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Articles

As the transition from education to employment becomes increasingly challenging, mechanisms to increase employability, including work-integrated learning (WIL), become more popular. As tertiary WIL curricula multiply, and increasing numbers of students undertake WIL, it is important to ensure the risks and difficulties associated with these experiences are understood and managed. This article considers equity of access to WIL, protection of participants and quality of educational outcomes. These issues are central to ensuring WIL is a valid educational opportunity, not mere exploitation. The national regulatory quality assurance mechanisms and extension of workplace laws to WIL will be considered, and the impact of regulation on WIL will be critically examined through case studies of different curricula. This analysis supports a call for changes to the national educational and employment regulations that affect WIL, as well as increased transparency of intra-university quality assurance processes. It is argued this will help protect students engaged in WIL, encourage institutions to maximise the efficacy and equity of WIL, and ensure that workplace standards are not unreasonably undermined.

Enterprise agreements made and approved under the Fair Work Act 2009 (Cth) (FW Act) continue in existence until they are replaced by a subsequent agreement or terminated by the Fair Work Commission (FWC). Uncontested or consensual applications to terminate agreements are not uncommon and do not attract controversy. However, contested applications are controversial and have recently been the subject of significant attention in the media and in Parliament. This article examines applications by employers to terminate existing enterprise agreements during contested bargaining for a replacement agreement. Most of these cases arise in the context of highly charged negotiations between parties who have been bargaining for an extended period, commonly involving multiple FWC proceedings and where the dispute appears to be at impasse. The application to terminate the agreement is presented by the employer as an attempt to break the impasse and resolve the dispute. The article considers the extent to which the FW Act agreement termination sections are operating to facilitate a form of compulsory arbitration of industrial disputes. Termination applications can be made unilaterally by one party to the dispute, and agreement termination can occur in the face of vigorous dissent. In particular, the discussion examines the parallels between

FWC decisions on termination and last offer arbitration — a form of arbitration where an arbitrator chooses between the final offers made by parties to a dispute at impasse. The discussion concludes that the provisions parallel final offer arbitration but produce results which operate fundamentally to the advantage of employers in contested bargaining.

Under Australian law, unpaid work experience (UWE) will usually be unlawful if it is undertaken as part of an employment arrangement, since employees are generally entitled to be paid at the minimum rate set by an award or minimum wage order. There have been various legal challenges to UWE in the Australian context, which highlight exploitative organisational practices. Yet there has been very little empirical evidence of the extent of, or patterns associated with, unlawful UWE across industries or workplaces. Utilising data from a nationally representative survey of UWE reported by working age Australians, we investigate the extent of potentially unlawful UWE. Potentially unlawful UWE was identified by looking for instances in which the work experience was reported to involve the same work as that done by regular employees and which did not predominantly involve observing or performing mock or simulated tasks. By confining attention to such cases, and subsequently excluding those doing UWE for a reason that would likely bring them within exemptions in labour or social security legislation, we estimate that at least 10% of the UWE reported in the survey was potentially unlawful. This equates to over half a million Australians being involved in unlawful placements or internships between 2011–16. Respondents undertaking potentially unlawful UWE were more likely to do so for longer periods than those with apparently lawful arrangements, but were less likely to secure an offer of paid employment from the organisation hosting them.

Section 550 of the Fair Work Act 2009 (Cth) (FW Act) is a robust and necessary mechanism for establishing the liability of those who assist, encourage or participate in contraventions of the FW Act. Section 550 derives its basis from the law of criminal complicity, and to establish the involvement of an accessory through s 550, it must be proven that they were an intentional participant and possessed actual knowledge of the 'essential elements' that constitute the contravention. The 'essentiality' of an accessory's subjective knowledge is not clear in some cases, possibly requiring knowledge of a particular award or minimum standard applying to an affected worker. Reform is accordingly suggested such that a partly objective fault element be introduced to enliven liability through s 550 of the FW Act directly. Reform is necessary due to growing concerns of temporary migrant worker exploitation and changes in the way work is done in the Australia.

The Australian horticulture industry, like its peers in most developed countries, faces significant labour supply challenges during the harvest season. Two regulatory initiatives seek to address this: the Seasonal Worker Programme and the second year extension on the Working Holiday visa. The latter has been far more widely used by horticulture employers, leading to a 'substitution effect' between the two visa schemes. This article indicates how the introduction of the second year visa extension for Working Holiday visa holders in 2005 has reshaped the horticultural labour market and constrained the ability of the Seasonal Worker Programme to fully succeed. This article identifies key and significant disparities between the regulation of the two visa schemes, which result in the production of two different types of horticultural workforces. Such disparities should be addressed and better understood in order to minimise the substitution effect and to develop more sustainable solutions to the endemic problems of labour supply and worker exploitation in the industry.

Case Note