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Anne Hewitt

The University of Adelaide

Laura Grenfell

The University of Adelaide

Hadieh Abiyat

The University of Adelaide

Mikeyli Hendry

The University of Adelaide

Joanna Howe

The University of Adelaide

Sam Whittaker

The University of Adelaide

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WEIGHING THE COST OF EXPECTATIONS THAT STUDENTS COMPLETE LEGAL WORK EXPERIENCE

ANNE HEWITT*, LAURA GRENFELL*, HADIEH ABIYAT*,
MIKEYLI HENDRY*, JOANNA HOWE*, SAM WHITTAKER*

I INTRODUCTION

There is a widely embraced global phenomenon which is challenging graduates entering the labour market: the expectation that you should already have extensive practical experience to be eligible for an entry level job. In 2016, the United Kingdom's Social Mobility Commission reported that work experience and internships are the new 'must have'.¹ In 2020 a UK survey indicated that over one third of companies admitted that they are 'not very likely' or 'not at all likely' to recruit graduates without work experience.² In that context, internships are considered vital to gain experience, to the extent that they have been described as the 'new degree'.³

This expectation that a graduate needs work experience to be competitive for employment also seems to hold true for graduates seeking to enter the legal profession.⁴ In the Australian context, one major legal recruitment company, Burgess Paluch, advises those 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

* The University of Adelaide Law School

¹ Social Mobility Commission, *State of the Nation 2016: Social Mobility in Great Britain* (November 2016) 143.

² High Fliers Research, *The Graduate Market in 2019: Annual Review of Graduate Vacancies & Starting Salaries at the UK's Leading Employers* (High Fliers, 2020) 23.

³ Pauline Leonard, Susan Halford and Katie Bruce, "'The New Degree?'" Constructing Internships in the Third Sector' (2016) 50(2) *Sociology* 383–99.

⁴ In the context of the United Kingdom legal profession, Allen and Overy's retiring senior partner David Morley stated in 2016 that 'work experience is the new job currency': Interview with David Morley, (Georgia Stanley, Legal Week, 31 March 2016) 01:15 <<http://www.legalweek.com/sites/legalweek/2016/03/31/work-experience-is-the-new-job-currency-allen-overys-morley-on-driving-social-mobility-in-law/?slreturn=20170518223129>>.

off, massively. Not doing it will not pay off. Massively. Try to get clerkships especially, and *as many as you can*.⁵

This candid advice captures the present predicament for law students. The advice is not aimed at increasing altruistic volunteering by legal professionals with the not-for-profit sector (a worthy cause⁶) but at guiding law students to the point they would likely be recruited by a law firm.⁷ It is aligned with numerous Australian online sources, including those of providers of the Graduate Diploma of Legal Practice (GDLP), universities, and firms, which tout the importance of practical legal work experience to securing a graduate position.⁸ This perception that it is necessary to seek ‘as much [practical experience] as you can’ is firmly implanted among most cohorts of law students and graduates.⁹ This expectation leaves law graduates facing an unenviable Catch-22 – you need have secured work to secure work. The result? The pressure to gain practical legal experience becomes a driving factor for many law students, who begin ‘preparing for the prestigious law clerkship programs’ years in advance with the perception that they are ‘the key gateway to securing a graduate job at top commercial law firms’.¹⁰ Thus

⁵ See Paul Burgess, ‘Advice for Graduate Lawyers: How to Make Your Application Stand Out’, *Burgess Paluch* (Web Page, November 2021) (emphasis added) <<https://www.bplp.com.au/advice-for-graduate-lawyers/>>.

⁶ The authors support the National Pro Bono Target of at least 35 hours per year per lawyer – see Australian Pro Bono Centre (webpage, June 2022) <<https://www.probonocentre.org.au/provide-pro-bono/target/>>.

⁷ There is significant evidence that altruistic work has health benefits, see, eg, Jerrf Yeung, Zhuon Zhang & Tae Yeun Kim, ‘Volunteering and health benefits in general adults: cumulative effects and forms’ (2018) 18 *BMC Public Health* 8. However, the impacts of student volunteering in a desire to improve employability have not been studied.

⁸ The website of Monash University Faculty of Law states: ‘Improved graduate employability driven by the skills and knowledge gained through participation [in clinical legal education]’: ‘Information for Future Students’, *Monash University* (Web Page) <<https://www.monash.edu/law/home/cle/future-students/>>. In terms of GDLP providers, see ‘A Brief Guide to PLT Work Experience’, *College of Law* (Web Page) <<https://www.collaw.edu.au/your-career/becoming-a-lawyer/work-experience/>>, and ‘How Do I Get Work Experience as a Lawyer’, *Leo Cussen Centre for Law* (Web Page) <<https://www.leocussen.edu.au/how-do-i-get-work-experience-as-a-lawyer/>>. For an example of an Australian law firm, see Kim Koelmeyer, ‘How to Get Practical Legal Experience During COVID-19’, *Anika Legal* (Web Page) <<https://www.anikalegal.com/blog/how-to-get-practical-legal-experience-during-covid-19/>>. For an example of a UK law firm, see Paul Gascoyne, ‘The Importance of Work Experience’, *Shearman and Sterling* (Web Page) <<https://ukgraduates.shearman.com/2017/04/06/the-importance-of-work-experience/>>. See also ‘Law Work Experience’, *The Lawyer Portal* (Web Page) <<https://www.thelawyerportal.com/free-guides/law-work-experience/>>.

⁹ See, eg, Annina Tropea, ‘5 Reasons Law Students Need Practical Experience During their Degree’, *Beyond Law* (Web Page) <<https://beyondlaw.com.au/resources/news/114-5-reasons-law-students-need-practical-experience-during-their-degree>>. See also Andrew Stewart and Rosemary Owens, *Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia* (Report, Fair Work Ombudsman, 16 January 2013) 57–8 [3.63].

¹⁰ 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>>.

there is an understanding that acquiring multiple stints of work experience, unpaid or paid, is pseudo mandatory for those law students seeking to secure graduate employment as lawyers.¹¹

This article seeks to explore the consequences of this pseudo mandatory work experience for law graduates at both the system level and at the individual level. The reasons for undertaking this study are threefold. First, there are well recognised equity issues associated with securing and undertaking work experience placements. Not everyone can afford to undertake extensive work experience nor has the networks to access it. These equity issues are particularly acute in the legal profession which in the past has suffered from the reputation of being close-knit, ‘pale, male and stale’, and generally lacking diversity.¹² Additionally, the legal profession has sometimes been accused of exploiting law students who need work experience.¹³

Second, there are growing indications that not all work experience conveys equal benefits. There is evidence that high quality work experience can be a means of ensuring individuals are able to gain practical skills, to develop professional connections, and to showcase their worthiness to secure graduate positions, which translate into positive employment outcomes.¹⁴ ‘High quality’ work experience in this context is defined as experience which is likely to have a positive impact on future employment. There is significant evidence, summarised by O’Higgins and Piñedo Caro, that paid work experience positions ‘are clearly associated with better post-programme outcomes

¹¹ This is in addition to mandatory work experience which must be undertaken as part of Practical Legal Training, which is a pre-condition for admission to legal practice in Australia. See Legal Profession Uniform Admission Rules 2015, Schedule 2.

¹² On the changing diversity in the legal profession, see: The Law Society of New South Wales, *Diversity and Inclusion in the Legal Profession: The Business Case* (Report, June 2017) 4; Sam McKeith, ‘Building Diversity in the Legal Profession’, *Law Society Journal Online* (online, 4 May 2019) <<https://lsj.com.au/articles/building-diversity-in-the-legal-profession/>>. In May 2019 the Law Council of Australia recommended that constituent bodies collect data on the ethnic and cultural diversity of the legal profession: ‘National Collection of Ethnic and Cultural Data’, *Law Council of Australia* (Media Release, 20 May 2019) <<https://www.lawcouncil.asn.au/media/news/national-collection-of-ethnic-and-cultural-diversity-data>>. To the authors’ knowledge, such data has not yet been published.

¹³ The 2013 Fair Work Ombudsman report surveyed final year law students in three different Australian law schools. Participants in that survey pointedly commented on the equity and exploitation concerns that arise for students engaging in unpaid work experience: “I don’t understand how people can afford to [work unpaid]. Studying at Uni is a big enough expense. I also don’t understand ethically how businesses can ask for that. I don’t get paid to work, yet the firm still charges me out at \$150/hour. The firm is gaining a considerable financial advantage from me being there. For me, giving up my own time is a big deal as I work 20+ hours at another job & study full time. I will be disappointed if this placement doesn’t increase my employability.”: Stewart and Owens (n 9) 57–8 [3.63].

¹⁴ Niall O’Higgins and Luis Piñedo, ‘Interns and Outcomes: Just How Effective are Internships as a Bridge to Stable Employment?’, (Employment Working Paper No 241, *International Labour Organization*, 9 August 2018); Universities Australia et al, *National Strategy on Work Integrated Learning in University Education* (2015).

than are unpaid' programmes.¹⁵ However, they posit that pay is not causative, and that the improved outcomes are in fact linked to the more 'structured and formalized approach' in paid experiences, which often include the 'presence of a mentor, access to health insurance, similar working conditions to those of regular employees and sufficient ... duration to allow significant work-related competencies to be acquired'.¹⁶ In contrast, poor quality placements, with inadequate supervision or training (which may equate to exploitative or illegal unpaid work¹⁷) have limited impact on graduates' employment prospects. As Piñedo and O'Higgins state, '[n]ot all internships enhance young people's subsequent employment prospects'.¹⁸ If law students with limited social capital are striving to gain practical experience but are only able to secure poor quality opportunities, this is likely to compound existing system-level disadvantage.

Third, at an individual level, the personal costs for students of the years dedicated to securing and completing work experience has been under explored. We know that lawyers and law students suffer from adverse mental health at higher rates than the general population.¹⁹ For this reason it is important to consider what impact the imperative to succeed in both work and study has on students.

This article begins, in Part 2, by sketching the equity literature and data in the UK and Australia on the systems level impact of pseudo mandatory work experience. Parts 3 and 4 add to this literature by exploring the effects at the individual level via personal accounts of participants. This impact is presented through the methodology of 'auto-ethnography' whereby the individual authors (including current students and recent graduates) offer their reflections on expectations and experiences around legal work experience. These accounts, set out in Part 4, indicate the mental health costs of the pseudo mandatory requirement that students compete for and complete multiple stints of legal work experience. The article concludes by calling for the legal academy and legal profession to engage in a meaningful conversation about how to protect law students from negative effects of expectations around legal work experience.

¹⁵ Niall O'Higgins and Luis Piñedo Caro, 'What Makes for a "Good" Internship?' in Andrew Stewart et al, *Internships, Employability and the Search for Decent Work Experience* (Edward Elgar, 2021) 35, 45.

¹⁶ Ibid 53. It is also notable that in the Australian context completing work experience is associated with better employment outcomes, and that workplace learning undertaken as a part of study is even more effective than extra- or co-curricular arrangements. Australian Collaborative Education Network, *Australian Collaborative Education Network – 2021 Summary Report for Graduate Outcomes Survey Items* (Report, Social Research Centre, October 2021), 15.

¹⁷ In 2018 it was estimated that at least 10% of unpaid work in Australia might be illegal: Andrew Stewart et al, 'The Nature and Prevalence of Unlawful Unpaid Work Experience in Australia' (2018) 31(2) *Australian Journal of Labour Law* 156, 171 ('Unlawful Unpaid Work Experience').

¹⁸ O'Higgins and Piñedo (n 14) 25.

¹⁹ Carl Cullinane and Rebecca Montacute, *Pay as You Go? Internship Pay, Quality and Access in the Graduate Jobs Market* (Report, The Sutton Trust, 2018) 3.

II SKETCHING THE EQUITY LITERATURE ON WORK EXPERIENCE

In 2018 the UK Sutton Trust, an institution focussed on improving social mobility and addressing educational disadvantage, argued that: ‘Internships are an increasingly integral part of the graduate job market, yet are characterised by many features that are socially exclusive and afford advantages to those from better-off backgrounds, serving as a drag on social mobility’. In this context, Carys Roberts, Director of the ThinkTank ‘Institute for Public Policy Research’, has identified and explained three critical obstacles to equitable access to internship experiences.²⁰ The first is a lack of existing networks in the relevant industry, disproportionately affecting those who are first in family, from regional or remote areas, or culturally diverse. A lack of existing network connections means individuals are unable to find out about internship opportunities which were not publicly advertised (those accessible through ‘word of mouth’) or gain preferential access to internships through connections. On this point, Roberts concludes that an unfortunate outcome of the informal nature of many work experience placements is that ‘connection rather than ability [is] the key that unlocks a work experience opportunity or an internship’.²¹

Financial barriers are the second equity obstacle identified by Roberts. These include requirements to pay for travel to where internships are located and accommodation there, to afford other internships costs such as equipment or appropriate clothing, and to sacrifice existing paid work in order to complete an internship (relevant to those without independent means or family support, and those with financial or caring responsibilities).

Discrimination on the basis of gender, ethnicity and other differences is the third obstacle that prevents some from securing internship experiences. This is problematic for the individuals affected, but also more broadly. Inequity in access to work experience risks promoting ‘inequalities of opportunity that we have been striving diligently to reduce in courts, schools and communities’.²²

The cumulative effect of these equity and access problems, according to Roberts’ research, can have a strong impact on particular

²⁰ Carys Roberts, *The Inbetweeners: The New Role of Internships in the Graduate Labour Market* (Report, Institute for Public Policy Research, April 2017).

²¹ 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> 23.

²² Ross Perlin, *Intern Nation: How to Earn Nothing and Learn Little in the Brave New Economy* (Verso, rev ed, 2012) xv. The British Low Pay Commission also noted the ‘potentially damaging impact ... on social mobility’ of unpaid internships for university graduates because they inhibit labour market access for particular groups who cannot afford to undertake them: British Low Pay Commission, *National Minimum Wage: Low Pay Commission Report 2012* (Cm 8302, 2012) 88 [3.52]. These access and equity issues may compound the exclusive nature of recruitment for particular careers, particularly those in which experience is necessary: see, eg, Sutton Trust, *Research Brief: Internship or Indenture?* (2 November 2014) <https://dera.ioe.ac.uk/30245/1/Unpaid-Internships-1.pdf>.

professions and disciplines. Roberts illustrates this in her three case study sectors (charity, creative industries and finance) which all have significant expectations of unpaid work: in these three sectors, the workforce was less diverse and included significantly fewer individuals from lower SES backgrounds than the broader population.²³ It is fair to say that the legal workforce in Australia is similar, with much evidence of a lack of socio-economic diversity, starting from admissions into law schools.²⁴

Other, additional, obstacles compound these equity problems identified by Roberts. For example, in 2021 Wright and Mulvey found that UK students from lower SES groups are less likely to be aware that work experience provides ‘currency’ in the employment market and therefore less likely to pursue or undertake relevant opportunities.²⁵

In Australia there is some evidence of replication of these equity issues identified in the UK. A 2016 nation-wide survey of unpaid work demonstrated the extent of unpaid work being undertaken in this country. It found that more than half (58%) of respondents aged 18-29 and over a quarter of respondents (26%) aged 30-64 had participated in at least one episode of unpaid work experience in the 5 years prior to the survey.²⁶ Not only are expectations of work experience deeply entrenched in Australia, but the 2016 survey also showed that some groups are having trouble accessing it. It 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, as are women and those who live outside capital cities.²⁷

A 2017 Universities Australia survey confirms that there is an equity and access problem in the participation of equity/disadvantaged student groups in work-integrated learning activities such as internships.²⁸ It indicates that official ‘equity groups’ who face issues in accessing higher education, namely students from low socio-economic backgrounds, rural and regional students and Indigenous students, face significant challenges in accessing these activities.²⁹ Financial stress was also an obstacle for other students such as international students (not considered an official equity group) who were less able to leave or

²³ Roberts (n 20) 26, 29–33.

²⁴ Kate Allman, ‘A Profession for the Wealthy? The Enduring Problem for Diversity in Law’ (2020) NSW Law Society Journal online at <https://lsj.com.au/articles/a-profession-for-the-wealthy-the-enduring-problem-for-diversity-in-law/>

²⁵ Ewan Wright and Benjamin Mulvey, ‘Internships and the Graduate Labour Market: How Upper-Middle-Class Students “Get Ahead”’ (2021) 42(3) *British Journal of Sociology of Education* 339.

²⁶ Damian Oliver et al, *Unpaid Work Experience in Australia: Prevalence, Nature and Impact* (Report, Commonwealth Department of Employment, 2016) 5 (‘*Unpaid Work Experience in Australia*’).

²⁷ Oliver et al, *Unpaid Work Experience in Australia* (n 26) 5; Damian Oliver et al, ‘Unpaid Work Experience is Widespread but Some Are Missing Out: New Study’, *The Conversation* (online, 18 January 2017) <https://theconversation.com/unpaid-work-experience-is-widespread-but-some-are-missing-out-new-study-70737#comment_1185501>.

²⁸ Universities Australia, *Work Integrated Learning in Universities: Final Report* (2019).

²⁹ Ibid 27-30.

suspend their part time employment and who may be constrained by visa conditions which limit the performance of unpaid work.³⁰

The statistics in the 2017 Universities Australia survey indicate that some students are undertaking multiple work-integrated learning activities such as internships.³¹ 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.³²

This trend particularly impacts on those who are struggling to access and finance a single episode of legal work experience.

At a systems-level, these trends and access and equity obstacles pose wide social implications: there is real concern that these issues could add to inequality in Australian society.³³ Policies and practices which effectively exclude specific groups from economic participation though meaningful and decent work may lead to fractures in society, lack of social cohesion and social unrest.³⁴ Exclusion from opportunities to secure decent work is linked to health problems,³⁵ social exclusion and poor mental health outcomes.³⁶ At an economic level, there are efficiency and efficacy costs from excluding groups from the benefits of internships. It can, for example, diminish much-needed diversity in particular professions and workplaces where diverse perspectives, life experiences and approaches can improve health outcomes.³⁷ Much research indicates that diversity within the workplace increases harmony, productivity, creativity and the ability to problem solve and catch any errors.³⁸

³⁰ Ibid 21. See also: Joanna Howe, 'A Legally Constructed Underclass of Workers? The Deportability and Limited Work Rights of International Students in Australia and the United Kingdom' (2019) 38(2) *Industrial Law Journal* 426; Joanna Howe, Andrew Stewart and Rosemary Owens, 'Unpaid Work and Temporary Migrant Labour in Australia' (2018) 40(2) *Sydney Law Review* 183.

³¹ Universities Australia (n 28) 8.

³² 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) 79.

³³ Paula McDonald, Damian Oliver and Deanna Grant Smith, 'The Growing Cost of Internships Could Add to Inequality', *The Conversation* (online, 20 June 2016) <<https://theconversation.com/the-growing-cost-of-internships-could-add-to-inequality-60371>>.

³⁴ Mark Gradstein and Maurice Schiff, 'The Political Economy of Social Exclusion, with Implications for Immigration Policy' (2006) 19(2) *Journal of Population Economics* 327.

³⁵ Gerhard Krug and Andreas Eberl, 'What Explains the Negative Effect of Unemployment on Health? An Analysis Accounting for Reverse Causality' (2018) 55(1) *Research in Social Stratification and Mobility* 25.

³⁶ Laura Pohlen, 'Unemployment and Social Exclusion' (2019) 164(1) *Journal of Economic Behavior & Organization* 273.

³⁷ L E Gomez and Patrick Bernet, 'Diversity Improves Performance and Outcomes' (2019) 111(4) *Journal of the National Medical Association* 383.

³⁸ Elizabeth Forma, 'Impact of Workplace Diversity' (2014) 3(1) *Review of Integrative Business and Economics Research* 402.

The 2017 Universities Australia report has given us data on the inequitable distribution of work experience opportunities for Australia's university students: it confirms data from the 2016 national survey into unpaid work which established that students from regional and remote areas or low SES backgrounds are less likely to have participated in unpaid work experience.³⁹ Of concern is evidence that university academics and administrators involved in internships have varying awareness of the equity implications of requiring and encouraging work experience.⁴⁰ Some Australian Law Schools, such as Monash⁴¹ and Macquarie,⁴² have addressed the problem of securing work experience in law by guaranteeing it as part of their law degree. But, as we explain below, there are other uncounted costs to the legal profession's expectation that law graduates have prior legal work experience.

Among the uncounted costs are the likely consequences of these expectations at the individual level. The consequences for a student unable to secure or complete a quality internship⁴³ or multiple stints of work experience, especially when, in many cases, that is effectively mandatory to be competitive for graduate positions, are immediate and extreme. In practical terms it may mean exclusion for those students who lack networks to secure high quality work experience placements (or any at all), who cannot afford to do long hours of unpaid or low-paid work, or afford accommodation remote from their home to access internship opportunities. It may mean that many internship opportunities can only be accessed and completed by the privileged few with existing industry connections and the means to access a position and support them in its completion. The explanation seems simple: if you cannot pay your own way or rely on family and friends to support you, you cannot afford to relocate to expensive metropolitan hubs and work for free for extended periods. Exclusions from high quality work experience (and potential consequential reduction in employment opportunities) or the struggle to locate and complete work experience despite obstacles can be enormously detrimental and stressful for individuals.

To sum up, some of the existing data is clear: work experience is not accessible equitably, which has consequences for productivity, business competitiveness and economic growth. But this data and analysis is abstract and impersonal and only demonstrates a part of the problem; it fails to recognise the impact at the individual level – the personal stories behind the statistics. The next section seeks to fill this

³⁹ Stewart et al, 'Unlawful Unpaid Work Experience' (n 17).

⁴⁰ Anne Hewitt, Rosemary Owens and Andrew Stewart, 'Mind the Gap: Is the Regulation of Work-Integrated Learning in Higher Education Working?' (2018) 44(1) *Monash University Law Review* 234.

⁴¹ For information on Monash Law School's 'Clinical Guarantee', see (Web Page, June 2022) <<https://www.monash.edu/law/future-students/cle/future-students>>.

⁴² See Macquarie University's Professional and Community Engagement program (PACE) (webpage June 2022) <<https://students.mq.edu.au/study/course/pace>>.

⁴³ Hallmarks of quality work experience were discussed above, see ns 14-16.

gap by offering some personal stories, drawing on the firsthand experiences of the authors.

III AN 'AUTO-ETHNOGRAPHY ANALYSIS' METHODOLOGY

To give context to this equity problem and put a 'human face' on a national and internationally recognised issue, in this part of the article the academic authors and three current students share personal stories about their experiences in accessing and completing work experience. This contribution is a variation on 'auto-ethnography'⁴⁴ in which each of the six authors provide narrated reflections on a series of questions identified as important in the context of the equity literature. The medium of 'auto-ethnography' is useful as it places the authors at the centre of the research, by focussing on individual experience in a social-cultural context. Auto-ethnography is valuable because it

reviews personal experience reflexively ... and from this analyses and distils key issues about that autobiography from an ethnographic stance, i.e. what the personal experiences say to the reader about culture, values, relations and society in relation to the topic of research interest.⁴⁵

This inward-focussed adaption of ethnography, which is commonly understood as participant observation, allows an exploration of 'the everyday' and learning about the present state of the world around us.⁴⁶ It is an appropriate methodology for this project, in that it allows a deep exploration of the phenomenon of work experience in law. As Campbell states:

By putting the *researcher's* experience, emotions and interactions at the centre of the story, this made the research into that particular phenomenon richer and more meaningful.⁴⁷

While the research project offers the experience of only 6 participants, the social sciences provide ample justification for deep,

⁴⁴ Carolyn Ellis and Arthur P Bochner (eds), *Composing Ethnography: Alternative Forms of Qualitative Writing* (AltaMira Press, 1996).

⁴⁵ Louis Cohen, Lawrence Manion and Keith Morrison, *Research Methods in Education* (Routledge, 8th ed, 2018) 298.

⁴⁶ Ethnography is 'a commitment to the first-hand experience and exploration of a particular social or cultural setting on the basis of (though not exclusively by) participant observation. Observation and participation (according to circumstance and the analytic purpose at hand) remain the characteristic feature of the ethnographic approach.'; 'Introduction' in Paul Atkinson et al (eds), *Handbook of Ethnography* (SAGE Publications, 2007 ed.) 1, 4–5. For further details of the methodology of ethnography, see David Silverman (ed) *Qualitative Research* (4th edition, 2016, SAGE) Chapters 7, 8 and 9.

⁴⁷ Elaine Campbell, 'Exploring Autoethnography as a Method and Methodology in Legal Education Research' (2016) 3(1) *Asian Journal of Legal Education* 95, 96. There is no ideal number of participants in an auto ethnography, however for ethical reasons all participants must give informed consent. Other published auto ethnographies in legal education have had six authors, see for example, Alex Steel, Natalie Skead, Kate Galloway, Mary Heath, Anne Hewitt & Mark Israel "Enabling professional development for sessional colleagues: reflections from the Smart Casual online initiative" (2018) (39)1 *Adelaide Law Review* 65-98.

rich, and contextually based studies.⁴⁸ This approach seeks to go deep, not broad; it does not claim that the insights generated as a result are comprehensive, representative, or universal. However, given the diverse backgrounds and experiences of the six authors, there is a likelihood that these experiences may reflect those of others. As Hughes states, any experience is likely replicated:

One of my basic assumptions is that if one quite clearly sees something happen once, it is almost certain to have happened again and again. The burden of proof is on those who claim a thing once seen is an exception; if they look hard, they may find it everywhere, although with some interesting differences in each case.⁴⁹

The authors echo some of the diversity found in the legal profession and law schools. Three are employed as legal academics, each of whom studied law in a different university in a different state and subsequently practised law before joining academia. Two of these academics also coordinate and deliver internship courses within their law school. Three authors are current students or recent graduates of law, one a mature age student. Two authors were born overseas; one migrated to Australia as an adult. One speaks English as a second language, one is Indigenous, two were raised in single parent households, two are the children of tertiary educated parents and three are the first in their family to attend university. Two of the authors grew up in Australian capital cities, two in regional towns, one on a farm in a regional area, and one overseas. Three of the authors were required to move to a capital city to commence their university education, and two also crossed state borders. Four of the authors attended public high schools, and two attended private schools. Four received government benefits while studying, and one received a scholarship. Three relied on additional income from part-time work while studying, and four also received additional financial or practical support from family, including three authors who lived in the family home.

The work experience undertaken by the authors was varied, and included placements in the public service, community legal centres and private firms. Placements were full- and part-time, most were based in Australia, and were both paid and unpaid. In addition, a few were 'paid' in that they were supported through scholarships. Some of the work experience was organised and/or financially supported by a Law School or other organisation but most was secured independently.

In terms of methodology, the ethnographic data was gathered by each author independently answering a series of questions, sparked by the equity literature (discussed above), which asked them to reflect on their experience of gaining and completing law-related work experience. The resulting narratives were centralised and a preliminary

⁴⁸ See, eg, Norman K Denzin and Yvonna S Lincoln, *The Sage Handbook of Qualitative Research* (Sage Publications, 3rd ed, 2005); Carl B Klockars, *The Professional Fence* (Free Press, 1974); Robert K Yin, *Case Study Research: Design and Methods* (Sage Publications, 2nd ed, 1994).

⁴⁹ Everett C Hughes, *The Sociological Eye: Selected Papers on Institutions and Race* (Aldine-Atherton, 1971) ix.

analysis undertaken by one author, with the resulting draft then circulated to each author for review and redrafting. Through this co-authoring process, each author retained control over the use of any of their responses and had the opportunity to edit them where they believed the context might give an inaccurate impression of their position or individual experience.

The inclusion of students as authors was deliberate, not only because they contribute relevant, recent and profound personal insights regarding the extent and effect of the pressures to gain practical legal experience, but also to engage them as research partners. Pedagogic literature recognises the value of collaborative engagement with students as partners in learning and teaching endeavours.⁵⁰ However, in this project, recognising students' value as research collaborators is particularly apposite. The project centres on collaborative engagement in which students are recognised as peers and equally rewarded for their contribution. In addition, the inclusion of students/recent graduates as authors, with consequent 'ownership' and control of their narrative responded to the ethical issues posed by asking students to engage in this project. This contrasts with the traditional approach of seeking informed consent from students to engage in research as participants rather than collaborators, described by Campbell as follows:

Researchers—by using qualitative, quantitative or mixed methods—must take into consideration the effect their study will have on any human participants. In traditional research, one of the ways of countering any ethical issues is to obtain informed consent from your participants. This is usually by way of a formal consent form which is accompanied by a description of the purpose and structure of the study. This works efficiently in traditional legal education research where participants (typically students) are interviewed, or complete a survey or questionnaire.⁵¹

Through the process of collaboration, each author was empowered to ensure the outcomes of the research truly reflected their perspective, and to adapt, change or delete any aspect of their narrative they did not want published for any reason.

IV ANALYSING THE DATA

A *Pressure to secure work experience*

All the authors felt pressure to acquire practical legal work experience prior to graduation. One commented, 'It seems essential to getting a graduate position to have a CV full of relevant work experience. The tight competitive nature of the legal job market is a common topic of conversation among my peers.' Another author

⁵⁰ See, eg, Mick Healey, Abbi Flint and Kathy Harrington, *Engagement Through Partnership: Students as Partners in Learning and Teaching in Higher Education* (Report, Higher Education Academy, July 2014) <<https://www.heacademy.ac.uk/engagement-through-partnership-students-partners-learning-and-teaching-higher-education>>.

⁵¹ Campbell (n 47) 100.

commented they were aware that in a ‘very competitive graduate market... I would need legal work experience to be able to secure a position.’ This pressure created a sense of anxiety for some of the authors, ‘the process of CV padding with work experience was very stressful’ and ‘I would say it is unrealistic and unfair’. This was especially true for those without existing connections in the law: ‘My background and consequent lack of connections in the industry is a source of anxiety for me when considering graduate employment.’

However, it is notable that the pressure reported by the academic authors, whose days as students are further behind them, seemed less intense. One academic author acknowledged not having felt the pressure to have a CV that included a commercial law placement, stating, ‘I was somewhat oblivious to the pressure to secure clerkships at firms over the summer. Some friends were doing commercial law clerkships but I never gave it serious consideration.’ That author did, however, undertake extensive legally relevant work, with a focus on legal research and editing, and admits that having hands-on legal experience in a law office is probably more important to securing a graduate position in the current climate than in previous times. It is debatable whether the relative lack of anxiety about work experience felt by the authors who graduated earlier is reflective of growing pressure to have practical work experience, the increasingly competitive graduate legal market,⁵² or simply the passage of time.

However, even among current students, not everyone had felt pressure to gain work experience in the same way. One author commented that they did not realise until later in their degree that practical experience was important, and that this may have been a consequence of the fact they felt isolated in law school and found it difficult to make social connections, which would have helped them learn about expectations from other students. Discussion about professional expectations among peers was perceived as particularly important, as this author did not feel that the law school itself specifically addressed the importance of practical experience to securing graduate positions, ‘[n]either our lecturers nor the university alerted us about gaining work experience.’

I did not know the importance of having work experience in securing a graduate position in the future.... I always thought I do not fit in the crowd, so I did not learn about this important facet of our degree early in the studies. It is very important to have a network of fellow students who exchange ideas and experiences so everyone in the group will learn from them.

⁵² In 1987, 10 of Australia’s then universities offered Bachelor of law degrees; in 2021, the number is 38. The number of law students graduating each year is estimated to be between 7500 to 15000: Gwilym Croucher and Peter Woelert, ‘How Australia Got so Many Law Schools’, *Pursuit* (online, 22 May 2018) <<https://pursuit.unimelb.edu.au/articles/how-australia-got-so-many-law-schools>>. According to the 2020 National Profile of Solicitors, Australia has 83,643 solicitors nationally, 26,066 more than in 2011: see Kate Allman and Amy Dale, ‘The State of the Profession 2021’ *Law Society Journal Online* (online, 9 August 2021) <<https://lsj.com.au/articles/the-state-of-the-profession-2021/>>.

The auto ethnography project confirms the Catch-22 effect identified at the outset of this article: the fact that the lack of work experience tends to be a barrier to gaining work experience. Some authors explained that they perceived work experience hosts did not consider applicants who did not already have work experience:

The biggest concern for me is, however, the commonly held view that CV's which do not demonstrate significant past work experience are usually desk rejected — barring the opportunity for human engagement to demonstrate employability.

After I secured my first clerkship, and had it on my CV, I felt I was much more competitive for future experiences, and they were much easier to obtain. That was also my observation among peers — that some students were able to amass a lot of work experience, but those who had not managed to get any continued to be refused places. I felt very grateful that I was offered that first opportunity, as it moved me from one group to the other.

[It] seemed to me that a whole group of deserving students were being overlooked by firms for placements, and because one firm wouldn't give them a chance no firm would.

Thus we see how exclusion from the legal profession can start early: graduate opportunities are narrowed if students do not quickly make networks among their peers and the profession, networks which offer access to a vital substrata of legal information about the expectations of legal employers and possible experience opportunities.

B *Challenges in securing work-experience*

Not only was acquiring legal work experience perceived as important, but the authors also commented on the practical and personal challenges legal work experience presented. These challenges include a number that are well recognised in the literature as well as some which are less frequently identified.

The authors echoed Roberts' finding of the importance of connections to secure work experience opportunities, many of which are accessible informally or through word of mouth.⁵³ The authors' experience varied from those without any pre-existing connections to the legal profession, to those with a number of social and family connections within the law, as the following quotations illustrate:

I knew no one who worked as a practitioner, let alone anyone who worked in the legal profession.

[I am] the child of tertiary educated parents, both of whom have law degrees, and one of whom works in the legal profession.

At the time of starting Law School, I had never even met a legal practitioner, nor were any of my peers considering studying law or aspiring to be lawyers.

Those who had or managed to develop connections to the profession acknowledged the variety of positive assistance these connections

⁵³ Roberts (n 20) 21–22.

offered them. This included using networking connections to maximise the chances of being recruited:

[I]t is vital in the current climate to put yourself out there and establish networks wherever you can. They will often be more promising in securing a job rather than applying for positions in a 'graduate pool'.

However, that same author explicitly recognised the time commitment required to develop connections if they were not pre-existing, and the stress that the process engendered. Another author commented 'I found the networking aspects of the interview process for a clerkship very challenging as I had had limited exposure to these settings in the past'.

Another illustration of the value of established connections is that they could be leveraged to create access to unique opportunities. For example, one author was able to use family connections to 'set up an opportunity to "shadow" a judge for a week'. That opportunity was explicitly described by the author as work experience 'padding' on their CV.

Several authors indicated that connections within the profession, whether pre-existing or developed through work experience, can give students an opportunity to learn how to 'sell' themselves in the law.

[T]he connections I had helped me to prepare my CV and to pitch myself in a legally appropriate way. For example, by having lawyers and those involved in the law read my CV and cover letter for positions I was able to get useful feedback about what to include and exclude, and how to sell myself for the legal profession.

One author with no prior legal connections articulated the difficulties in securing work experience where they had no access to advice about how to frame their CV for legal work:

I cannot imagine successfully securing work experience at all had it not been for some very valuable feedback received during the internship application process which demonstrated how misplaced my understanding was of an attractive and representative legal resumé.

Several of the authors identified the importance of opportunities to gain practical work that were facilitated by the law school itself, including internship courses and clinical legal education.⁵⁴ This was perceived to be valuable because it did not require existing connections to the profession to establish, and in some instances, because of the practical and supportive environment that the opportunities presented.

The duration and fulltime work at the firm made me evaluate the experience as useful. I learnt valuable skills and made a network of law students. The environment was welcoming and non-judgemental.

⁵⁴ For an analysis of how one Australian law school offers formal internships and attempts to address equity issues, see Laura Grenfell & Cornelia Koch, 'Internship courses for all? Supporting Students undertaking unpaid university-run legal internships' (2019) 44/3 *Alternative Law Journal* 226-231.

However elective internship courses were not always perceived as useful, with sufficient duration and quality of supervision both being identified as detriments to a constructive learning environment.

I did not learn very much there since I felt I was ignored by the lawyers. ... The other downside of this work experience was the brief time spend there which was about 14 days.

This indicates that even in the Law School context, not all work experience is automatically high quality: like with all university courses, what a student gains from a placement can often depend on the individual student's sense of connection with fellow students and supervisors.⁵⁵

C *The Costs of Work Experience*

More traditionally recognised costs associated with undertaking work experience were identified though the auto ethnographies, including: funding costs associated with the work experience, 'organising travel and accommodation was also an obstacle'; paying for placement insurance '[the placement] was unpaid, and I had to pay for workplace insurance'; and covering living expenses while completing unpaid work 'I found myself having to save money from Centrelink payments'.

One cost associated with undertaking work experience which has received less attention in the literature is the impact of the time that they take, both to secure and to complete. One author commented 'in the last 6 months, I have spent around 40 hours submitting applications for work experience or part time paid positions that have been rejected with no more than the usual 'thanks for applying'.' The time away from family and social support that work experience required, particularly for those who lived remote to where work experience opportunities are located, was also identified as a significant issue. One author commented that:

One of the biggest challenges for me was sacrificing more time away from my family and community while undertaking work experiences... I have almost always had to sacrifice my university breaks to complete these experiences. This at times has impacted my mental health, [I have] become homesick and feeling 'burnt out'.

Several authors also explicitly addressed another rarely recognised cost of undertaking experience work experience - that time dedicated to gaining work experience could negatively impact on a student's capacity to excel in their studies. This becomes a delicate balancing act, where the value of additional work experience is balanced against the potential negative impact on a student's transcript, which may be poorly received by future employers.

⁵⁵ This is consistent with the conclusions of O'Higgins and Piñedo Caro based on extensive survey data regarding work experience and subsequent employment outcomes: above n 15.

It has certainly been a struggle to try and balance gaining work experience while maintaining a passing grade... I was ashamed that the places I worked or applied at would see the subjects I had failed on my academic transcript and [worried it] would impact their decision to hire me.

Work experience is very important but at the same time the Law Degree is quite hard to manage. Students should have full concentration to their studies to achieve good marks. I came across peers who used to work tirelessly and sometimes missing out on their classes.

The psychological costs of being on placement in an unfamiliar environment, often isolated from support networks, was also explicitly acknowledged by several authors.

I did not meet others who had taken a similar path to me. I found at times I was the only Indigenous employee within the firm. While I made great legal networks, I found it difficult to form meaningful relationships with anyone and at times felt isolated.

In the clerkship at a major firm, I struggled to find my feet... I think my struggles were due to my unease in a large corporate law firm and my lack of professional networking skills and experience.

The effort that was going into conducting the work was more worth than the income I was paid in return. I used to come home exhausted and disheartened to do the work next day only because my hard work was not appreciated financially (monetary). I was struggling to fulfill my family responsibilities and keep up with life expenses.

These costs are potentially accentuated by the fact that a participant is being judged while completing work experience: 'I was very aware that firms were considering me as a potential graduate recruit.'

D Intersectional Dynamics

The First Nations author in the project has contributed invaluable insights into the unique challenges work experience can pose to Indigenous participants. That author comments:

Indigenous law students in contemporary society are living in two worlds. The first world is the one they grew up in, with cultural and community expectations. Indigenous students who undertake tertiary study are often expected to return to their community or will return due to feeling disconnected and isolated at University. The other world is the 'white man's' world, having to learn to the complex nature of the Australian legal system which has hindered and negatively impacted Indigenous communities since colonisation. At times I have felt stress and anxiety trying to fulfil duties in both of these 'worlds'. It would be difficult for most Indigenous law students to have a full CV while trying to balance family, community and study expectations.

Another author, who is culturally and linguistically diverse, commented explicitly on the impacts of discrimination which affected their capacity to secure, complete and maximise their learning in work experience:

I could see the discriminatory treatment of the supervisor. Even though I was working for free, I was reminded that I had little experience therefore I am not capable of doing some tasks. I was not given the opportunity to practice some of the difficult tasks, but others would be given the same opportunity. I am sure if I was given a bit more opportunity I would have gained more experience.

The perception of discrimination in seeking to enter the labour market is supported by research.⁵⁶ The experience of discrimination once participating in the labour market is particularly problematic given that not all legislation that offers protection against discrimination applies to tertiary students engaged in workplace learning.⁵⁷ The same author identified that this discriminatory treatment continued beyond their voluntary work experience placement.

I was able to secure a paid employment but again due to little experience I was taken advantage of by being paid less than the National Minimum Wage and worked long hours. When I raised it, I was fired from work. The supervisor lawyer did not involve me and my other colleague in serious legal work too.

This narrative is both shocking, and unsurprising. There is evidence that a substantial amount of 'voluntary' work experience occurring in Australia may be unlawful,⁵⁸ and also evidence of underpayment and exploitation of diverse graduates in the context of law.⁵⁹

V CONCLUSION

The existing equity data and literature make it clear that the expectation of work experience prior to graduate recruitment serves as a potential 'drag on social mobility' and it has consequences for diversity in the workplace which in turn affects productivity, business competitiveness and economic growth. In this article we have sought to add to this abstract data and analysis by offering a focus on the impact at the individual level – the personal stories behind the statistics.

The small-scale of the project is aimed at presenting a preliminary exploration of the equity issues raised by the pressure for law students

⁵⁶ Alison Booth, Andrew Leigh and Elena Varganova, 'Does Racial and Ethnic Discrimination Vary Across Minority Groups? Evidence from a Field Experiment' (IZA Discussion Papers No 4947, Institute of Labor Economics (IZA), May 2010).

⁵⁷ For further analysis see: Anne Hewitt, 'Avoiding the Trap of Exploitative Work: A National Approach to Making Work-Integrated Learning Effective, Equitable and Safe' (2018) 31(2) *Australian Journal of Labour Law* 101; Anne Hewitt et al 'Are Work Experience Participants Protected Against Sex Discrimination or Sexual Harassment?' (2021) 46(2) *Alternative Law Journal* 115.

⁵⁸ Stewart et al, 'Unlawful Unpaid Work Experience' (n 17).

⁵⁹ For example, in *GLS v PLP* [2013] VCAT 221, Garde P found that Ms GLS, a mature age Graduate Diploma in Legal Practice student undertaking a practical legal training placement, was an employee. Central to this decision was a verbal agreement she would be remunerated \$50 or \$100 per day (the amount varied during the course of her placement), which constituted a significant underpayment. While there is no evidence in the case that Ms GLS was culturally or linguistically diverse, this case is clear evidence that exploitation of vulnerable graduates occurs. It is also worth noting that Ms GLS was found to have been subject to sexual harassment during her placement.

to have multiple stints of legal work experience ('as much as you can') when applying for graduate employment. It is not intended to be representative of the diversity of those studying and working in law in Australia. Regardless, the reflections are still of value for two reasons. First, many of the challenges identified in the auto-ethnography mirror and personalise those which have been recognised in the literature. These include the importance of existing networks and social connections into the legal profession, and the significant financial costs associated with undertaking work experience. While the authors all managed to undertake work experience of various kinds despite (and in some instances, with the assistance of) these factors, this suggests that considering equity in access to work experience remains important. As Dalrymple et al state in their review of employability literature: 'Opportunities designed with the best of intentions may in fact prove to be differentially available to students when considered in the wider nexus of background, self-concept, self-efficacy and human and other capitals.'⁶⁰ Awareness of this may provide incentives for universities, firms and law societies to implement a range of initiatives to limit or overcome these equity issues. For example, recruiters for law firms may like to ask candidates not just about work experience but also how they got the work experience and distinguish candidates who secured work experience on the basis of connections from those who used cold calling.⁶¹

Second, many of the reflections in part 4 of this article highlight and give voice to issues that have been less canvassed in the literature. These include the significant psychological costs of the expectations that a law graduate's CV will include legal work. Those impacts arise from the stress of seeking work experience, working in unfamiliar and challenging environments while constantly being judged, the enforced isolation from family and community required to complete multiple full-time placements away from home, and the challenges of balancing work experience, paid work and study commitments. These challenges are significant, and in the context of growing awareness of the mental health challenges faced by both law students and lawyers, need to be

⁶⁰ Roger Dalrymple et al, *Employability: A Review of the Literature 2016-2021* (Advance HE, 2021) 66.

⁶¹ This is a recommendation made by Rare, *Social Mobility in Graduate Recruitment - Potential Not Polish: What graduate recruiters can learn from contextual admissions to universities* (2013) p76. However, some other interventions frequently adopted to improve equality in recruitment may be less effective. For example, a large-scale meta-analysis of interventions to change implicit associations found that effect sizes were generally small or not distinguishable from zero: Patrick Forscher, Calvin Lai, Jordan Axt, Carol Ebersole, Michelle Herman, Patricia Devine & Brian Nosek, 'A meta-analysis of procedures to change implicit measures (2019) 117(3) *Journal of Personality and Social Psychology* 522-559. That is, any changes from training were negligible. A systematic review focused specifically on reducing implicit prejudice reached similar findings: Chloe FitzGerald, Angela Martin, Delphine Berner & Samia Hurst. 'Interventions designed to reduce implicit prejudices and implicit stereotypes in real world contexts: a systematic review ' (2019) 7(29) *BMC Psychology* 1-12.

considered further.⁶² In addition, even within the limited pool of participants within this project, it demonstrates a real risk that a combination of high expectations for practical experience combined with discrimination which limits an individual's capacity to gain that experience, restricts the diversity of those able to enter into the practice of law.

These conclusions are concerning and they necessitate greater reflection, adaptation and change. Both the legal profession and legal academy urgently need to reconsider the unnuanced encouragement for students to engage in practical work experience. Is more, in fact, better? Is this pressure for 'as many as you can' contributing to the negative mental health outcomes for law students and graduates by failing to recognise the many and subtle costs of these expectations?

While the legal academy can address some of the equity obstacles to work experience by, for example, attempting to guarantee more access to legal placements, it should also weigh the cost of such work experience on the mental health of law students. As highlighted in Part 4 of this article, the reality is that many students are being forced to balance doing well in their studies with ensuring a means of supporting themselves, remaining connected with their families and caring responsibilities, in addition to securing and completing extensive and mostly unpaid work experience. This study underscores that some law students have internalised the narrative they need to have completed large amounts of work experience to be competitive for graduate work. In addition, it establishes that the pressure of securing and undertaking work experience poses significant challenges for some students. Without intervention there is also a risk that this problem may compound. There is evidence that expectations of work experience are becoming more deeply entrenched and that securing *some* work experience is no longer sufficient. Together the legal profession and law schools should engage in a meaningful conversation about how to protect law students from negative effects of rising expectations around legal work experience while maintaining the positive outcomes that quality work-based learning can achieve. This conversation must occur at both the national and local levels to ensure the interests of all stakeholders, including students, universities, admitting authorities and legal employers, are met. There are a variety of ideas that could be canvassed in this conversation. These include: stakeholders working to counter the 'more is better' narrative; law schools capping the number

⁶² The increasing incidence of psychological distress among law students and graduates is well documented. See, eg, Norm Kelk et al, 'Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers' (Report, Brain & Mind Research Institute, University of Sydney, January 2009); Norm Kelk, Sharon Medlow and Ian Hickie, 'Distress and Depression Among Australian Law Students: Incidence, Attitudes and the Role of Universities' (2010) 32(1) *Sydney Law Review* 113, 114, 117; Kennon M Sheldon and Lawrence S Krieger, 'Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being' (2004) 22(2) *Behavioural Sciences and the Law* 261; Matthew M Dammeyer and Narina Nunez, 'Anxiety and Depression Among Law Students: Current Knowledge and Future Directions' (1999) 23(1) *Law and Human Behavior* 55.

of work experience opportunities individual law students can undertake as a part of their university study; government/university schemes for providing minimum levels of financial or practical support (such as accommodation) for law students undertaking work experience placements. Whatever the particular levers which are chosen, the focus should be on ensuring quality, not quantity in work experience. In other words, on finding ways to guarantee all law students access to a high-quality work experience that can be undertaken without unduly compromising their mental health, financial stability, cultural and family responsibilities or their university study.