

Work Integrated Learning (WIL) and Work Experience (WEXP)

The University offers a wide range of work-integrated learning ("WIL") courses which allow students to gain experience in their chosen field of study while receiving credit toward their degree. It is also common for students to seek out non-creditable opportunities for industry experience through unpaid internships or work experience ("WEXP").

Unpaid work can take place legally. However, if the arrangement between the student and the industry partner has the characteristics of an "employment relationship", then the *Fair Work Act 2009* requires that the student be paid and afforded the benefits of statutory employment conditions.

The University has an important role in ensuring that the terms of WIL and WEXP arrangements are fair and that students are not exploited.

1 Work Integrated Learning

Under a WIL placement, the student is usually enrolled in a specific WIL course, and receives credit towards their degree upon its successful completion. WIL placements are "vocational placements" under the Fair Work Act and can be lawfully unpaid.

The University prefers its standard WIL Agreements to be used where possible.

2 Non-creditable internships and other "work experience" arrangements

"Work experience" is a voluntary, unpaid arrangement, which is not a requirement of a student's program of study.

Under a genuine work experience arrangement, it should be the student (and not the organisation) who gets the main benefit from the arrangement. Strictly, a student on work experience should not be given any work to do which would normally be done by a paid employee.

The University prefers its standard WEXP Agreement to be used where possible.

3 When does an "employment" relationship exist?

An employment relationship can arise even where the parties call the arrangement something else, say it is not employment, or if a person agrees not to be paid wages for work they do.

There are a range of indicators that an employment relationship exists and each case needs to be assessed on its merits. Generally, the more productive work that's involved (rather than just observation, learning, training or skill development), the more likely it is that the person is an employee.

For example, if a student is doing work that would otherwise be done by an employee, or if it's work that the business or organisation has to do, there is a real risk that the arrangement is in fact an "employment arrangement", and unlawful if the student is not paid.

Additional guidance and useful examples can be found on the website of the Fair Work Ombudsman:

- [Types of unpaid work](#)
- [Fact Sheet – Unpaid Work](#)
- [Fact Sheet – Student Placements](#)

Can I use a document provided by the Host?

Griffith University has approved agreements for documenting WIL and WEXP arrangements for its students. However, sometimes the Industry Partner (Host) requests the use of its own document. If you need to review a Host-provided document, please check the following matters carefully.

REMEMBER – WIL or WEXP arrangements which do not use the standard Griffith WIL or WEXP Agreement may not be signed on behalf of the University without the prior written approval of the Dean (Career Readiness)¹.

1 Duration of the placement and cancellation rights

WIL:	<ul style="list-style-type: none">• The duration of a WIL placement varies from course to course (depending on the number of credit points allocated).• Given that a WIL course is a for-credit degree requirement for which the student must pay tuition fees, the Host should <u>not</u> have the ability to unilaterally cancel the placement. The University's standard agreement provides that a WIL placement may only be terminated by the Host in consultation with the Course Convenor and with the approval of the Head of School or Department.
WEXP:	<ul style="list-style-type: none">• Unpaid work experience should not exceed 30 days in a year (see section 12 of the <i>Education (Work Experience) Act 1996</i>). This limit is mentioned in the University's standard WEXP agreement.• As WEXP placements are "voluntary" the student should be free to withdraw from it at any time. It is similarly acceptable for a Host to have the right to terminate the WEXP placement at any time, although the University prefers that the Host provides written notice to the University of its reasons for doing so.

2 Intellectual Property

Where possible, you should resist a clause which assigns all intellectual property created during the placement to the Host.

WIL:	<p>A student undertaking a WIL placement is required to submit assessment Items to the University to demonstrate their achievement of the learning outcomes, and to meet the requirements of their University program. This often takes the form of a "report" about their placement, as distinct from the actual "work items" they have created for the Host.</p> <p>The following approach is recommended:</p> <ul style="list-style-type: none">• copyright in the assessment items should be owned by the student;• the Host may retain a copy of the assessment items and use them for the purposes for which they were created and for other business purposes; and• all other IP created by the student as a result of the student participating in the placement can be assigned to the Host.
WEXP:	<p>A student on a work experience placement should not be undertaking "work" which is likely to result in the creation of IP valuable to the Host. For this reason, the University's standard WEXP document provides that:</p> <ul style="list-style-type: none">• all IP created by the student during the placement remains owned by the student; and

¹ This rule does not currently apply to the Health Group.

- the student grants a licence to the Host to use such IP for the purposes for which it was created and for other business purposes.

If a Host insists on owning IP created by a work experience student, then the parties need to consider whether the student or the Host is getting the main benefit from the arrangement. If the student is creating valuable IP, then they should be paid for their work, and in those circumstances, it's perfectly acceptable for an employer (Host) to own the IP which its employees (students) create.

3 Insurance

Gaining the benefit of the University's insurance cover is a significant motivation for Hosts wanting the University to be a party to a WIL or WEXP agreement.

According to the University's [Insurance website](#): *"Students undertaking unpaid work experience or community placement as a course/subject requirement and/or to gain experience in their field of study are covered by the University Public Liability and Personal Accident Insurance. This cover does not extend to incidents involving motor vehicles."*

Things to watch out for:

- University insurance will only cover the student for (non-creditable) WEXP where the unpaid activity is "approved by the University as of benefit to the student in their study." That approval (which is essential) should be obtained in writing from the Program Director.
- Is the student approaching the end of their program? The University's insurance cover only applies while the student has an active enrolment status at the University. If the placement period extends beyond the student's last course, you should consult Student Life and the University's Insurance officer to check whether the student will be covered.

4 Indemnity

The following clauses should be resisted:

- a clause which requires the University to indemnify the Host for losses it suffers as a result of the WIL or WEXP placement. The student is under the direct supervision of the Host, and so it is reasonable for the Host to take responsibility for the consequences of the student's actions;
- a clause requiring the University to indemnify the Host if the arrangement breaches the Fair Work Act. This might also be expressed as an indemnity for wages, taxes, superannuation, leave or other such employee entitlements to which the student becomes entitled as a result of the arrangement. The Host is wholly responsible for the type of activities which a student is asked to do, and so the Host should accept responsibility if the arrangement is deemed to be an employment relationship; and
- a clause requiring a personal indemnity from the student.

5 Limits on the University's liability

Consequential losses (being that portion of loss flowing from a breach or negligence which is unforeseen at the time of the breach or negligence) should be expressly excluded. Because indirect or consequential loss exceeds the scope of loss for which a Court would make an award of damages, insurers treat any agreement to indemnify against indirect or consequential loss as an assumed risk of the indemnitor, and something they will not insure against.

You might want to add the following clause from the standard WIL and WEXP agreements: *"In no event will the University be liable for any consequential losses (such as loss of profits, business revenue, goodwill, reputation or loss of actual or anticipated savings or opportunities) suffered or incurred by the Host, its staff or any other person in connection with the placement."*

6 Confidentiality

Confidential clauses should be carefully checked to ensure they don't interfere with the student's right to:

- submit their assessment items to the University under a WIL placement (although the Host may wish to have these examined under conditions of confidentiality); and
- report any serious incidents in the workplace or other concerns about the placement to the University.

7 Health and Safety

- At a minimum, the Host should be responsible for providing a proper induction for the student and ensuring that it provides a safe workplace.
- WIL Placements should not be approved without the University having first conducted a risk assessment, work site evaluation and interview with the intended supervisor.

For more information contact:
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