integrated learning. In K.E. Zegwaard & T.J. Pretti (Eds.), *The Routledge international handbook of work-integrated learning* (3rd ed). Taylor & Francis Group.
<https://public.ebookcentral.proquest.com/choice/PublicFullRecord.aspx?p=7252887>.



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in Practice

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