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Facilitating Effective Work Experience Supervision to Enable Diverse Students to Succeed in the Australian Legal Profession

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# EFACILITATING EFFECTIVE WORK EXPERIENCE SUPERVISION TO ENABLE DIVERSE STUDENTS TO SUCCEED IN THE AUSTRALIAN LEGAL PROFESSION

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## I INTRODUCTION

Participating in “real work” as a volunteer, intern, or 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. While the mechanics of this process are not fully understood, it has been suggested that work experience assists students transition to the graduate labour market by allowing them to cultivate employability skills,<sup>1</sup> to develop professional connections and networks,<sup>2</sup> and act as a signifier of employability in future recruitment processes.<sup>3</sup> This certainly rings true in relation to the Australian legal profession, where having legal work experience is becoming increasingly important in the quest to secure graduate employment.<sup>4</sup> In the Australian legal profession, the industry terminology for professional work experience is generally clerkships or placements. As these terms can carry with them varying expectations in terms of whether or not the intern is still completing their degree/s, or has

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<sup>1</sup> Laura Grenfell and Cornelia Koch, ‘Internship Courses for All? Supporting Students Undertaking Unpaid University-Run Legal Internships’ (2019) 44(3) *Alternative Law Journal* 226, 229.

<sup>2</sup> This is known as ‘social capital’, the networks which connect a student or graduate to potential employers: Michael Tomlinson, ‘Forms of Graduate Capital and Their Relationship to Graduate Employability’ (2017) 59(4) *Education and Training* 338.

<sup>3</sup> Ming Cheng, Olalekan Adekola, Jo Clarisse Albia and Sanfa Cai, ‘Employability In Higher Education: A Review Of Key Stakeholders’ Perspectives’ (2022) 16(1) *Higher Education Evaluation and Development* 16.

<sup>4</sup> Thomas Bolli, Katherine Caves and Maria Esther Oswald-Egg, ‘Valuable Experience: How University Internships Affect Graduates’ Income’ (2021) 62 *Research in Higher Education* 1198. See also Anne Hewitt et al, ‘Weighing the Cost of Expectations that Students Complete Legal Work Experience’ (2022) 32(1) *Legal Education Review* 109.

completed their studies, we have adopted the language of ‘intern’ and ‘internship’ in this paper, acknowledging it is not generally the terminology in use in the legal profession itself. By legal internships we refer to all short-term work based undertaken by law students, whether for course credit or otherwise, and whether remunerated or not.

However, the authors argue that legal internships are not a panacea to ensure all legal graduates can secure quality employment. This is because there are cohorts, particularly of students belonging to official equity groups, who are likely to be less able to secure or complete legal internships and therefore miss out on any of the benefits they would enable. While there is limited data accessible on the characteristics of Australian law students completing internships, broader (interdisciplinary) evidence suggests that there may not be equitable engagement with such opportunities across the diverse student cohort.<sup>5</sup>

Research has variously identified factors such as socio-economic status,<sup>6</sup> living in regional areas,<sup>7</sup> cultural background,<sup>8</sup> disability<sup>9</sup> and age<sup>10</sup> as potential barriers to undertaking internships. The term ‘diverse students’ in this paper, except where otherwise specified, will incorporate these factors.<sup>11</sup> These factors may act as either a barrier to securing an internship or negatively impact students’ internship experience and its potential to positively impact future employability. Further, it should be acknowledged that some students will experience these factors in combination, where ‘different forms of discrimination

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<sup>5</sup> These barriers were considered across disciplines and professions in Damian Oliver et al, ‘Unpaid Work Experience is Widespread but Some Are Missing Out: New Study’ *The Conversation* (Web Page, 18 January 2017) <<https://theconversation.com/unpaid-work-experience-is-widespread-but-some-are-missing-out-new-study-70737>>; also not distinguishing between disciplines, but demonstrating lower engagement diverse students is Denise Jackson, *Student Participation in Work Integrated Learning in Higher Education – A three-year review* (Report, Australian Collaborative Education Network, 2023).

<sup>6</sup> Jackson (n 1) 9.

<sup>7</sup> *Ibid* 11.

<sup>8</sup> Christopher Niesche, ‘Australia’s Law Firms Focus on Diversity, Ethnicity and Inclusion’ *Law.Com International* (Feature Article, 12 September 2022) <<https://www.law.com/international-edition/2022/09/12/australias-law-firms-focus-on-diversity-ethnicity-and-inclusion/>>.

<sup>9</sup> Giancarlo De Vera, Maria Markoulli and George Stribling, ‘People With Disability In The Legal Industry: Time For An Attitudinal Evolution’ *LSJ Online* (Feature Article, 14 December 2022) <<https://lsj.com.au/articles/people-with-disability-in-the-legal-industry-time-for-an-attitudinal-evolution/>>; see also data about cross disciplinary engagement with WIL for those with disabilities in Jackson (n 1) 13.

<sup>10</sup> Universities Australia, *Work Integrated Learning in Universities: Final Report* (Report, 2019).

<sup>11</sup> Although we have not included female students in this definition, we would note that women are more likely to experience discrimination and sexual harassment once they have entered a legal workplace: Equal Opportunity Commission (SA), *Review of Harassment in the South Australian Legal Profession* (Report, April 2021) (‘EOC Report’). LGBTQI+ individuals are also more likely to be subject to such behaviours: Aidan Ricciardo et al, ‘Perceptions Of LGBTQI+ Diversity in The Legal Profession: It’s Happening Slow, But It’s Certainly Happening’ (2021) 46(2) *Alternative Law Journal*.

arise at the intersection of traditional grounds of discrimination' and may thereby experience (compounded) intersectional disadvantage.<sup>12</sup>

In addition, there are students who complete internships which do not facilitate them to develop the employability skills and professional connections which would help them transition into paid work. Such negative experiences could arise for a variety of reasons, but a significant one is provision of poor workplace supervision, which limits the outcomes of the internship for the participant.<sup>13</sup> In a graduate market which prioritises experience, this is likely to negatively affect graduate employment prospects.<sup>14</sup> There is evidence that students from equity groups are less likely to obtain benefits from internships, perhaps because they complete placements which are likely to achieve limited employability outcomes.<sup>15</sup> Such inequity in access to quality work experience risks promoting 'inequalities of opportunity that we have been striving diligently to reduce in courts, schools and communities'.<sup>16</sup> This is a particular concern in professions and jurisdictions in which the expectations that graduates have already completed significant work experience are strongly entrenched, such as the legal profession in Australia.

This paper will consider the importance of quality workplace supervision for diverse legal interns in Australia. In Part 2, the paper will present evidence of the obstacles to diverse Australian students securing internship placements. Part 3 will explore the lack of diversity in the Australian legal profession. Part 4 will consider importance of supervision in legal workplaces, especially for diverse legal interns. Part 5 will look at the 'Safer Legal Work' project we undertook, and in Part 6 we will analyse the conclusions that can be drawn from the project, with particular consideration regarding how the legal profession can better support a diverse cohort of future lawyers at the beginning of their careers.

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<sup>12</sup> Beth Goldblatt, 'Intersectionality in international anti-discrimination law: addressing poverty in its complexity' (2015) 21 *Australian Journal of Human Rights* 1, 47-70.

<sup>13</sup> Jenny Fleming, 'Exploring Stakeholders' Perspectives Of The Influences On Student Learning In Cooperative Education' (2015) 16(2) *Asia-Pacific Journal of Cooperative Education* 109-119.

<sup>14</sup> Matthew Wolfram, Brian Vivona and Tamanna Akram, 'On the Intersectional Amplification of Barriers to College Internships: A Comparative Case Study Analysis' (2021) 91(4) *Harvard Educational Review* 457-481.

<sup>15</sup> This conclusion was drawn in relation to work placements associated with tertiary education in the UK. See Aysha Divan, Colin Pitts, Kate Watkins, Stephanie J. McBurney, Tim Goodall, Zografou Gina Koutsopoulou & John Balfour 'Inequity In Work Placement Year Opportunities And Graduate Employment Outcomes: A Data Analytics Approach' (2022) 46(7) *Journal of Further and Higher Education*, 869-883.

<sup>16</sup> Ross Perlin, *Intern Nation: How to Earn Nothing and Learn Little in the Brave New Economy* (Verso, rev ed, 2012) xv; British Low Pay Commission, *National Minimum Wage: Low Pay Commission Report 2012* (Report, Cm 8302, 2012) 88 [3.52]; Sutton Trust, *Research Brief: Internship or Indenture?* (2 November 2014) <<https://dera.ioe.ac.uk/30245/1/Unpaid-Internships-1.pdf>>.

## II INTERNSHIPS IN AUSTRALIA

Participating in internships, often unpaid,<sup>17</sup> can be a meaningful way for students and recent graduates to gain workplace experience to help them secure a job in their chosen field.<sup>18</sup> This is also true for those seeking entry into the Australian legal profession, in which ‘acquiring multiple stints of work experience, unpaid or paid, is pseudo mandatory for those law students seeking to secure graduate employment as lawyers’<sup>19</sup> and practical legal work is perceived to be ‘the key gateway to securing a graduate job at top commercial law firms’.<sup>20</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 doing it will not pay off. Massively. Try to get clerkships especially, and *as many as you can.*<sup>21</sup>

While there is clear evidence that Australian legal graduates are expected to have secured and completed work experience to be competitive for graduate positions, there is evidence suggesting some cohorts of students face obstacles in securing legal internships. Specific evidence about participation of minority groups in legal internships in Australia is not always available, however there is national data suggesting inequitable engagement in internships for some student groups. For example, a representative survey of unpaid work conducted in 2016 found that young Australians (18-29 years old) from lower socio-economic backgrounds (as defined by parents’ highest level of education) are less likely to have participated in internships, as are women and those who live outside capital cities.<sup>22</sup> A 2017 Universities Australia survey also confirmed that students from ‘equity groups’ – identified for the purposes of that survey as ‘Indigenous students, students from low socio-economic backgrounds and regional and rural students’<sup>23</sup> – do not participate in work-integrated learning activities such as internships during their tertiary education to the same extent as

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<sup>17</sup> Damian Oliver et al, *Unpaid Work Experience in Australia: Prevalence, Nature and Impact* (Department of Employment, 2016).

<sup>18</sup> Philip C. Rothschild and Connor L. Rothschild, ‘The Unpaid Internship: Benefits, Drawbacks, and Legal Issues’ (2020) 10(2) *Administrative Issues Journal* 2.

<sup>19</sup> Anne Hewitt et al, ‘Weighing the Cost of Expectations that Students Complete Legal Work Experience’ (2022) 32(1) *Legal Education Review* 109.

<sup>20</sup> Misa Han and Edmund Tadros, ‘Law Students Spend “Multiple Years” Building CV for Clerkship’ *Australian Financial Review* (online, 13 July 2017) <<https://www.afr.com/companies/professional-services/law-students-spend-multiple-years-building-cv-for-clerkship-20170625-gwy9h3>>.

<sup>21</sup> Paul Burgess, ‘Advice for Graduate Lawyers: How to Make Your Application Stand Out’ *Burgess Paluch* (Web Page, November 2021) <<https://www.bplr.com.au/advice-for-graduate-lawyers/>>. Emphasis added.

<sup>22</sup> Oliver et al (n 5).

<sup>23</sup> Universities Australia, *Work Integrated Learning in Universities: Final Report* (Report, 2019) 27.

peers who are not from equity groups.<sup>24</sup> Older students also participate in such activities at a much lower rate, with only one in five students aged 50 years or over participating in work-integrated learning, compared to almost half of 20-29 year old students;<sup>25</sup> however, further research is necessary to understand how much of this relates to the motivation of students from different age groups for undertaking a degree.<sup>26</sup> Financial stress was also identified as an obstacle for other groups such as international students (although not considered an official equity group as defined above in the context of that survey), who were less able to leave or suspend part time paid employment.<sup>27</sup> There are also additional unique issues for international students completing internships in Australia, due to restrictions on their study and work associated with study visa conditions which may lead to exploitation.<sup>28</sup>

Interestingly, the Universities Australia survey indicates that some students are undertaking multiple work-integrated learning activities such as internships.<sup>29</sup> This is confirmed by McDonald, Stewart and Oliver, who comment on the trend to do multiple stints of work experience:

To distinguish themselves from their peers ... young people may seek multiple episodes of work experience, for longer periods, or in higher status or internationally recognized organizations.<sup>30</sup>

This trend particularly impacts those who are struggling to access or complete even a single internship. International evidence suggests potential reasons for this, including difficulty securing internships because of inherent racism in recruitment practices,<sup>31</sup> a lack of cultural capital and professional connections limiting capacity to secure an internship,<sup>32</sup> and the financial challenges inherent with completing unpaid work.<sup>33</sup> If completing internships, including unpaid internships, is quasi-mandatory (as is suggested by the quote from Burgess Paluch

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid 17.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid 21.

<sup>28</sup> Alex Reilly, 'Protecting Vulnerable Migrant Workers: The Case of International Students' (2012) 25 *Australian Journal of Labour Law* 202.

<sup>29</sup> Universities Australia (n 10) 8.

<sup>30</sup> Paula McDonald, Andrew Stewart and Damian Oliver, 'Challenging the Assumptions Supporting Work Experience as a Pathway to Employment' in Andrew Stewart et al (eds), *Internships, Employability and the Search for Decent Work Experience* (Edward Elgar Publishing / International Labour Organization 2021) 76, 79.

<sup>31</sup> Christopher Boulton, 'Under the Cloak of Whiteness: A Circuit of Culture Analysis of Opportunity Hoarding and Color-Blind Racism Inside US Advertising Internship Programs' (2015) 13(2) *Communication, Capitalism and Critique* 390-403.

<sup>32</sup> Carys Roberts, *The Inbetweeners: The New Role of Internships in the Graduate Labour Market* (Report, Institute for Public Policy Research, April 2017) 21.

<sup>33</sup> Alan Milburn, *Fair Access to Professional Careers: A Progress Report by the Independent Reviewer on Social Mobility and Child Poverty* (Report, 30 May 2012) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61090/IR\\_FairAccess\\_acc2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61090/IR_FairAccess_acc2.pdf)> 23.

above<sup>34</sup>), yet the barriers to entry for diverse students mean they are excluded from these opportunities, this will reinforce disadvantage. For example, the British Low Pay Commission noted the ‘potentially damaging impact ... on social mobility’ of unpaid internships which can inhibit labour market access for groups who cannot afford to undertake them.<sup>35</sup>

In addition, all interns experience a power disparity in the workplace. As, often young, workers at the very start of their career and they may feel compelled to accept any experience and conditions offered in order to become and remain employable in their chosen field. As well as the vulnerabilities associated with age and lack of experience, diverse students may continue to face disadvantage even if they do manage to secure an internship, as they may find themselves vulnerable to harassment and discrimination within the workplace.<sup>36</sup> They may face discrimination that is based on characteristics such as their sex, sexual preference, gender identity, disability, class, or race. For example, in a study on medical students undertaking mandatory work experience placements, the authors found that:

Participants commented on their increased extraneous load due to stereotype threat—that is, thinking about race at the expense of clinical reasoning—and frequently felt disadvantaged because White students did not have to contemplate these same issues.<sup>37</sup>

This is compounded by the fact that unpaid interns (who are unlikely to fulfil the legal definition of an employee<sup>38</sup>) are largely excluded from workplace protections under the *Fair Work Act* 2009 (Cth) (‘FWA’),<sup>39</sup> and many prohibitions of discrimination and harassment.<sup>40</sup> The only provisions within the FWA that do apply are the protections against bullying<sup>41</sup> and against sexual harassment.<sup>42</sup> Notably the extension of the FWA prohibition against sexual harassment to workers (which are more expansively defined than employees, using the definition of worker from the *Work Health and Safety Act* 2011 (Cth) which includes any individual who performs work in any capacity, including a trainee, a student gaining work experience or a volunteer) was also replicated

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<sup>34</sup> See Han and Tadros (n 20).

<sup>35</sup> British Low Pay Commission (n 16) 88.

<sup>36</sup> Anne Hewitt et al, ‘Are Work Experience Participants Protected Against Sex Discrimination or Sexual Harassment?’ (2021) 46(2) *Alternative Law Journal* 115.

<sup>37</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* 58.

<sup>38</sup> For an analysis of intern status as an employee, see Anne Hewitt & Craig Cameron, ‘Employee or Student Learner? Managing the Risks of Providing Financial Support to Students Undertaking Work Experience’ (2023) 36(3) *Australian Journal of Labour Law* 262-288.

<sup>39</sup> *Ibid.*

<sup>40</sup> Anne Hewitt, Rosemary Owens, Andrew Stewart & Joanna Howe, ‘Are Work Experience Participants Protected Against Sex Discrimination Or Sexual Harassment?’ (2021) 46(2) *Alternative Law Journal* 115-119.

<sup>41</sup> *Fair Work Act* 2009 (Cth) pt 6-4B.

<sup>42</sup> *Fair Work Act* 2009 (Cth) s 527.

in the federal *Sex Discrimination Act* 1984 (Cth).<sup>43</sup> Both amendments are recent, and arise from the Resect@Work report and subsequent reforms.<sup>44</sup>

In addition, many students undertaking internships must contend with intersectional disadvantage. This arises when students simultaneously occupy multiple social identities, each with unique ascriptions of disadvantage and advantage, all of which affecting how they are treated, and which can result in the experience of compound disadvantage. This concept was classically illustrated in the American case of *DeGraffenreid v General Motors* in which five Black women sued General Motors, claiming that the company had discriminated against them ‘as Black women’.<sup>45</sup> Notably, the plaintiffs lost their case, on the basis they were unable to establish a threshold level of discrimination based on either their race or sex, and the category of ‘Black women’ was not one protected under law. This illustrates the real challenges of intersectional disadvantage, and the failure of laws to respond to it.<sup>46</sup>

The authors contend that this myriad of demonstrated issues of access to, and experience within, internships is likely extend to internships in the Australian legal profession. While there is limited statistical data about the characteristics of Australian law students undertaking legal internships, there is no reason to believe these profound issues are not replicated in this professional context. This is suggested when we look at the lack of diversity in the existing profession, which is considered below.

### III THE LACK OF DIVERSITY IN THE AUSTRALIAN LEGAL PROFESSION

There is limited data on diversity in the Australian legal sector, but historically the profession has been dominated by ‘white, heterosexual, able-bodied, middle class men’.<sup>47</sup> Despite wider trends towards multiculturalism and inclusion, the status quo in the Australian legal profession has proven difficult to displace.<sup>48</sup> Female representation at in the legal profession has improved, with women currently making up

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<sup>43</sup> Definition of worker given at *Sex Discrimination Act 1984* (Cth) s 4 and the prohibition of sexual harassment at s *Sex Discrimination Act 1984* (Cth) 28B.

<sup>44</sup> The FWA amendments were implemented by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth). The SDA amendments were implemented by the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* (Cth).

<sup>45</sup> 413 F Supp 142; ED Mo 1976, 143.

<sup>46</sup> Australia’s laws also fail to recognise or respond to intersectional discrimination: see Andrew Thackrah, ‘From Neutral to Drive: Australian Anti-Discrimination Law and Identity (2008) 33(1) *Alternative Law Journal*, 31-35.

<sup>47</sup> Margaret Thornton, ‘“Otherness” on the Bench: How Merit Is Gendered’ (2007) 29(3) *Sydney Law Review* 391, 391.

<sup>48</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.



55% of solicitors,<sup>49</sup> but being underrepresented in senior roles.<sup>50</sup> However, diversity more broadly, including cultural diversity, has not kept pace.<sup>51</sup> As someone who bucked this trend during her own legal career, Katrina Rathie writes that: '[r]esearch 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>52</sup> Similarly, while 20% of Australians live with a disability, data from NSW suggests that only 6% of legal practitioners identify as living with a disability.<sup>53</sup> Age, too, can be a barrier. For instance, Verghis suggests that while there are increasing numbers of mature-aged graduates and some positive signs for older entrants to the law, 'age discrimination can be hard to shift in the profession'.<sup>54</sup>

The lack of diversity in the law may negatively affect applicants for internship positions from groups underrepresented in the profession in numerous ways. The traditional values and hierarchies of the legal system are stubborn, and aspiring lawyers can find themselves up against:

...unconscious bias and stereotyping, where employers promote candidates who are not only competent but also culturally similar to themselves in recreational pursuits, experiences and presentation styles.<sup>55</sup>

This acts as a barrier to securing internships, which themselves can be a gateway into the profession, as discussed in Part II above. Even if these obstacles are overcome and an individual manages to enter the profession, bias and stereotypes present an ongoing hurdle to career

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<sup>49</sup> In 2016, the national profession was approximately 50:50 men and women: Law Society of New South Wales, *National Profile of Solicitors 2022 Report* (Report, 2013)

<<http://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/1378059.pdf>>. Since 2018, there have been more female solicitors than men, and in 2022 55% of Australian solicitors were women: Law Society of New South Wales *National Profile of Solicitors 2022 Report* (Report, 2023) <<https://www.lawsociety.com.au/sites/default/files/2023-05/2022%20National%20Profile%20of%20Solicitors%20-%20Final.pdf>>, 9.

<sup>50</sup> Meraiah Foley et al *Designing Gender Equality into the Future of Law: Final Report* (Report, UNSW and ANU, 2023), 8.

<sup>51</sup> Sam McKeith, 'Building Diversity in the Legal Profession' *LSJ Online* (Feature Article, 4 May 2019) <<https://lsj.com.au/articles/building-diversity-in-the-legal-profession/>>; see also Law Society of New South Wales *National Profile of Solicitors 2022 Report* (Report, 2023) <<https://www.lawsociety.com.au/sites/default/files/2023-05/2022%20National%20Profile%20of%20Solicitors%20-%20Final.pdf>>.

<sup>52</sup> Katrina Rathie, 'Law Firm Leadership – Is It Alright to be All White?' *Johnson Partners* (Article, November 2021) <<https://johnsonpartners.co/news/law-firm-leadership-is-it-alright-to-be-all-white/>>.

<sup>53</sup> Amy Dale, 'Lunch with the Disabled Australian Lawyers Association' *LSJ Online* (Feature Article, 3 December 2021) <<https://lsj.com.au/articles/the-disabled-australian-lawyers-association/>>.

<sup>54</sup> Sharon Verghis, 'Age is Just a Number' *LSJ Online* (Feature Article, 7 February 2022) <<https://lsj.com.au/articles/age-is-just-a-number/>>.

<sup>55</sup> Christopher Niesche, 'Australia's Law Firms Focus on Diversity, Ethnicity and Inclusion' *Law.Com International* (Feature Article, 12 September 2022) <<https://www.law.com/international-edition/2022/09/12/australias-law-firms-focus-on-diversity-ethnicity-and-inclusion/>>.

advancement and promotion.<sup>56</sup> The result is a lack of diversity at all levels of the sector. For example, while the most recent Australian census reported that 3.2% of the population identified as Aboriginal or Torres Strait Islander,<sup>57</sup> in a 2020 National Profile of Solicitors, only 0.8% identified as being Aboriginal or Torres Strait Islander.<sup>58</sup> This lack of proportionate representation in the profession is deeply entrenched, with a 2014 survey also reporting a figure of 0.8%.<sup>59</sup> While there are many unique opportunities for Indigenous law students, and other research suggests that some Indigenous students may be suffering adverse effects from over engagement in workplace learning,<sup>60</sup> interdisciplinary data suggests Aboriginal and Torres Strait Islander students do not participate in internships at the same rate as non-Indigenous students.<sup>61</sup>

Further, results from a 2015 Diversity Report found that while Asian Australians accounted for 9.1% of the total Australian population, they made up only 3.1% of partners in Australian law firms, 1.6% of Australian barristers, and 0.8% of the judiciary.<sup>62</sup> Recent appointments of judges from diverse backgrounds are an important step towards a more representative judiciary in Australia,<sup>63</sup> but completely closing the representation gap in the higher levels of the legal profession will take considerably more time.

<sup>56</sup> Brian Opeskin, 'Dismantling the Diversity Deficit' 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).

<sup>57</sup> Australian Bureau of Statistics, *Australia: Aboriginal and Torres Strait Islander Population Summary* (Feature Article, 1 July 2022) <<https://www.abs.gov.au/articles/australia-aboriginal-and-torres-strait-islander-population-summary>>.

<sup>58</sup> URBIS, *2020 National Profile of Solicitors* (Report, 1 July 2021) 11. Asian Australian Lawyers Association, *The Australian Legal Profession: A Snapshot of Asian Australian Diversity in 2015* (Report, 2015).

<sup>59</sup> *Ibid.*

<sup>60</sup> Anne Hewitt, Laura Grenfell, Hadieh Abiyat, Mikeyli Hendry, Joanna Howe & Sam Whittaker 'Weighing the Cost of Expectations that Students Complete Legal Work Experience' (2022) 32(1) *Legal Education Review* 109-128.

<sup>61</sup> Denise Jackson (2023) *Student Participation in Work Integrated Learning in Higher Education – A three-year review* (Australian Collaborative Education Network) 10.

<sup>62</sup> Asian Australian Lawyers Association, *The Australian Legal Profession: A Snapshot of Asian Australian Diversity in 2015* (Report, 2015).

<sup>63</sup> Manan Luthra, 'Breaking Barriers to the Bench: Hament Dhanji SC on NSW Supreme Court', *Indian Link* (Web Page, 13 September 2021) <<https://www.indianlink.com.au/breaking-barriers-indian-origin-hament-dhanji-nsw-supreme-court-bench/>>; Emma Musgrave, 'Esteemed Sydney Barrister Takes to Supreme Court Bench', *Lawyers Weekly* (Web Page, 9 September 2021) <<https://www.lawyersweekly.com.au/biglaw/32441-esteemed-sydney-barrister-takes-to-supreme-court-bench/>>; Shirley Glaister, "'Long overdue": Australia's First Indigenous Supreme Court Judge Appointed', *SBS* (Web Page, 13 June 2022) <<https://www.sbs.com.au/language/english/long-overdue-australia-s-first-indigenous-supreme-court-judge-appointed/>>; Elliahn Blenkinsop, 'Supreme Court of WA Welcomes First Aboriginal Judge', *WA Today* (Web Page, 21 September 2022) <<https://www.watoday.com.au/politics/western-australia/supreme-court-of-wa-welcomes-first-aboriginal-judge-20220921-p5bjxg.html>>; Keely McDonough, 'A "Culturally Diverse" Supreme Court: New Judges Appointed to the Bench', *Law Society Journal* (Web Page, 23 June 2022) <<https://lsj.com.au/articles/a-culturally-diverse-nsw-supreme-court-new-judges-appointed-to-the-bench/>>.

In addition to experiencing discrimination in recruitment and advancement, once inside legal workplaces, diverse interns may experience continued discrimination and microaggressions. Speaking to *Lawyers Weekly* in 2022, 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. Similar experiences have been shared by other members of our association and lawyers of diverse backgrounds.<sup>64</sup>

Sharing his experience of discussing those who were fasting for Ramadan in the law firm where he was employed, Zaahir Edries told Australia's multicultural public broadcaster, Special Broadcasting Service (SBS), that a manager had responded: 'Really? How many of them do we have working here? Perhaps we should keep an eye on them'.<sup>65</sup>

Similar exclusionary behaviours are reported by lawyers and law students with disabilities. For example, Joseph Popov, Disability Student Representative for the University of Newcastle Law Students Association, recently reported that he tried to seek adjustments for a graduate interview, without success: 'I emailed three times, and never got a response ... attitudinal issues have been a problem, in my experience'.<sup>66</sup>

And while they are overrepresented in the profession nationally, both women and men in the legal profession perceive women have substantially reduced opportunities for advancement within the profession, and are not perceived equally by clients.<sup>67</sup>

Dealing with these types of comments and attitudes creates additional emotional labour and mental load, making it more difficult to complete work on a day-to-day basis.<sup>68</sup> This may be the case even for those well established in their careers. For those at the very outset, often young and inexperienced, such as diverse interns, the challenges will be exacerbated. In a largely homogenous industry, where knowing the right people can open doors, being connected to people in the industry through family, school, or background might be the difference between landing an internship or not. University run merit-based

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<sup>64</sup> Jess Feyder, 'How Can We Diversify Australia's Legal Profession?' *Lawyers Weekly* (Article, 26 July 2022) <<https://www.lawyersweekly.com.au/biglaw/35056-how-can-we-diversify-australia-s-legal-profession/>>.

<sup>65</sup> Massilia Ali, 'Eighty Per Cent Of Muslims In Australia Say They Have Experienced Discrimination' *SBS News* (Article, 19 July 2021) <<https://www.sbs.com.au/news/article/eighty-per-cent-of-muslims-in-australia-say-they-have-experienced-discrimination/od64j7jmr>>.

<sup>66</sup> Giancarlo De Vera, Maria Markoulli and George Stribling, 'People With Disability In The Legal Industry: Time For An Attitudinal Evolution' *LSJ Online* (Feature Article, 14 December 2022) <<https://lsj.com.au/articles/people-with-disability-in-the-legal-industry-time-for-an-attitudinal-evolution/>>.

<sup>67</sup> Meraiah Foley et al, *Designing Gender Equality into the Future of Law: Final Report* (Report, UNSW and ANU, 2023), 30-31.

<sup>68</sup> Bullock et al (n 37).

programs aim to counter this problem.<sup>69</sup> However, financial barriers can still be a major obstacle to entry into such programs.<sup>70</sup> Students who are living with, and supported by, their parents are more likely to be able to afford to undertake a stint of unpaid work experience. Students supporting themselves find this much more difficult.<sup>71</sup> In this way, disadvantage can be reinforced.

Further to these factors, there have been several reports over the past few years examining sexual harassment within the legal sector.<sup>72</sup> These reports found that such harassment is rife, and that the hierarchical nature of the sector leads to power imbalances that are a key driver for this behaviour. A report by the Equal Opportunity Commission of South Australia found that, '[o]f those who had experienced discriminatory harassment, the vast majority (94.4%) identified that the behaviours involved a person more senior in the workplace'.<sup>73</sup> It identified new graduates and junior lawyers as particularly vulnerable to harassment, bullying, and discrimination.<sup>74</sup> Similarly unedifying data was presented by the International Bar Association in its 2019 report, which reported that bullying and sexual harassment are rife in Australian legal workplaces. Among Australian respondents to the IBA's 2018 survey, 73% of women and 50% of men indicated they had been bullied in connection with their work in law, while 47% of female respondents and 13% of male respondents indicated they had been sexually harassed.<sup>75</sup>

This data suggests that working in law poses a variety of personal workplace challenges for the individual and that both those from well represented groups (like women) and underrepresented groups (including those who are culturally diverse) face obstacles. There is, however, evidence that the nature and quality of supervision can affect the outcomes of work experience for student participants, which could help to minimise these risks for those particularly vulnerable participants in legal workplaces. This will be explored below.

#### IV LEGAL SUPERVISION

There has been surprisingly little research into legal supervision practice in Australia.<sup>76</sup> However, a dominant understanding of supervision within the legal profession relates to the allocation of work

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<sup>69</sup> Grenfell and Koch (n 1).

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> For example, more than three-quarters (78%) of female lawyers believe sexual harassment is a problem in the legal profession, and a mere 16% believe it is being adequately addressed: Meraiah Foley et al, *Designing Gender Equality into the Future of Law: Final Report* (Report, UNSW and ANU, 2023), 8, 29.

<sup>73</sup> EOC Report (n 11) 71.

<sup>74</sup> Ibid 124.

<sup>75</sup> IBA Legal Policy & Research Unit, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (Report, May 2019).

<sup>76</sup> Jeff Giddings and Michael McNamara, 'Preparing Future Generations of Lawyers for Legal Practice: What's Supervision Got to Do with It?' (2014) (37)3 *University of New South Wales Law Journal* 1226, 1226.

and reviewing final work products.<sup>77</sup> For legal interns, including students with no or limited previous engagement with a legal workplace or legal work, this is a necessary component of legal supervision. However, it is not sufficient in the context of the law school to work transition. Supervisor support and mentoring has been shown to be critical for internship participants to be able to transfer their academic knowledge to workplace activities.<sup>78</sup>

A broader conceptualisation of supervision, sometimes referred to as “clinical” supervision addresses this gap. Hawkins and Shohet explain clinical supervision as follows:

In supervision we *collaborate* and *relate* in order to *reflect* on the *relating* between the practitioners and their client(s), in order to create new *learning* and *unlearning*, that both transforms the work, and increases the capacity of the supervisee to *sustain* themselves in the work.<sup>79</sup>

This definition of supervision includes relational components, including between supervisor and supervisee. It also incorporates the process of guiding the supervisee towards increased self-efficacy and competence in their work, which is not necessarily addressed within the provision of feedback which is at the heart of traditional supervision. However, the scope of clinical supervision can go even further, with definitions often dependant on the function or purposes ascribed to supervision. In the context of clinical legal education, supervision has been ascribed a variety of purposes, many of which are also relevant in the context of supervising law students in a challenging and non-diverse profession. For example, Giddings and McNamara identify three functions to the supervision role: provision of mentoring/support, ensuring managerial/administrative compliance, and provision of education/training.<sup>80</sup> A preliminary consideration suggests all these are relevant in the context of internships in the Australian legal profession, where risk management and training are important, but we also know students require assistance to develop professional skills and networks to facilitate their entry into the profession. In the context of social work, it has been posited that supervision includes another critical component, as a vehicle to explore and mediate stress, inequality, and injustice.<sup>81</sup> Conceived of in this way, supervision is not just about improving work practices and capacities, but also imbuing certain values in supervisees, and creating positive workplace and professional cultures. This is something that has been widely acknowledged as required in the legal profession, with its history of harassment, abuse and bullying (discussed above).

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<sup>77</sup> Michael McNamara, *Supervision in the Legal Profession* (Springer, 2020).

<sup>78</sup> Brian D. Blume et al, ‘Transfer of Training: A Meta-Analytic Review’ (2010) 36(4) *Journal of Management*, 1065-1105; Natalie Govaerts and Filip Dochy ‘Disentangling the Role of the Supervisor in Transfer of Training’ (2014) 12 *Educational Research Review*, 77-93.

<sup>79</sup> Peter Hawkins and Robin Shohet, *Supervision in the Helping Professions* (McGraw-Hill Education, 2012) 26.

<sup>80</sup> Giddings and McNamara (n 76) 1244.

<sup>81</sup> Carole Adamson, ‘Supervision is Not Politically Innocent’ (2012) 65(2) *Australian Social Work* 185, 193-4.

Understanding the scope of appropriate supervision for internship participants is critical, because the supervisor is central to the participant's experience. There is evidence that a good workplace experience, and good supervision, can improve the learning and employability outcomes for participants. For example, supervision can assist a student develop emotional intelligence,<sup>82</sup> ensure students are provided with opportunities to extend their learning,<sup>83</sup> and ensure feedback is meaningful and can assist in skills development.<sup>84</sup> As they are at the coal face of participant engagement with the workplace, supervisors are also critically important in articulating cultural and workplace norms, and ensuring students are aware of their rights and empowered to respond to workplace problems. This is particularly important for law students from cohorts underrepresented in Australia's legal profession who, as discussed above, may be less familiar with workplace norms and need more assistance to identify and navigate them, and who are more vulnerable to inappropriate workplace behaviours. In the context of power discrepancies and a competitive labour market, it may be difficult for students, especially a diverse student, to speak up about such issues.<sup>85</sup> This is particularly the case where anonymous complaints are impossible. Rather than putting the onus on the individual intern to raise these issues, other mechanisms must be put in place. These can include induction and preparation processes,<sup>86</sup> provision of documentation regarding policies (such as those relating to workplace harassment) and guidelines regarding workplace culture, and specific discussions between mentor and mentee.

However, good workplace supervision also requires supervisors to develop 'their own mentoring, management, and leadership skills'.<sup>87</sup> This is an issue if there are limited, or no, formal opportunities for supervisors to do this. This is one of the issues to which the 'Safer Legal Work' project, discussed below, sought to respond.

## V 'SAFER LEGAL WORK' PROJECT

The analysis above suggests that law students (and graduates) from backgrounds not well represented in our profession face additional

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<sup>82</sup> Nigel Gribble, Richard K Ladyshefsky and Richard Parsons, 'Fluctuations In The Emotional Intelligence Of Therapy Students During Clinical Placements: Implications For Educators, Supervisors, And Students' (2016) 21(1) *Journal of Interprofessional Care* 8-17.

<sup>83</sup> Andrew J Martin et al, 'Work-Integrated Learning Gone Full Circle: How Prior Work Placement Experiences Influenced Workplace Supervisors' (2019) 20(3) *International Journal of Work-Integrated Learning* 229, 238.

<sup>84</sup> Kevin W Eva et al, 'Factors Influencing Responsiveness To Feedback: On The Interplay Between Fear, Confidence, And Reasoning Processes' (2019) 17(1) *Advances in Health Sciences Education* 15-26.

<sup>85</sup> EOC Report (n 11) 85.

<sup>86</sup> Calvin Smith, 'Evaluating the Quality of Work-Integrated Learning Curricula: A Comprehensive Framework' (2012) 31(2) *Higher Education Research and Development* 250.

<sup>87</sup> Martin et al (n 83) 239.

obstacles in accessing legal internships and achieving positive outcomes from them. Students may experience intersectional disadvantage and are at significant risk of discrimination and harassment, restricting their capacity to secure prestigious internships, and affecting their experience if they do manage to get one. In the absence of significant protections for interns, and a lack of labour law coverage, it is left to the industry to consider how to respond.

However, as discussed above, the Australian legal profession is currently facing a critical (and long awaited) self-reckoning regarding the prevalence of sexual harassment within the profession. While important, the authors believe this movement has, arguably, distracted from critical engagement with other important equity issues. For this reason, perhaps, the legal profession has not yet significantly engaged with racial and other discrimination in the legal profession. Indeed, in 2023 data suggests most Australian lawyers did not think culturally diverse participants in the profession were treated equally, and substantial majority of both women (87%) and men (68%) in the profession did not believe that issues of discrimination were being adequately addressed in the profession.<sup>88</sup> Similarly, there has not been the same impetus to amend legislation to strengthen or extend protections against discrimination and harassment on grounds other than sex, which limits the legal protections available, *inter alia*, to interns.

To respond to this differential agenda, two potential courses of action present themselves. Ideally, Australia would engage in the same kind of broad critical analysis of workplaces, culture and legislation as has been undertaken with regard to sexual harassment on other grounds. While ideal, there does not seem to be significant professional or political appetite for such a process of scrutiny and legislative reform. Alternatively, a variety of regulatory actors including social partners can use their existing influence to implement strategies to develop incremental change, in the hope of achieving positive change in the period until this issue achieves traction on the broader socio/political agenda.

In a European context, the *Treaty of Lisbon* recognises the role of social partners, cross-industry organisations representing the interests of workers and employees, in labour relations and European social dialogue.<sup>89</sup> However, in other jurisdictions, social partners can be conceived of more broadly. In addition to cross industry organisations (typically, trade unions), social partners can include socio-professional groups representing specific or sectoral interests, and universities with a progressive and inclusive agenda.<sup>90</sup> In the context of this analysis, the social partners which are of most relevance are universities teaching law, with the capacity to engage with law students throughout their

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<sup>88</sup> Meraiah Foley et al, *Designing Gender Equality into the Future of Law: Final Report* (Report, UNSW and ANU, 2023), 28-29.

<sup>89</sup> *Treaty on the Functioning of the European Union*, opened for signature 13 December 2007 (entered into force 1 December 2009) art 152.

<sup>90</sup> See, eg, 'Social Partnerships', *The Open University* (Web Page) <<https://about.open.ac.uk/social-partnerships>>.

degree program, and the organisations representing the legal profession as a sector. In Australia, this includes state/territory representative organisations for solicitors and barristers, and the national Law Council of Australia. Other socio-professional groups, such as more discrete organisations aimed at promoting the engagement of particular groups with the legal profession, for example the Asian Australian Lawyers Association, Pride in Law and the Muslim Legal Network, could be included within the widest approach to social partners.

These (broadly defined) social partners have been involved in the movement to respond to sexual and sex-based harassment in the Australian legal profession. Included in the recommendations of the various reports has been a call to arms to universities to be more active in providing education and training in relation to sex harassment. While educational measures in isolation cannot prevent harassment, it is hoped they can improve the capacity of students to identify inappropriate workplace behaviours and increase their familiarity with the response mechanisms. In the longer term, it is hoped such initiatives will contribute to broader cultural change within the profession. For example, the EOC Report specifically recommended:

[t]hat the South Australian universities and providers of Practical Legal Training review their ethics content, with a view to providing a profession-specific perspective of harassment and ensuring that students have a comprehensive understanding of the issue as a means of fulfilling the Legal Practitioners Education and Admission Council's Professional Obligations competency.<sup>91</sup>

While this call for university action was limited to sexual and sex-based harassment, the authors posit there are broader education opportunities and broader inequities which law schools should address. It is hoped that increasing awareness of inequities within the profession for all students (and, eventually, members of the profession) will facilitate cultural change. This, in turn, will contribute to the transformation of the profession from its history as 'white, heterosexual, able-bodied, middle class' and male.<sup>92</sup>

At the Adelaide Law School, we developed a multi-stage project designed to respond to this challenge and increase awareness among students and the profession of a variety of inequities which may affect an individual student's capacity to enter, and experience within, the legal profession. The project involved the development of student and host resources for internships. The student resources were designed to empower students with knowledge about their rights, and strategies to seek assistance and support if they encounter inappropriate behaviour in a legal workplace. In particular, we wanted to assist students to recognise and respond to a wide range of problematic workplace practice, not limited to sexual and sex-based harassment. The host materials were focussed on developing solicitor's supervision skills to enable them to better support diverse students and explicitly engage with them in articulating workplace culture and addressing

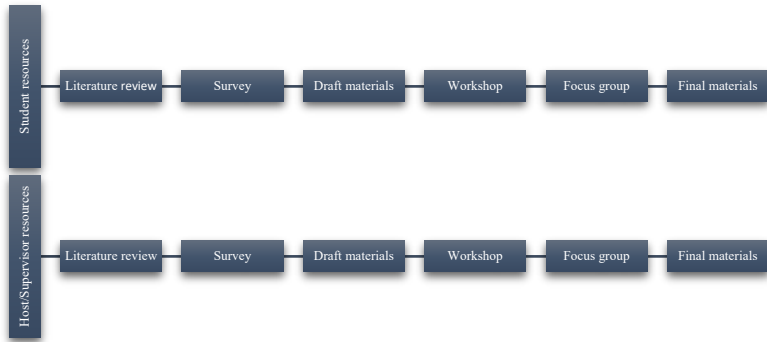
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<sup>91</sup> EOC Report (n 11) 125.

<sup>92</sup> Thornton (n 47); Rathie (n 52).



inappropriate workplace behaviours. The project stages are illustrated below.<sup>93</sup>

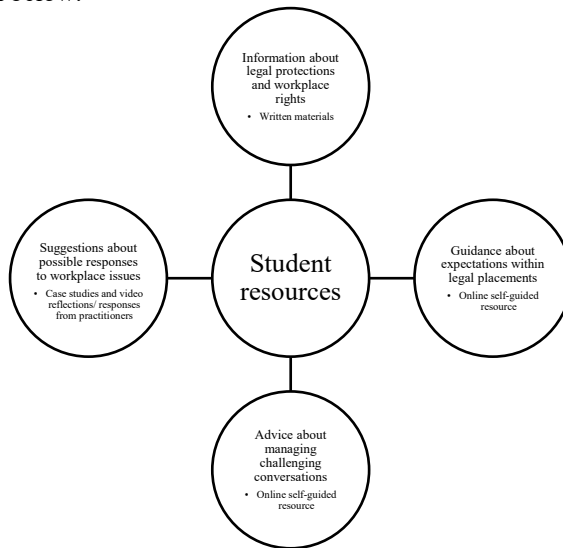


**Diagram 1**  
**Development of Student and Host/Supervisor Materials**

More detail about the content of these two stages is set out below, followed by an evaluation of the resources.

*A Student Resources*

We developed a package of student-oriented resources, illustrated in a diagram below.



**Diagram 2**  
**The Student-Oriented Resources**

We undertook a literature review and qualitative study of law students currently participating in internships, or work-integrated learning more broadly, to better understand the factors that influence

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<sup>93</sup> The project in its entirety was undertaken pursuant to Human Research Ethics Approval H-2023-034.

their experiences with supervision, and to identify areas that need improvement. We developed and distributed a survey<sup>94</sup> that consisted of 19 questions, with the intention of investigating the students' knowledge about, and experiences with, supervision during legal placements. Our three main areas of interest in this study were:

- student awareness and knowledge of their rights in the workplace and the protocols to follow if these rights were violated;
- the supervision techniques that are most effective for students, and whether these are commonly used; and
- whether student values and supervisor behaviour align, and how this can be improved if not.

An electronic link to the survey was distributed via the course learning platform to all students enrolled in the final year compulsory law course, or an internship elective, in 2022. Students were provided information about the purpose of the survey and requested to complete it on a voluntary basis. Unfortunately, student engagement was minimal. While 22 out of a possible student cohort of >300 students participated in our study, there was a notable attrition rate, evidenced by questions 1 and 2 of the survey receiving 22 responses, questions 3-7 receiving 11 responses, and the remaining questions 8-20 receiving a mere 8 responses. This attrition rate may be a result of the first half of the survey involving multiple-choice questions, while the second half required students to provide short answers to describe their experience, which may have deterred responses. The low response rate and self-selection of participants were limitations of this study. It may be that students who had no problems in their internship experiences were less likely to see relevance and value in completing the survey or otherwise participating in the study. No demographic data was collected, so we cannot speculate on the influence of individual differences on the attrition rate. Nevertheless, despite the attrition and the small sample size, the survey data provides an insight into student experiences of supervision in legal placements which we used to inform decisions about what resources would be most useful.

The survey data revealed a lack of legal knowledge in relation to some aspects of an intern's rights at work. For instance, students indicated that knowledge of their rights as a student learning in the workplace was low, with 50% of students responding that they had never been taught about their rights prior to undertaking their placement, and 100% responding that there had been no explicit discussion of their rights during their placement. On the other hand, when asked to evaluate their existing level of knowledge about specific workplace rights, 71.21% of respondents described their knowledge of discrimination, bullying, and harassment laws as 'good', 19.70% evaluated their knowledge as 'extensive', 7.58% described their knowledge as 'poor', and a further 1.52% were unsure of their level of knowledge of discrimination, bullying, and harassment laws. Despite

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<sup>94</sup> See Appendix A.

this, the students reported that they had largely not been told what to do if they observed or experienced discrimination, harassment, or bullying during their placement. This is problematic because those completing unpaid internships in Australia often fall outside standard labour regulation and may not be covered by prohibitions of discrimination and harassment.<sup>95</sup>

Students were hesitant to discuss challenges encountered during their placement with their supervisors, with 55.56% responding that they did not raise issues with supervisors, and 50% suggesting that they would not feel comfortable reporting unhappiness with aspects of their supervision with other individuals within their placement organisation. When prompted to elaborate on this hesitation, students expressed that they felt ‘they should take the responsibility for following up with the matters’ themselves, and described the challenges they faced as ‘an internal battle’ they were dealing with, akin to ‘imposter syndrome’, rather than something they should concern their supervisors with. This internalised pressure, coupled with the perception that supervisors and solicitors were ‘incredibly unavailable’ or even ‘disinterested’ in placement students appears to be particularly damaging to student placement experiences.

The survey data revealed a disconnect between the supervision techniques that students experience, and the supervision techniques that they consider most helpful to them. Techniques such as explaining tasks, providing feedback on performance, and explaining supervisors’ own projects were deemed by students to be more helpful but were experienced less, while techniques such as mentoring, being introduced to people, and discussing student career aspirations were deemed less helpful by students but were experienced more. One example of this disconnect in action is that students expressed that they appreciate when supervisors ‘take time to give...mentoring and career advice as well as just legal stuff’, however, the student responses also suggest that supervisors, solicitors, and partners in legal placements are uninterested in getting to know the students and are often unavailable or short on time. Further, students seemed to be particularly interested in learning about the daily responsibilities and challenges of their supervisors beyond the strictly legal matters that they are expected to manage on placement. As one student described, it is imperative that supervisors:

[t]ry to remember how everything is difficult and scary when you first start. That everything is new and it is easy to feel like you are not performing well enough... I think it's important that the students feel that no question is a stupid question, and when under pressure mistakes will happen, but the way that the supervisor reacts is really important, ie to build confidence, rather than berate them or embarrass them, and sometimes, to even have a laugh about it. Give them the feedback they need if they are not doing what

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<sup>95</sup> Anne Hewitt and Natalie Skead, ‘The Resource Implications of Work Integrated Learning and Legal Clinics in Australian Legal System: Managing Workload, System Support and Recognition’ (2023) 30(2) *International Journal of Clinical Education* 4.

is required, but remember to throw them a bone sometimes, and give them some words of encouragement.

In moving forward, the survey data suggested that supervisors should try to balance their time between mentoring placement students and their other responsibilities, and to engage with the student beyond strictly legal matters. It also implied that providing students with education on their rights as students learning in the workplace prior to commencing their placement may further promote this outcome.

In response to this data, we interrogated the complicated legislative protections which may, or may not, extend to individuals undertaking internships depending on a variety of factors. We developed a summary of the rights extended to: students doing unpaid placements as a part of their degree, students and graduates doing unpaid placements which are not a degree requirement, and those being paid for their placements. As we were preparing these materials for the benefit of law students and law graduates, we determined it was appropriate to explicitly engage with the legislation in these summaries. In addition to the rights summary, we created a presentation that can be used by an instructor in a classroom, about workplace rights and protections.

We also reviewed a decade of investigations and reports regarding inappropriate behaviours in Australian workplaces and the legal profession.<sup>96</sup> Following that analysis, we prepared a series of amalgam ‘case studies’ based on real life submissions to the various reviews which sought to capture a variety of quintessential situations of bullying, harassment and discrimination that internship students and junior lawyers might experience. These case studies were designed to be learning resources, for educating law students about their rights, and actions they could take in response to inappropriate workplace behaviours, and also a tool to engage with the profession regarding these issues.

We then approached several members of the South Australian legal profession to provide commentary on the case studies. In recruiting these commentators, we sought to ensure representation from both junior and senior ranks of the profession, barristers and solicitors, and ensure that the participants demonstrated diversity in terms of gender, ethnicity, culture, race, and religion. We ultimately 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 potential minefield it created.

Finally, we embedded the protections summary, case studies, and video resources into the compulsory final year in the Adelaide Law

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<sup>96</sup> See, eg. Equal Opportunity Commission (SA), *Review of Harassment in the South Australian Legal Profession* (Report, April 2021); International Bar Association Legal Policy & Research Unit, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (Report, May 2019).

School curriculum. 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 South Australian Legal Professional Conduct Rule regarding sexual harassment, and analysis of its operation; and,
- discussion of the enforcement mechanisms in operation to respond to discrimination, harassment and bullying in the profession, and consideration of the relevant support and information services that members of the profession can access.

The various resources we created are available to students, set as seminar readings, and discussed in lectures and seminars in the final year course covering civil procedure and ethical dispute resolution. The case studies are distributed and excerpts of the videos shown to facilitate discussion about discrimination, harassment and bullying within the profession, and the ethical and legal implications of such behaviour. The online self-directed resources about expectations in internships and challenging conversations are made accessible to students, and discussed in class.

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

[W]e're a multicultural society, there's different Asian, European, African backgrounds that you might see day to day, but in terms of the legal profession, it is still predominantly at this stage 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.

The lack of diversity in the profession can make people feel isolated. As the solicitor has identified in her statement above, this can be exacerbated for young people trying to have their voices heard in the profession. With data showing that more than 24% of the Australian population are from a non-European background,<sup>97</sup> and nearly 25% of Australians speaking a language other than English at home,<sup>98</sup> there is a significant need for efforts to promote diversity and representative equality in the profession. While it is important for government and key industry players to work together to bridge legislative gaps, even if legislative protections were to extend to unpaid interns, someone feeling isolated and vulnerable in a workplace is unlikely to make a

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<sup>97</sup> Australian Human Rights Commission, *Leading for Change: A Blueprint for Cultural Diversity and Inclusive Leadership* (Report, July 2016).

<sup>98</sup> Australian Bureau of Statistics, 'Cultural Diversity: Census' (Web Page, 28 June 2022) <<https://www.abs.gov.au/statistics/people/people-and-communities/cultural-diversity-census/2021/Cultural%20diversity%20data%20summary.xlsx>>.

complaint.<sup>99</sup> Our resources for students will go some way to helping to empower legal interns, but it is just a first step.

### B *Host/Supervisor Resources*

To supplement the student resources, we developed a complementary set of resources for host firms/supervisors. Those resources were informed by a literature review and preliminary survey of legal practitioners who engage in supervision.<sup>100</sup> That survey was electronically distributed to a group of practitioners who had already agreed in principle to trial our resources (a non-random sample). To initially recruit practitioners for the trial, we advertised the session through the Law Society of South Australia and were able to reward completion of the training with credit for Continuing Professional Development. In the survey we asked them to respond to eighteen closed and open questions about their supervision experiences. We had twelve completed surveys, which for our small, non-random sample represented a response rate of 100%. Despite the response rate, the self-selection of participants again represents a limitation in that results may be skewed by practitioners who were already motivated to improve their supervision skills and committed to professional development in this area.

Our three main areas of interest were:

1. familiarity with a variety of supervision and communication techniques,
2. the extent to which they had completed training in supervision and responding to sexual harassment and other workplace issues,
3. whether they would be prepared to engage in supervision training, and their preferred mode and duration.

Respondents indicated that they were aware of and/or had used a variety of common supervision and communication techniques. However, fewer respondents were confident with providing feedback to students. When asked to identify the most challenging aspects of supervision, several respondents wrote about the difficulties that arise when they need to provide constructive feedback to the person they are supervising. The following are examples of responses to the question, ‘What aspects of supervision do you find most challenging’:

Junior’s ability to accept constructive criticism. Conversations around the junior’s time management and matter prioritising. Trying not to micro-manage those personalities.

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<sup>99</sup> EOC Report (n 11); International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession* (Report, May 2019); Kate Eastman, ‘We Need to Address The Shame Culture of Sexual Harassment’ (2020) 69 *Law Society of NSW Journal* 24; Hagar Cohen, ‘Three Lawyers Speak Out With Allegations Of Racism Inside Legal Aid’ *ABC News* (Web Page, 7 June 2022) <<https://www.abc.net.au/news/2022-06-07/allegations-of-racism-inside-legal-aid-three-lawyers-speak-out/101132048>>.

<sup>100</sup> See Appendix B.

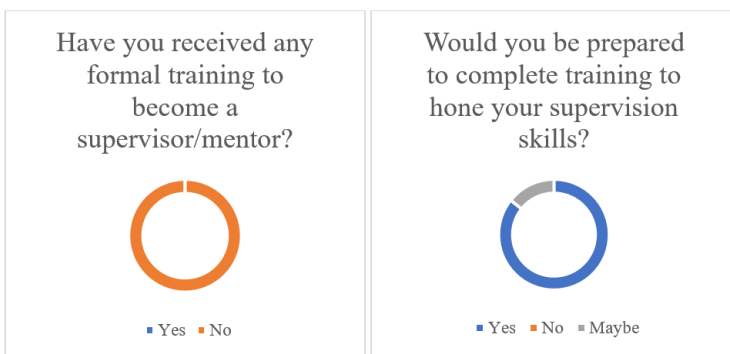
The disparity/disconnect between the skills and expectations of a supervisor compared to the skills and knowledge of a junior.

Working with staff who are unwilling or unable to improve – ie performance management. Giving negative feedback.

Additionally, participants were asked if they had supervised a student or junior solicitor who appeared to be suffering from poor mental health, and 83% of respondents said that they either had or maybe had done so. One respondent who had supervised someone who appeared to be suffering from poor mental health went on to elaborate that during that supervision experience, they did not feel confident in knowing what to do or how to support that person. In response to the question ‘Is there anything else you would like to add about supervision of law students / junior lawyers you think might be useful’, one respondent noted:

Advice about dealing with people whose challenging behaviour may be caused by mental health conditions.

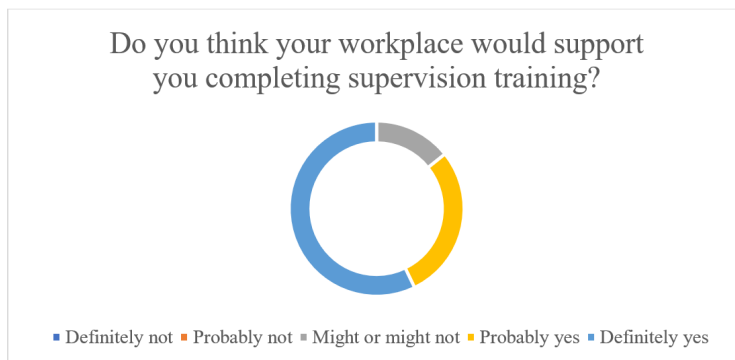
63% of respondents had received training on how to recognise and respond to workplace, harassment, bullying or discrimination. When prompted to provide details about that training, respondents wrote that such training is now part of the Mandatory Continuing Professional Development requirements in South Australia. This suggests that those respondents who have not yet undertaken this training will need to do so as part of their ongoing practising obligations. However, similar responses would, perhaps, not be expected in jurisdictions without such an obligation. In contrast, no respondents had received any formal training in being a supervisor or mentor. 86% of respondents said they would be prepared to complete training to hone their supervision skills and 100% responded that they either would or maybe would be prepared to do so.



**Figure 1 and 2**  
**Response to Questions about Formal Training to Become a Supervisor / Mentor**

Encouragingly, when asked whether their workplace would support them in completing supervision training, 57% responded that they

definitely would, 29% responded that they probably would, and 14% responded that they might or might not.



**Figure 3**  
**Responses to Question about Workplace Support for Supervisor Training**

Informed by the survey, we developed supervisor resources guided by three principles:

1. that they should mirror much of the information provided to students, to facilitate effective communication between supervisor and supervisee;
2. that they should cover a myriad of topics relevant to effective supervision, including students' rights in the legal workplace, how to open lines of communication generally and specifically about workplace culture and how to respond to inappropriate workplace behaviours, recognising and responding to possible mental health problems, and effective supervisor skills, and
3. the resources should be able to be used in a self-directed manner if required, to ensure they would not only be of use in the period during which we were funded to offer training.

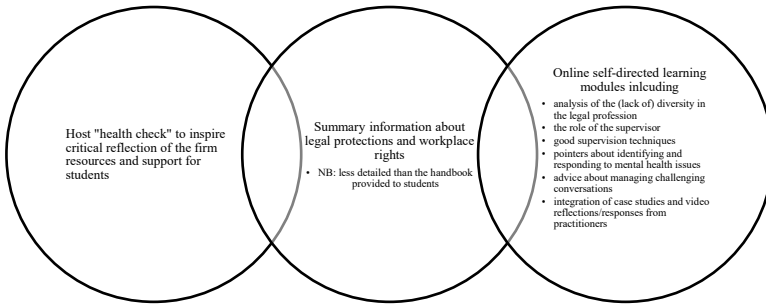
The resources we developed consisted of three parts, a host health check, a self-directed online module, and case studies of discrimination, harassment and bullying in the profession and video responses from practitioners to the case studies. We also included summary information about students' rights in the workplace. Given the stark response from the practitioner survey in relation to the lack of existing training for those becoming supervisors and mentors, we wanted to ensure that those undertaking the training were well-supported across a range of areas. It was also important that if we were providing our students with information about their rights in the workplace and what they should expect in terms of quality supervision, that the people who would be supervising those students would be armed with the same information.

As with the student resources, the host resources prompt participants to consider the nature of the industry and the power imbalances that may arise in the supervisor/student relationship. Supervisors are encouraged to consider the intersectional vulnerabilities that those they are supervising may face and to challenge



their existing ideas about how best to ensure the experience is safe, comfortable, and enriching. This relates to both their own words and actions, as well as the broader culture within their workplace.

The resources also look at the roles of the supervisor, and what makes quality supervision. They provide advice about how to manage challenging conversations and about the limits and boundaries of the supervision relationship, including that supervisors are not equipped or expected to be psychologists. The resources provide information on additional supports to which students might be referred as needed.



**Diagram 3**  
**The Host/Supervisor-Oriented Resources**

### *C Trial and Feedback on Resources*

After the resources were developed, each set was trialled with a group of volunteers from the relevant cohort. We sent an email to students who had recently completed the Legal Practice Internship course offered through the university. Six students volunteered to attend a workshop using the student-oriented materials and subsequent focus group, and 9 legal practitioners with previous experience supervising students/junior solicitors volunteered to attend a workshop using the solicitor-oriented materials and subsequent focus group.

There was universal agreement in both focus groups that provision of training and resources was critical to improve the experience of students and their supervisors. The possibility of adverse outcomes when such resources were not available were clearly articulated. As one student stated:

Students are so young when they go into these situations like when I did my work experience ... and I had no idea about anything. And then, like everything like it was a horrible experience. And then I left, and no one told me that what had happened was wrong.

From the supervisor perspective, this issue was framed in terms of adverse professional outcomes:

If the supervision is not good and they are being asked to do things that haven't been properly explained, then that will impact on their professional reputation.

Students very clearly explained they believed firms needed to do more to ensure supervisors were adequately skilled and supported.

People shouldn't just be able to host people or have employees, like people employed, if they have ... they don't know that what they're doing.

They don't know how to be mentors. They don't know how to train. They're not trained teachers.

Students also identified that they wanted to be better informed and equipped to manage challenges in the transition into the legal profession: '[i]t's crucial that people have access to this information'. They strongly endorsed the idea of student-oriented resources being made available to students, but also suggested they should be integrated into the compulsory curriculum at a much earlier stage of the law degree as students commenced internships at different times in their study: 'I think it should be ... a subject and do it as an intensive ... talking about for 5 straight days, compulsory attendance like make it a non-negotiable'.

With regard to the content of the resources, students indicated they were largely satisfied with the draft materials incorporated into the workshop. However, there was significant interest in discussing the content of the supervisor-oriented materials. Students agreed these should mirror theirs, to facilitate understanding between supervisor and supervisee in the workplace. This was a point echoed by the practitioner focus group participants who stated that would enable them to 'know where the expectations of the university and the students are at' and 'ensure student and supervisor are on the same page'. Students also specifically identified a variety of content they thought should be included for supervisors, including:

- information on how to open lines of communication, especially on challenging topics (like inappropriate workplace behaviours),
- techniques for provision of useful feedback,
- the importance of approaching each student as an individual.

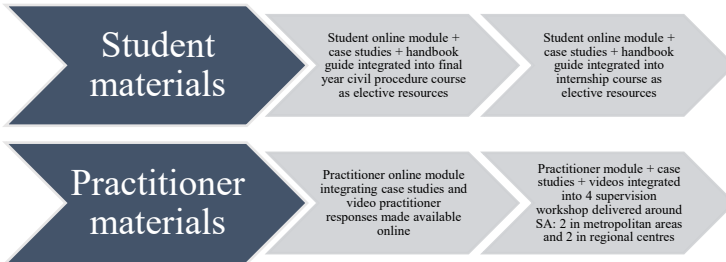
Interestingly, when practitioners were asked for feedback on their version of the resources, these specific topics were ones where they suggested more detail was warranted than we originally provided. They suggested it would be useful to include:

more explicit examples [scripts / sets of words] in terms of having constructive/difficult conversations.

[guidance about how to] deal with personal conversations when different people have different feelings and expectations around this.

The practitioner feedback also suggested that additional content should be included in their resources, specifically on remote supervision and how supervisors could work collaboratively with others to both develop their own supervision skills and support students.

Based on this feedback, the student and practitioner resources were refined. The final resources will be utilised in 2024 as follows:



**Diagram 4**  
**Use of the Materials in 2024**

## VI DISCUSSION

The results indicate that while interns and their supervisors demonstrated reasonably broad understanding of rights around workplace harassment, discrimination, and bullying, beyond that there are gaps in skills and knowledge on the intern side about how to raise problems or concerns in the workplace, and on the supervisor side about how to most effectively guide and support a student through their internship. Given that internships are touted as an important stepping stone into the legal profession, it is important to ensure that students feel safe and supported, and that they are receiving quality supervision.

The students in our study overwhelmingly wanted to be supervised in their internships by supervisors who were skilled and knowledgeable and had sufficient time to spend in providing appropriate guidance and support. Several described experiences where they were left to their own devices and expected to work things out for themselves. While the practitioners in our study indicated a willingness to undertake further training to develop their knowledge and skills in supervision, none had received any formal training in this area before being charged with students to supervise. To address these challenges, we developed training materials that were informed both by existing literature, and by feedback from the respective groups.

More still remains to be done. An illustration of the importance of a range of responses can be seen in the report of an independent review conducted in New Zealand at law firm Russell McVeagh after a number of summer clerks experienced sexual harassment.<sup>101</sup> That review made several recommendations including:

- Before hosting students, firms should ensure they have enough senior lawyers with the skills and time to properly supervise and train junior lawyers.<sup>102</sup>

<sup>101</sup> Margaret Bazley, *Independent Review of Russell McVeagh* (March-June 2018) <<https://s3.documentcloud.org/documents/4575427/Independent-Review-of-Russell-McVeagh-2018.pdf>>.

<sup>102</sup> *Ibid* 6.

- At least one senior lawyer should be given the time, training and responsibility for the recruitment and oversight of clerks and graduate lawyers.<sup>103</sup>
- Independent experts should be enlisted for the development of policies in relation to such things as harassment, bullying, alcohol use, and host responsibility and behaviours.<sup>104</sup>
- More meaningful processes be put in place to make sure that junior lawyers and students are able to speak up if they experience inappropriate behaviours in the workplace. These processes should be developed with the input of the junior lawyers themselves.<sup>105</sup>

It is clear such changes have cost implications for firms. However, in light of the issues which have been explored in this article, we hope firms will find those resources and commit to implementing such strategies. As well as being important for the experiences of those involved, as a practitioner in our focus group stated, ‘there is a business imperative to bring students in and retain them.’ From a student perspective, a focus group participant clearly explained the link between quality supervision and retention: ‘[if you] just throw a junior in an office and just start throwing work at them, and then when they get it wrong, or they suck, treat them badly, they [will] leave.’ Maybe this truth will be the incentive firms need to take this project further.

## VII CONCLUSION

For law students wanting to transition into the legal profession in Australia, internships are quasi-mandatory. However, these experiences are not uniformly positive. One of the ways in which we can meet this challenge is by equipping those at the very beginning of their legal career with an understanding of what constitutes inappropriate work and workplace behaviour and equip them with tools for responding to these issues. To this end, we have created resources for students in the final year of their degree, and all students going out on work placements. While these resources do not address the challenge of access to internships, it is hoped they will improve students’ experiences while undertaking internships.

However, it is not enough to expect those with the least power to do all the heavy lifting. We must also partner with those who are hosting these students on placement to ensure that placements offer experiences which will be both safe and useful for participants. This incentivised us to develop a complementary suite of resources for organisations hosting these students and their legal supervisors.

Together, we hope that these resources will inform stakeholders about what good legal placements can and should look like and enable them to open lines of communication to develop safer and more

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<sup>103</sup> Ibid 8.

<sup>104</sup> Ibid 6.

<sup>105</sup> Ibid 9.

productive placements, as well as contribute to a larger turning of the tide within the sector. In a small way, we have sought to honour the inspiring words of then senator Barack Obama, accepting his party's nomination as candidate for president, on 5 February 2008: 'Change will not come if we wait for some other person or some other time. We are the ones we've been waiting for. We are the change that we seek'.<sup>106</sup>

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<sup>106</sup> Barack Obama, 'Barack Obama's Feb 5 Speech' (Speech, Federal News Service, 5 February 2008).

## Appendix A

### Survey Questions – Student Survey

- 1. Have you ever been taught about your rights as a student learning in the workplace?**

Y/N

**How would you evaluate your level of knowledge about the laws which relate to students learning at work regarding:**

	Poor	Good	Extensive	I am not sure
<b>2. Discrimination</b>				
<b>3. Harassment</b>				
<b>4. Bullying</b>				

- 5. Which of the following supervision techniques have you experienced in your placement? Tick those that apply.**
- Allocating tasks
  - explaining tasks
  - providing feedback on my performance
  - taking me to meetings
  - explaining the work your supervisor is undertaking
  - mentoring
  - explaining workplace culture
  - introducing me to people
  - talking to me about my future aspirations
  - setting workplace expectations (dress, attendance times, demeanour, etc)
  - discussing current issues with the legal profession
  - explaining workplace policies
  - discussing workplace risks and how to manage them
  - Other [free text]
- 6. Please identify the 4 supervision techniques which work best for you?**
- Allocating tasks
  - explaining tasks
  - providing feedback on my performance
  - taking me to meetings
  - explaining the work your supervisor is undertaking
  - mentoring
  - explaining workplace culture

- h. introducing me to people
- i. talking to me about my future aspirations
- j. setting workplace expectations (dress, attendance times, demeanour, etc)
- k. discussing current issues with the legal profession
- l. explaining workplace policies
- m. discussing workplace risks and how to manage them
- n. Other [free text]

**7. What is the most challenging aspect/s of your placement?**

Free text

**8. What has/could your supervisor do to help with those?**

Free text

**9. Have you raised these issues with your supervisor?**

Y/N

**10. If no to Q9 – why not?**

Free text

**How much time has your supervisor spent with you on average?**

<b>11. Per day</b>	5-10 minutes
	10 minutes – half an hour
	Half an hour – 1 hour
	>1 hour
<b>12. Per week</b>	10 minutes – half an hour
	Half an hour – 1 hour
	1 hour – 3 hours
	3 hours

**13. During your placement has there been any explicit discussion of your rights as a student learning in the workplace?**

Y/N

**Were you told what to do if you observed or experienced:**

	Y	N
<b>14. Discrimination</b>		
<b>15. Harassment</b>		
<b>16. Bullying</b>		

**17. Have your expectations about supervision met? How/how not?**

Free text

**18. Can you identify any specific examples of good supervision or supervision which you thought could have been improved?**

Free text

**19. What do you think supervisors should do to ensure all law students completing placements are facilitated to succeed?**

Free text



## **Appendix B**

### **Survey Questions – Practitioner Survey**

#### **1. Which of the following supervision techniques have you used?**

- a. Taking time to get to know the person as an individual
- b. Combine face to face and written communication
- c. Explicitly model the behaviours I want to see
- d. Identify resources and opportunities to develop skills
- e. Provide guidance on how to perform tasks
- f. Provide exemplars of work
- g. Give feedback on work well done
- h. Provide specific guidance on areas for improvement
- i. Ensure they are familiar with workplace expectations and policies

#### **2. Which of the following communication techniques are you aware of / have you used?**

- a. Active listening
- b. Cultural sensitivity
- c. Providing sandwich feedback
- d. Mirroring
- e. Being attentive to emotional issues
- f. Combining multiple communication methods (i.e. verbal and written)
- g. Asking how to best provide instructions/feedback

#### **3. Please indicate how important you think these will be to a student or junior solicitor (Not at all important; Moderately important; Extremely important)**

- a. Allocating meaningful tasks
- b. Developing connections / rapport with them
- c. Articulating when / how they can ask questions or seek advice
- d. Explaining what is required to successfully complete assigned tasks
- e. Providing constructive feedback on their work
- f. Explicitly articulating workplace expectations
- g. Discussing workplace risks and how to manage them
- h. Providing information about workplace policies
- i. Introducing people in the workplace
- j. Discussing their career aspirations
- k. Providing career guidance

#### **4. Have you received any formal training in being a supervisor/mentor?**

Yes/No

**4a. If you have received training, please provide brief details here (when/where did the training occur, approximately how long did it take, what did it cover, was it compulsory or voluntary?)**

Free text

**5. What aspects of supervision do you find most challenging?**

Free text

**6. What would assist you with supervision?**

Free text

**7. Would you be prepared to complete training to hone your supervision skills?**

Yes / No / Maybe

**8. Which of the following kinds of supervision training would you be most likely to engage with?**

- a. Face-to-face
- b. Remote synchronous (i.e. via Zoom or MS Teams)
- c. Self-directed online

**9. If you were prepared to do supervision training, how long would you be prepared to dedicate to it?**

- a. 1 hour or less
- b. 1-3 hours
- c. A full day

**10. Do you think your firm would support you completing supervision training?**

- a. Definitely not
- b. Probably not
- c. Might or might not
- d. Probably yes
- e. Definitely yes

**11. Have you ever received training in recognising/responding to workplace harassment, bullying or discrimination?**

Yes/No

**11a. If yes, could you provide brief details**

Free Text

**12. Do you feel confident assisting a student or junior solicitor recognising/responding to workplace harassment, bullying or discrimination?**

Yes/No

**12a. If no, why not?**

Free Text

**13. When assisting a student or junior solicitor with recognising/responding to workplace harassment, bullying or discrimination, what strategies have you employed or might employ in the future?**

Free text

**14. Have you ever supervised a student or junior solicitor who appeared to be suffering from poor mental health?**

Yes/No/Maybe

**14a. During that supervision experience, did you feel confident in knowing how to support them?**

Yes/No/Unsure

**14b. What did you do? In retrospect would you have chosen a different course of action?**

Free text

**15. Is there anything else you would like to add about supervision of law students/junior lawyers you think might be useful?**

Free text