

VOLUNTEERING AND UNPAID WORK PLACEMENTS AMONG CHILDREN AND YOUNG PEOPLE IN NSW

Organisation: Interns Australia
Name: Mr Eamon Waterford
Position: Director - Policy & Advocacy
Date Received: 4/02/2014

Submission by Interns Australia



Parliament of New South Wales

Committee on Children and Young People

Inquiry into volunteering and unpaid work placements among
children and young people in NSW

January 2014



About Interns Australia

Interns Australia is the support and advocacy body for interns in Australia. It aims to end any exploitation from internships through empowering interns and building awareness amongst employers, educational institutions, industry, governments and the wider community about the value of genuine and worthwhile internships.

Authors of this report:

Leesa Charlotte, Colleen Chen, Edwin Montoya Zorrilla, Matthew Ng, Natalie Sookee, Matilda South, Eamon Waterford

Contact details:

[REDACTED]
[REDACTED]



Table of Contents

| | |
|---|-----------|
| About Interns Australia..... | 1 |
| Table of Contents | 2 |
| Recommendations | 3 |
| Introduction..... | 4 |
| Why is it important that we ensure internships are not exploitative? | 5 |
| What principles determine the value of an internship? | 9 |
| What makes a valuable internship for an intern? | 9 |
| What makes for a negative experience for an intern? | 10 |
| Different types of unpaid work | 10 |
| Volunteering vs. Internships..... | 10 |
| Vocational Placements | 11 |
| Traineeships | 12 |
| The fragmentation of legal provisions for unpaid work experience in state law .. | 12 |
| The lack of research on young people’s experiences of internships | 14 |
| Preliminary Survey conducted by Interns Australia..... | 15 |
| Global Best Practice in Tertiary-level Work Placements | 20 |
| United States of America | 20 |
| United Kingdom | 23 |
| Canada | 24 |
| France..... | 26 |
| Germany | 27 |



Recommendations

- That the NSW Government investigate methods of adopting the USA model of a 6-point test for the legality of unpaid internships.
- That the NSW Government use its position in the NSW community to encourage the adoption of a charter of ethical internship processes, similar to the German “Fair Company” initiative.
- That the NSW Government pursue reform of unpaid work experience through the Council of Australian Governments.
- That the Commission for Children and Young People conduct research into the extent and experiences of internships by young people in NSW.
- That the Office for Industrial Relations, Office for Volunteering investigate methods of better management of unpaid internships.



“Internships have made the entry level job an endangered species”

Ross Perlin, author of *Intern Nation: How to Earn Nothing and Learn Little in the Brave New Economy*.

Introduction

We welcome this opportunity to comment on the issue of unpaid work in NSW. As the body representing young people in unpaid work placements, we wish to provide recommendations to this inquiry in order to ensure that every young person is safe from exploitation through unpaid work. Should you require any additional information, please do not hesitate to get in contact with us via [REDACTED]

Internships are being used increasingly in Australia as a method to provide experience to young people in their chosen career or industry. However, this has come with a growing concern that internships are exploiting young people and are being used as a low-cost or no-cost alternative to employing staff for businesses.

Currently there is little in the way of regulatory or legislative oversight into internships, with the Fair Work Ombudsman finding that:

“a significant number of workers, particularly young workers, are asked or required to undertake unpaid job trials or unpaid training which go beyond what is reasonably required to assess an applicant’s ability or suitability. Such arrangements effectively require the performance on an unpaid basis of work that would normally be undertaken by a paid employee”¹

We recognise that unpaid internships are, in the right circumstances, a worthwhile and effective tool for furthering the education of young people and can effectively build the capacity of the workforce. In this submission, we will unpack what is required in order to

¹ Fair Work Ombudsman 2013, *Experience or Exploitation?*, available online: <http://www.fairwork.gov.au/Publications/Research/Unpaid-work-report-summary.pdf>



ensure internships remain a positive process and how the NSW Government can play a role in both supporting positive internship experiences and reducing the number of exploitative internship experiences that young people have.

Why is it important that we ensure internships are not exploitative?

If we look at the experience of the workforce in the United States, we can see the negative consequences of a rapid expansion of the use of internships without sufficient community and government oversight. Far from being a nice addition to a potential employee's resume, internships in the USA have become, for many sectors, a required first step in gaining paid employment. For many industries, it is impossible to gain paid employment after the completion of a relevant tertiary degree without first working full time for periods of a year or more.

This has a number of implications. First and foremost, it limits access to certain industries to only young people who have the financial capacity to work full-time without pay. This is not only concerning for issues of equity and access, but also will lead to productivity drops as less proficient, but more wealthy graduates are preferenced over their more-proficient but less wealthy counterparts. Where the amount of unpaid experience required for a paid job in an industry is not mandated, financially-supported young people are able to prolong their transition from study/unpaid work into the paid workforce, giving them an advantage over less supported young people who must limit their unpaid work in order to gain paid employment, often unrelated to their chosen career.

Secondly, it reduces the supply of paid positions and opportunities for young job seekers entering the workforce. A report conducted by the Fair Work Ombudsman pointed to the growing prevalence of "internships" in the Australian workplace. They are particularly apparent in industries that feature an abundance of overqualified graduates



who are seeking experience to further their careers. Indeed, the gap between higher levels of education and underemployment highlights the vulnerability of young people to exploitation.

Young people are attaining higher levels of education; however rates of unemployment and casual employment for young people are increasing. Despite higher education achievements, the percentage of tertiary education and VET graduates who obtain full time work has decreased since 2007. Graduates are increasingly opting to continue full time study or are employed in casual work. Higher education and practical skill sets increase the long-term employability of young people; however the under-utilisation and misalignment of skills gained through higher education with the needs of the labor market present a major barrier for young people accessing full time work. This impacts not only employability, but influences the growing trend of young people delaying major life transitions. Ultimately, young people are faced with significant barriers to entering a changing labour market in a competitive, globalised world. The difficult transition from education to full time work highlights the need for governments to recognise the vulnerability of young people entering into the labour market, and address the question of whether education and training institutions adequately prepare young people for further study or work.

Internships are increasingly relied upon by students to supplement higher levels of education and increase transferability of skills in order to overcome barriers to the workforce. Young people frequently enter into unpaid agreements with employers as a necessary step towards gaining employment. The *Fair Work Act 2009* outlines necessary conditions of internships; that they benefit the intern rather than the employer, and that the intern does not undertake “productive work” which contributes to the business. However, interns are regularly entering into ambiguous and illegal contracts with employers by performing productive work without being remunerated, for often lengthy time periods, leaving young people unemployed for months or years. To



that end, a report conducted by Fair Work Australia reveals a common trend for interns to take on responsibilities that paid employees entitled to rights and wages would otherwise occupy. As a consequence, there are less entry-level jobs available for young people transitioning from full time education to full time work. Due to such arrangements, young people are excluded from economic participation as well as trapping cohorts of graduates in a cycle of underemployment.

Thirdly, the rise in unpaid internships exacerbates the trend towards an increasingly casualised workforce, heightening precarity for young people. Over the past 30 years entry-level job opportunities have dramatically decreased. In conjunction with this, youth unemployment rates have remained significantly higher than the average unemployment rate of 5% for the past decade². With the casual workforce highly concentrated by workers aged 15-24, young people are thrust into a changing labour market without job security and with fewer opportunities for full time work. Young people have to “make do” with insecure economic arrangements, whilst business focus remains on productivity.³ In order to increase experience, young people are turning to internships, which are readily available. However, the lack of remuneration and rights in the workplace could have significant social and economic implications for Australia and generations of young people in years to come.

Ultimately, the rise in internships can be seen as a symptom of an education system that does not effectively match the number of graduates it produces to the number of jobs available in fields related to a given degree. For example, one academic determined that less than 20% of Journalism graduates could expect to get a job, given

² Edginton, P 2013, ‘High rate of youth unemployment will hurt future productivity’, The Australian, 05/10/13, viewed online: [REDACTED]

[REDACTED] last viewed: 24/01/13

³ Lucas, C 2012, ‘A precarious life’, The Sydney Morning Herald, 28/03/12, viewed online: [REDACTED]



the size of the industry.⁴ This mismatch has shifted the balance between employees and employers towards employers, allowing them to demand more of job-seekers, including an expectation that working for free prior to securing a job is a reasonable expectation.

Given this is a significantly entrenched problem that is unlikely to be resolved in the foreseeable future, it is important that government and community regulate the role of internships in order to ensure that no young person is exploited by businesses that have a significant.

Looking into the international sphere, unpaid internships have become highly controversial and contested in the corporate world. In the USA, through recession, a competitive and decreasing job market has meant many entry level jobs being usurped by unpaid internships.

Such instances have begun to be tested in the courts with several cases outlining the exploitation and expectation of unpaid interns in the corporate world. These include *Glatt v. Fox Searchlight Pictures Inc.* and *Wang v. Hearst Corp.* In such cases, unpaid interns did not receive significant training, worked long hours and performed duties that should have been performed by low level employees.

In many cases, unpaid internships aren't even leading to paid jobs. Recent studies have shown that completing an unpaid internship had no tangible employment advantage over not completing any kind of internship, with 27% and 32.5% of 2013 college graduates finding employment. However, 63% of graduates who completed a paid internship found work upon graduation.⁵

⁴ McAllister, Peter 2012, 'Degree of doubt for journalism students', The Australian, 18/04/12, viewed online: [REDACTED]

[REDACTED] last viewed 15/01/14

⁵ Gittleson, Kim 2013, 'The former interns battling to change the culture of US work', BCC, 05/12/13, viewed online: [REDACTED] viewed 29/01/2014



What principles determine the value of an internship?

What makes a valuable internship for an intern?

A good internship should be of greatest benefit not to the employer, but to the person undertaking the internship. Ideally it will contribute to the intern's prospects in a designated field and offer skills that will benefit them in their future career including insight into the industry or sector they are wishing to enter. There should also be opportunities for the intern to network within their industry and form useful contacts that could lead to paid work.

The best internships are clear about what they are offering from the very beginning. This is best done in the original job description for the intern, this means that both the intern and the employer are aware of each other's expectations from the commencement of employment. The internship should be for a reasonable amount of time and require a fair amount of hours per week for the intern to work. This should be agreed on before employment and the intern should not be required to work more than the agreed hours. If not associated with a qualification, the employer should take into account that the intern's need to work and study whilst undertaking the internship.

As stated above, the main benefit should be for the intern. This means that there should be sufficient supervision and support offered by the employer including evaluation and feedback throughout the internship. The intern should work to a timeline, where their progress can be reviewed and the employer can determine whether it is still appropriate for the intern to continue. It is important that the intern is learning throughout their experience. The intern should have rights in the workplace and should also be covered by insurance. Where it is not possible for the intern to be paid, they should be provided with a stipend that covers their travel costs and, where facilities to bring lunch are not provided, their lunch costs.



What makes for a negative experience for an intern?

A trap that a lot of internships fall into is that they don't have a clear purpose or objective from the start. This is especially the case when employers are using unpaid interns to fill entry-level positions. These are positions where interns often learn little, which defeats the purpose of the internship. It is particularly bad if the intern is also not offered opportunities to meet with people in the field and network.

Some employers like to allude to the possibility of employment at the end of the internship. This creates a lot of stress for interns to perform well so that they may gain paid employment. This is sometimes coupled with having to compete with other interns for rewards or employment at the end of the internship. With this element of competition, interns may be more likely to work hours outside of what was initially designated. Some employers don't even outline a clear time-frame for what hours are expected and how long the internship will last for.

Interns have a bad time if they are not offered a proper induction into the workplace or when tasks that have been set at the onset of the internship are changed halfway through. Bad internships also fail to properly support their interns and offer limited supervision. There are also conditions where the intern feels like they are in danger or uncomfortable. Interns are often unlikely to speak up so if they feel unsafe in the workplace this is particularly bad.

Different types of unpaid work

Volunteering vs. Internships

It is important to delineate between volunteering and unpaid work placements, especially in the not-for-profit sector (NFPs), where there may be some confusion between volunteering for a cause and seeking work experience.

While many NFPs certainly rely to some extent on volunteers, and there are significant



social and personal outcomes for young people volunteering their time and skills, there is a growing trend of NFPs offering unpaid internships that offer education and skills development for young people looking to break into the NFP sector.

According to the Fair Work Ombudsman, NFPs are exempt from many requirements of unpaid work legislation and regulation, as there needs to be allowances for organisations to allow people to volunteer their time for a cause they believe in.

However, Interns Australia has heard of a number of concerning examples of NFPs taking advantage of these exemptions to offer internships which are advertised as opportunities to gain work experience and would be classified by any reasonable person as exploitative.

While it is important not to limit NFP's capacity to offer volunteering opportunities (indeed - there is significant evidence that volunteering offers significant personal value to young people and should be encouraged), instances where NFPs use interns to replace paid staff should be discouraged.

Vocational Placements

It is important that we recognise that vocational placements, typically conducted as part of a university or TAFE course, are quantifiably different to what is normally conceived as an 'internship'. Some common examples of vocational placements are:

- Placements as part of a Degree in Social Work,
- The work experience requirement of qualifying for a Practicing Certificate as a Solicitor
- Interning as a Doctor-in-training.

These vocational placements differ in that they are a compulsory requirement of a qualification. As students considering a career in this field are aware of the requirement prior to starting study, and all students complete the same level of work experience, the risk of disadvantaging financially-poorer students is diminished.



Traineeships

Finally, as the Fair Work Ombudsman states, traineeships are an important aspect of workforce development, but must be paid. Internships that require significant training of the intern, and expect some level of skilled work to be completed by the intern, are better classified as traineeships and should be paid under all circumstances (other than some specific forms of volunteering in the NFP space, such as Lifeline Counsellors).

The fragmentation of legal provisions for unpaid work experience in state law

Currently the extent of legal protection overseeing unpaid work experience varies between different jurisdictions. Each State and Territory has legislation that regulates the conduct of both secondary and post-secondary education and training, providing for various forms of monitoring and dispute resolution. And while most state legislations relating to work placement require written agreements with relevant training provider and an approval by a skills board, the variations in terms and definitions can cause confusion for employers and interns seeking clarity on the validity of unpaid internships.

In New South Wales, the *Apprentice and Traineeship Act 2001* regulates the apprenticeship and traineeship system to ensure that training is delivered with nationally recognised outcomes. The Act requires for all apprenticeships and traineeships to provide a training contract that is approved by State Training Services; paid employment under an appropriate industrial arrangement; and a training plan endorsed by an Registered Training Organisation that specifies the training required to achieve the appropriate nationally recognised qualification.⁶

In Queensland, the Vocational Education, Training and Employment Act 2000 allows a

⁶ NSW Government Office of Education 2011, 'A Guide to Apprenticeships and Traineeships in New South Wales'



student to undertake work experience with a registered training provider so long as the activity is required under their course and formally assessed.⁷ The Queensland Industrial Relations Commission also has the power to fix remuneration and conditions for any 'vocational placements' under The Industrial Relations Act 1999 if they feel that the student should be duly compensated. However, no record has been obtained of an order having been made.⁸

In Victoria, The Victorian Education and Training Reform Act 2006 contains provisions that regulate what are called 'practical placements'.⁹ These apply to post-secondary students of registered TAFE providers who are placed with an employer for work experience or training. A written agreement must be made between the employer and the TAFE provider, and the placement must comply with any restrictions or conditions imposed by the Victorian Skills Commission. The Act also envisages that a minimum rate of payment can be imposed.

In Tasmania, vocational placements are subject to regulation of the Training and Workforce Development Act 2013.¹⁰ Under the Act, an employer may provide vocational placements for persons undertaking the training required for a qualification with the registered training organisation only if it contains the provisions (determined by the Tasmanian Traineeships and Apprenticeships Committee) relevant to the vocational placements being provided.

However, despite these stringent requirements, many internships and other work placements programs are not well enforced by the authorities. While some employers

⁷ QLD Government 2013, 'Vocational Education, Training and Employment Act 2000', Chapter 4
[redacted] last viewed 15/1/14

⁸ QLD Government 2013, 'Industrial Relations Act 1999' Chapter 4
[redacted] last viewed 15/1/14

⁹ VIC Government, 'Education and Training Reform Act 2006'
[redacted]

¹⁰ TAS Government 2013, 'Training and Workforce Development Act 2013'
[redacted] /14

[redacted] last viewed 16/1/14



are genuinely confused by the fragmentation of legislations, others have tended to exploit the lack of clarity and enforcement in this grey area.

The lack of research on young people's experiences of internships

There is a lack of data on the quality and quantity of internships in NSW and Australia. The Fair Work Ombudsman, in their report '*Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia*', noted that "It is difficult to accurately quantify the number of workers undertaking unpaid work experience."¹¹ The absence of concrete research makes it difficult to recommend specific policy changes, as the current state of affairs can only be gained by anecdotal evidence and estimations through youth unemployment figures.

While much of the legislation covering workplace relations is a Federal issue, the NSW Government is well placed to research the experiences and extent of internships in NSW. In particular, the Commission for Children and Young People is well placed to use their expertise on different aspects of this issue to conduct robust and useful research. In addition, both the Office for Volunteering NSW and the Office of Industrial Relations are well placed to support this research.

Recommendation: That the Commission for Children and Young People conduct research into the extent and experiences of internships by young people in NSW.

Recommendation: That the Office for Industrial Relations and Office for Volunteering investigate methods of better management of unpaid internships.

¹¹ Stewart, A & Owens, R. 2013, *Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia*, Fair Work Ombudsman, available online: <http://www.fairwork.gov.au/Publications/Research/UW-complete-report.pdf>



Preliminary Survey conducted by Interns Australia

Soon after Interns Australia was founded, a survey was launched to document unpaid and paid internships across the country. Targeted young people through social media and phone calls to members of Intern Australia's immediate networks, the survey aims to last for a year, culminating in a concise overview of its results in October 2014. Currently there has been 50 in-depth responses to the survey.

A number of themes were heard throughout the survey, such as:

"Because my internships have been primarily paid so I have felt like an integral part of the team and felt more pressure to work my hardest which was more fulfilling." -

Respondent 5

"Although I learnt many things both technically about design and about industry as a whole- I was required to work hard for no pay. Toward the end as the company was making profits from my work, which became difficult." – Respondent 2

"Sometimes my supervisor was amazing but a lot of the time I was just put in the corner to work on an isolated project and I didn't feel like I got to learn much about the organisation." – Respondent 44

"Minimal learning experience. Needed more structure and supervision otherwise not worth it. Felt like I was there to do menial things other people didn't have time or want to do." – Respondent 32

"Stressful, high expectations with little support or training. Followed by long periods of sitting around watching others work because no-one has time to explain new tasks. At least I didn't have to get coffees for people." – Respondent 14

"Is was a great experience however I felt the workplace didn't really teach me anything. Rather it was self directed education and learning. Sometimes I felt like I was a consultant rather than an Intern." – Respondent 39



Quantitative Results

The preliminary results of the surveys are as follows:

Figure 1: Opinion is divided as to whether or not internships are a prerequisite to a job.

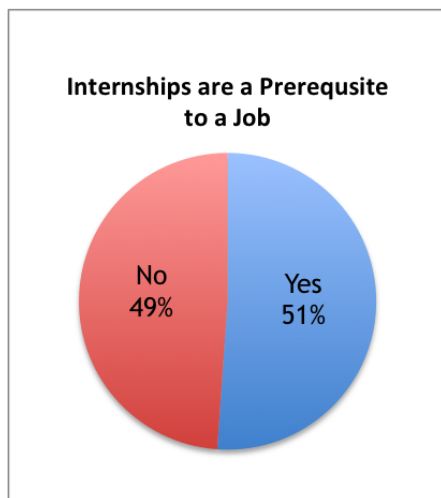


Figure 2: Most internships currently undertaken by young people are not a compulsory component of a vocational training qualification.





Figure 3: Internships are popular in Arts and Media as well as the Non-Profit sector. Internships are also common in the Engineering, Government, Financial Services and Legal sectors.

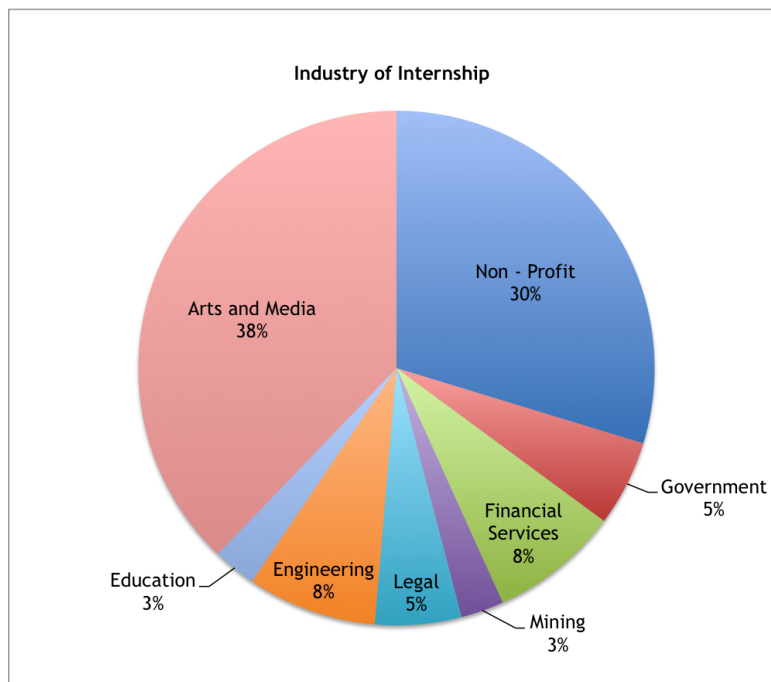


Figure 4: The level of supervision can vary greatly between internships, with a minority feeling that their internship was well structured and supervised.

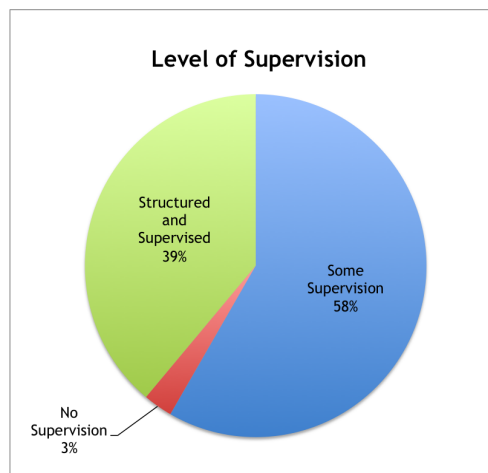




Figure 5: Most respondents to the survey have done one or two internships, with almost one quarter having done three or more.

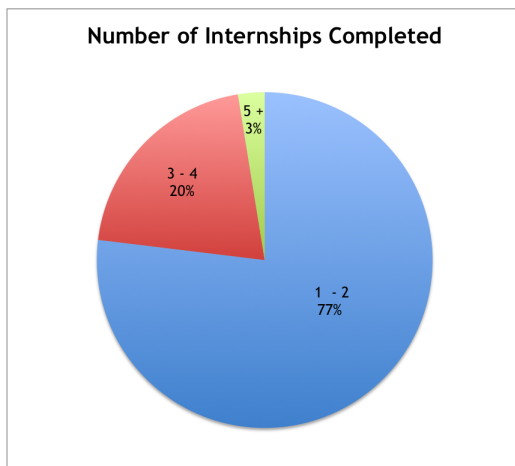


Figure 6: The length of internships vary, with a majority falling within the 3-6 month bracket.

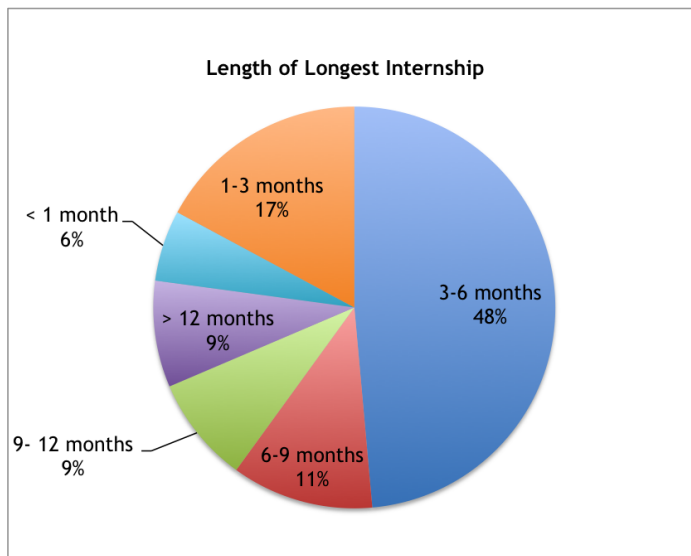




Figure 7: Time commitment during the internships also vary, with one day per week and five day per week being the most popular options.

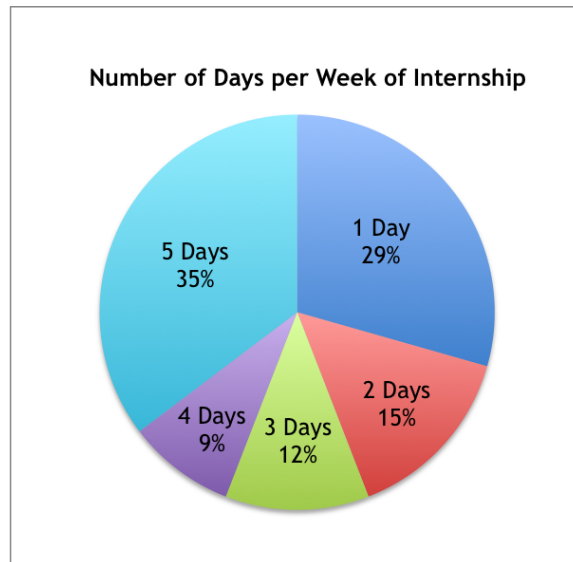
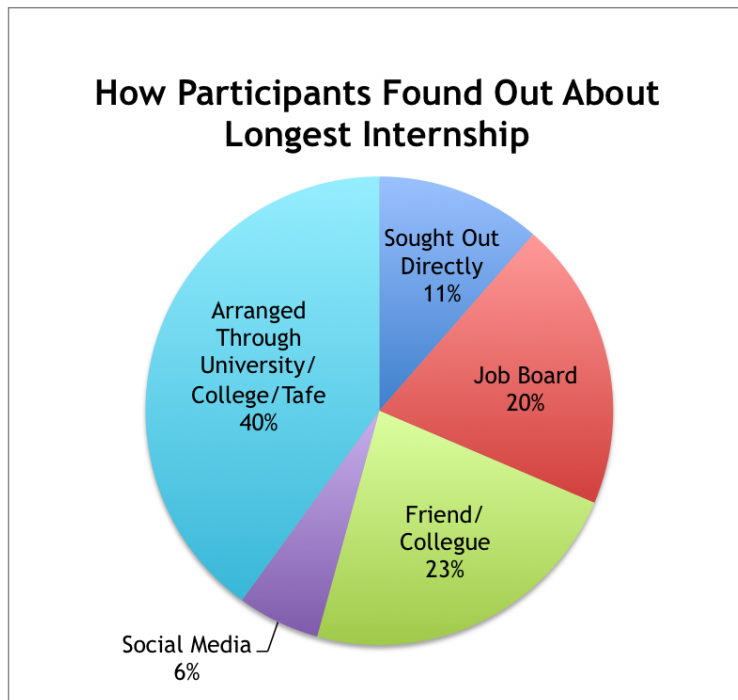


Figure 8: Internships in Australia are often arranged through tertiary institutions, with a large amount coming from job boards and immediate networks.





Global Best Practice in Tertiary-level Work Placements

United States of America

With a rising rate of unemployment upon graduation in the USA, many college students and graduates are turning to unpaid internships to gain valuable and unique experiences as a foothold to entering into the workforce. The jobless rate for college graduates sits at around 9.4%, the highest level since the government record keeping began in 1985.¹²

A 2013 survey also shows the rates of students undertaking internships, pre and post college, to be rising.¹³ The National Association of Colleges and Employers predicted that the number of internships on offer would rise by 2.7% in 2013.

With this rise in internships the USA legal system has been making significant strides towards best practice in internship legislation. An increasing number of class action lawsuits (e.g. *Glatt v. Fox Searchlight Pictures Inc.* and *Wang v. Hearst Corp.*) against corporate entities has resulted in a desire for greater clarity around the laws protecting unpaid interns.

Legal protections

Unpaid interns in the USA are protected under the Department of Labor's *Fair Labor Standards Act* (FLSA). Fact sheet #71 'Internship Programs Under the Fair Labor Standards Act' provides a 6 point test for determining the legality of unpaid internships:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational

¹² Baig, Mehroz 2013, 'Unpaid internships for graduates now the new norm?', Huffington Post, 09/12/13, viewed online: [REDACTED]
last viewed 15/01/14

¹³ NACE, '2013 Internship and Co-op Survey', viewed online:
<http://www.naceweb.org/uploadedFiles/Content/static-assets/downloads/executive-summary/2013-internship-co-op-survey-executive-summary.pdf>, last viewed 15/01/14



environment;

2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.¹⁴

A judge may apply all six points to any given case to determine whether an 'intern' is in fact acting as an 'intern' at their time with the for-profit company. If all six points apply, an employment relationship does not exist under the FLSA and the person is deemed an 'intern'.

Successful application of these points were demonstrated in the 'Black Swan' case (Glatt v. Fox Searchlight Pictures Inc.) where Glatt successfully argued that he should be defined as an employee, rather than as an intern, and that his classification as an intern was a violation under both federal and state laws. Whilst interning for Fox Searchlight, Glatt was running errands, processing payments and doing other such tasks that would be considered entry level work, which entitled him to at least minimum wage. Furthermore, through application of the 6 point test, judge William H. Pauley III gave the judgement that Fox Searchlight was in breach of federal laws and certification of an FLSA collective action was granted on 11 June 2013, meaning that a class action could be taken out against Fox Searchlight.

Cultural changes

¹⁴ United States Department of Labor 2010, 'Fact Sheet #71: Internships Programs Under the Fair Labor Standards Act' accessed online: <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>, last viewed 13/01/14



Along with legislative change and backing in the court system has come significant social change amongst corporations in the USA. While some legal uncertainty still remains, it appears that many for-profit entities are weighing the risk of being sued as greater than the benefits of unpaid interns. One report has even gone so far as to call interns a “reckless liability.”¹⁵ Larger organisations that feel that they may be at risk of legal action have been cancelling their internship programs, including large publishing company Conde Naste Traveller.

Young people have begun to view internship exploitation as not just an ethical issue (where they may feel that they have no grounds to challenge the terms of their internship), but a legal issue and have accordingly sought recognition and compensation for their work in court. In *Wang v. Hearst Corp. ('Harpers Bazaar')* Ms Wang and lawyers successfully sought to widen her case to a class action. This brought on to the case 3,000 similarly situated interns who were working, or have worked, for Hearst publications.

Published in 2012, *Intern Nation: How to Earn Nothing and Learn Little in the Brave New Economy* brought to light the exploitative nature of unpaid internships. Author Ross Perlin highlights the drastic cultural change that has taken place over the last few decades in the American workplace landscape:

“This is a generational rite of passage. We now have a massive culture of unpaid work that may have started decades ago with good intentions but has really gone off the rails. The vast amount of what goes on at for-profit employers is illegal and unethical and erodes the ethic of a fair wage for a day’s work.”¹⁶

¹⁵ Weissmann, Jordan 2013, ‘The court ruling that could end unpaid internships for good’, *The Atlantic*, 12/06/13, viewed online: [REDACTED]

[REDACTED] last viewed 13/01/14

¹⁶ Schorr, Melissa 2014, ‘The revolt of the unpaid intern’, *The Boston Globe*, 12/01/14, viewed online: <http://www.bostonglobe.com/magazine/2014/01/12/unpaid-internships-are-they-doomed/vi8MVMlqfeJQHIMY3vIBpJ/story.html>, last viewed 15/01/2013



While this move towards fairer rights and opportunities for unpaid interns, the 6 point test only applies to the for-profit sector. Government agencies and not-for-profit organisations are exempt meaning that the move towards justice in the USA is concentrated on only one section of the job market - those who can afford to pay their interns.

Recommendation: That the NSW Government investigate methods of adopting the USA model of a 6-point test for the legality of unpaid internships.

United Kingdom

In the United Kingdom, employers are legally obligated to pay all interns the minimum wage¹⁷, unless:

- the internship is doing voluntary work for a registered charity
- the internship is simply "work-shadowing"
- the internship is part of a course of study

"Voluntary worker" is a specific term under the National Minimum Wage Act 1998, as a class of workers exempt from qualifying for the NMW. This exemption is designed to allow people who genuinely wish to work without profit for good causes to do so within organizations built around and catering for such volunteer work. The NMWA has been noted for its comprehensiveness, operating such that

In national minimum wage legislation there is a specific exemption for "workers" who are students undertaking work experience lasting up to one year as part of a UK further or higher education course.

The British government has recognised the importance of business civil society in

¹⁷ Employment for Students 2014, Internship Frequently Asked Questions, Available Online: [REDACTED] (Accessed 26 January 2014)



furthering the interests of interns. In 2011, it adopted a “lead by example” policy as part of a report introduced by Nick Clegg. This policy specifically identifies internships as an important element of social mobility, enabling adults to build their skills. To this end it not only identifies the need for business to create more opportunities for internships but also emphasises the need for transparency, and encouraged more funding to be devoted to internships as a means of promoting fair access to jobs¹⁸.

Over the years, such engagement has been effective. The National Council of Voluntary Organisations has developed and distributed a template with information and norms for hosting interns¹⁹, which has had a significant industry effect, among other non-governmental initiatives. Another interesting proposal that might have had an even stronger effect was that considered in the 2009 paper “Unleashing Aspirations”, commissioned by the UK Cabinet, which endorsed the introduction of a Quality Kitemark scheme as an external quality assurance mechanism to encourage compliance with industry-specific and national codes²⁰. The Kitemark would have consisted of a rating based on six categories of internship quality.

Regarding enforcement measures, without which any internship laws are toothless, the government has collaborated with civil society by introducing a “naming and shaming” policy to expose breaches of the NMWA²¹, which has encouraged affected parties to come forward. Such policies have been effective in light of efforts to engage the various stakeholders within this issue and to raise awareness of laws and policies in place²².

Canada

The number of interns in Canada is unknown and there are no official statistics recorded

¹⁸ Stewart, A & Owens, R. 2013, *Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia*, Fair Work Ombudsman, available online: <http://www.fairwork.gov.au/Publications/Research/UW-complete-report.pdf> at 221-222.

¹⁹ Ibid at 220.

²⁰ Ibid at 219.

²¹ Ibid at 214.

²² Ibid at 224.



by Statistics Canada. However, given that 13% of Canadians aged 15-29 are neither students nor in paid employment and that 15% of those in their early 20s were jobless, various forms of unpaid work experience have become commonplace as a way to enter the job market.

Like Australia, work placement is largely regulated by provincial law in Canada and there is no uniform regulatory approach to internships. British Columbia and Ontario are two provinces that have been recognised as having strong legislative oversight in unpaid work placements and internships and will therefore be examined in turn.

In British Columbia, an intern or a person asked to perform 'trial work' will be covered by the Employment Standards Act 1996 because any such work is understood as the labour or services an employee performs for an employer and therefore subject to the regulations of the act.²³

Above that, there is also government support for internship programs in the private sector whereby small businesses employing fewer than 500 employees may apply for support for up to 75% of the wage of an intern for a period of up to 12 weeks to develop an online and e-marketing strategy.²⁴

In Ontario, The Employment Standards Act 2000 regards the intern as an employee because an employee is defined to include either a person who supplies services to an employer for wages, or a person who receives training from a person who is an employer. The only time where the definition can be exempt is if the following six definitions are met.²⁵

²³ Employment Standards Act of British Columbia 1996,

last viewed 15/1/14

²⁴ 'Small Business Internship Program Renewed for 2011/12', *Small Business BC*, 21 March 2011

Last viewed 15/1/14

²⁵ The six definitions are as follows: 1. The training is similar to that which is given in a vocational school; 2. The training is for the benefit of the individual; 3. The person providing the training derives little benefit from the activity of the individual while he or she is being trained; 4. The individual does not displace



The definition has been tested in court during the *Girex Bancorp Inc v Hsieh & Sip* 2004 CanLII 24679 case.²⁶ The employer claimed that interns were experiencing the ‘real office environment’ during their work placement but the Board determined that the lack of formal instruction, supervision and evaluation meant that the training could not be characterised as ‘similar to that which is given in vocational school’. It seems that the less direct supervision or the more an intern/trainee is required to undertake tasks not related to the profession or skill in which they are supposed to be trained, the less likely it is that the conditions will be satisfied.

On the federal level, legislation has been put forward to address the problem of youths entering the labour market. Davenport MP Andrew Cash has incorporated the issue of unpaid internships into the National Urban Workers Strategy that aims to outlaw unfair practices and enforce laws around internships by bringing all provinces on board to tackle the issue.²⁷

France

France has a long-standing tradition of stipended internships. Called 'Stage', it is a common process for recent university graduates. These internships will last for 3-6 months and must be paid at at least 30% of the French minimum wage (approx 436 Euros a month). This stipend is subsidised by the French government by way of a tax incentive for businesses, where this stipend is tax-deductable.

The benefits of the system include that it offers a clear training process for young graduates into the career of their choice, and offers them some financial support (albeit

employees of the person providing the training; 5. The individual is not accorded a right to become an employee of the person providing the training; 6. The individual is advised that he or she will receive no remuneration for the time he/she spends at the training. Employment Standards Act of Ontario 2000, [REDACTED] Last viewed 15/1/14

²⁶ Warren H. D. Schmidt as Director for Girex Bancorp Inc 2004,

[f](#) Last viewed 16/1/14

²⁷ Cash, A 2013, 'Bill C-542 An Act to establish a National Urban Workers Strategy'

Last viewed 16/1/14



relatively small amounts). Any internship that is longer than 2 months is legally required to offer this stipend. While some internships pay a much larger stipend than the required 30% of minimum wage, only this initial amount is tax-free for businesses, so-as to prevent rorting of the system by businesses. As this system is fairly comprehensive, there is a built in level of equity as all graduates can access some form of 'Stage'.

The downsides to a policy such as this include that it entrenches the expectation that young graduates should work for little money for a period of time in order to qualify for paid work. Similarly, the stipend may not be enough to live in many areas of France, particularly in Paris.

Germany

Germany's internship laws are comprehensive and in many instances modelled on existing laws for regular employees, rather than treating internships as an exception. For example, interns are entitled to certain amounts of paid leave depending on the payment tied to their internship²⁸. The laws also give interns the opportunity to bargain collectively for their rights, creating a participatory framework for furthering the interests of interns. This has led to collective agreements that have increased the remuneration of interns across the public sector²⁹. By law, reasonable remuneration is mandated, although the amount is not prescribed, rather a matter of industry self-regulation³⁰.

In 2010, the Social Democratic Party, the Left Party and the Alliance '90/Greens Party of Germany came together to present proposals to improve the legal conditions for interns in Germany through legislation³¹. Although no legislation resulted from this process, the effects of such campaigns and alliances have been widespread.

²⁸ [REDACTED] (Accessed 26 January 2014)

²⁹ [REDACTED] (Accessed 26 January 2014)

³⁰ Ibid.

³¹ [REDACTED] (Accessed 26 January 2014)



Most salient is the “Fair Company” initiative launched by the magazine *Karriere*³², which operates as a charter that over 390 companies have signed up to uphold, containing the following conditions:

- They will not substitute internships for full-time positions.
- They will not provide an internship *in lieu* of a full-time job to someone who applied for a full-time position.
- They will not seek to attract interns by making vague promises about a subsequent full-time position.
- They will provide internships primarily to assist professional orientation while a potential intern is undergoing a form of education.
- They will pay interns an adequate allowance

The parties proposed explicit definitions for internships (the SPD proposed a definition according to prevailing case law whilst the Alliance '90/The Greens asked to point out the purpose of gaining practical work experience, skills and professional knowledge), monthly allowances of at least €300 (the SDP proposed €350), the right to sign a contract, receive a qualified reference and certificate after the completion of the internship, and a maximum duration (the Alliance '90/The Greens suggested a duration of no more than six months).

In addition, the German SDP proposed a new regulation conferring the burden of proof upon the employer in the case the employer allegedly abused the intern as cheap labour.

Recommendation: That the NSW Government use its position in the NSW community to encourage the adoption of a charter of ethical internship processes, similar to the German “Fair Company” initiative.

■ (Accessed 26 January 2014)