



15 November 2024

# Student placements – complying with relevant regimes

Presentation By

Michael Nicolazzo | Partner | Employment, Safety & People  
Kirsten Sullivan | Senior Associate | Employment, Safety & People



Maddocks



We would like to begin by acknowledging the traditional owners and custodians of the land on which we're all located today.

We pay our respects to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander people attending today's webinar.

# Outline

This session will take a deep dive into the perennial issue of student placements and the connections with the Fair Work Act, internships and the application of relevant Labour Hire Licensing laws. This session will provide guidance on how Universities can ensure they are compliant, best practice approaches, learnings and tips and traps.

**Why is this  
such an  
interesting  
topic?**





# “Internships: Head Start or Labour Trap”

60% of university students who had done a **paid** internship received a job offer

36% of university students who had **not** done a paid internship received a job offer

37% of university students who had done an **unpaid** internship received a job offer



# Agenda



# Vocational placements

## Section 12 of the Fair Work Act

### Requirement 1

“with an employer for which a person is not entitled to be paid any remuneration”

### Requirement 2

“a requirement of an education or training course”

### Requirement 3

“authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory.”



Vocational placement?

Employment?

Work experience?



# Employee?

1

Written documents

3

“work-wages bargain”?

2

Multi-factorial test





# Guidance

What is the purpose of the placement?

Length of time

Is the student expected to do productive work?

At the student's own initiative?



# What flows ...?

1

If employee ... Fair Work Act entitlements

2

Risk for universities – knowing involvement

3

Over 60% reported an awareness of students undertaking unpaid work organized, facilitated or encouraged by institution – but not undertaken for credit

# ***Torcello v Deakin University* [2023] FWC 2528**

**Student  
enrolled in  
Master of  
Teaching**

**Requirement to  
undertake 60  
days  
professional  
placement**

**Placement at  
Fountain Gate  
Secondary  
College paused**

**Unfair dismissal  
claim and a  
general  
protections  
claim**

**Contributions  
so significant  
to transcend  
student  
placement –  
not accepted**



# *Tracey v Murdoch University* [2022] FWCFB 220

Would it be decided differently in 2024?

## Parties

Dr Tracey – Graduate  
from Dublin –  
Bachelor of Veterinary  
Medicine

Murdoch University’s  
School of Veterinary  
Medicine –  
Postgraduate clinical  
training program

## Placements

January 2020 to  
January 2021 – Day  
and evening shifts  
within Animal Hospital,  
& Diploma of  
Education

January 2021 –  
January 2022 –  
similar placement, but  
with Master of  
Education

## Claim

Work at the hospital –  
largely unsupervised

Raised dispute for  
“leave”, then all Fair  
Work Act entitlements

Paid under terms of  
Stipend Agreement

## Decision

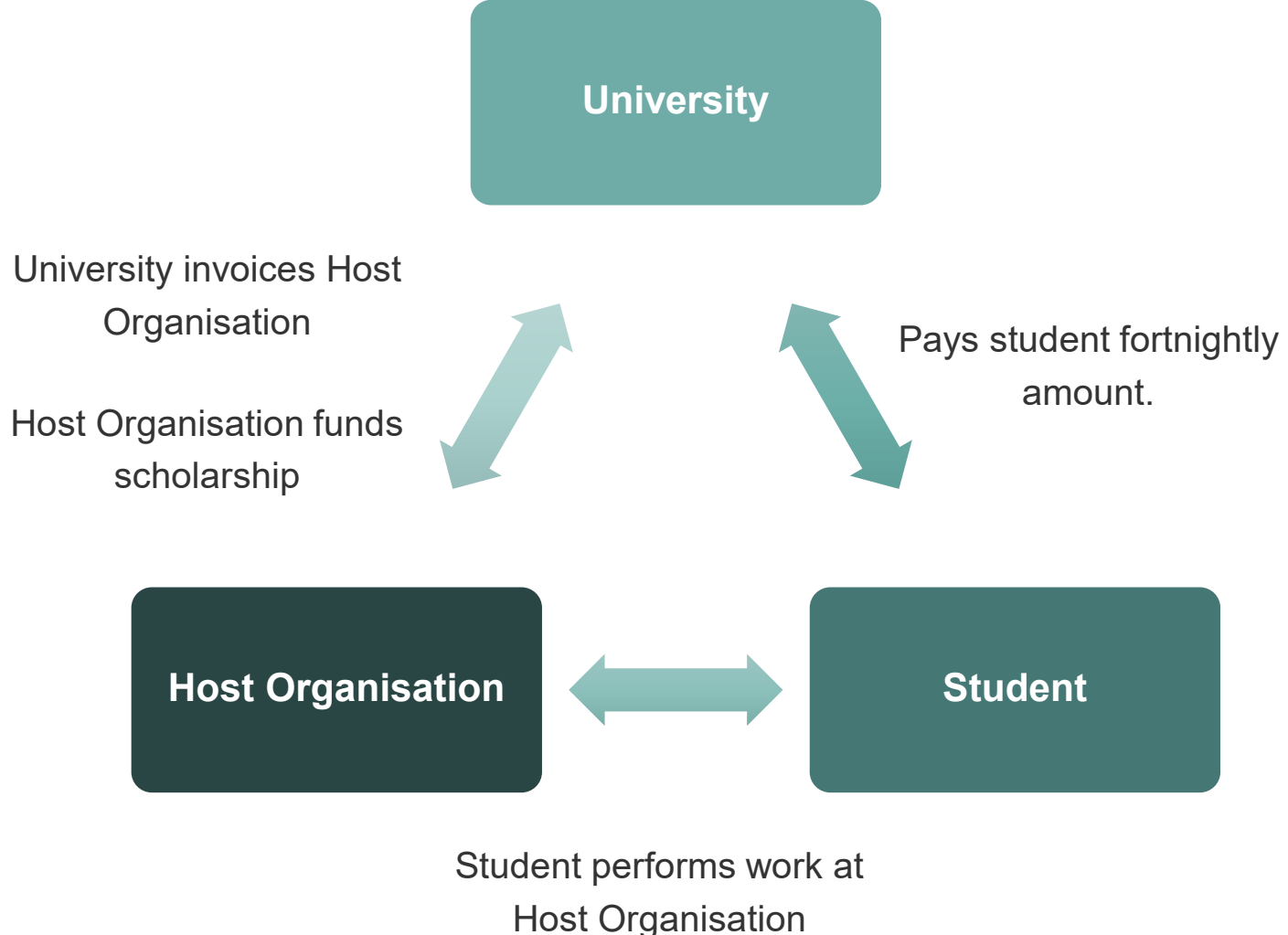
Terms of the contract  
comprehensive –  
*Personnel Contracting*

Stipend agreement ≠  
work-wages bargain

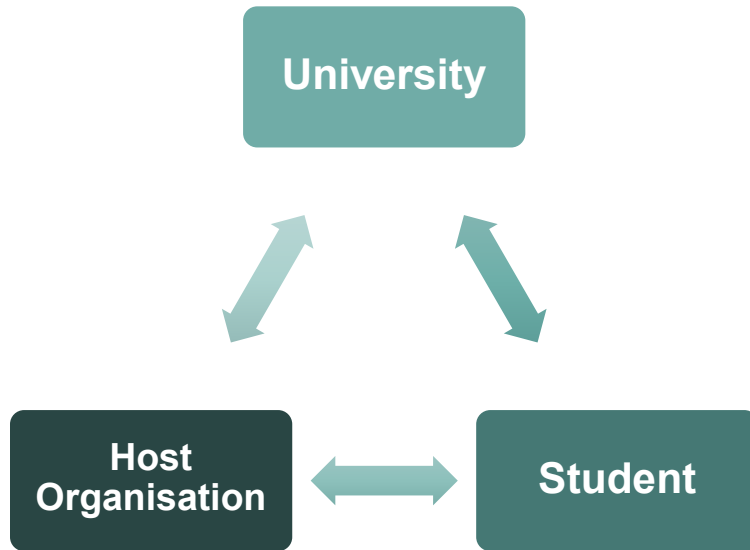
Hours of work,  
direction and control,  
totality of the  
relationship?



# Scholarships – a “work”-around?



# Scholarships – a “work”-around?



Describe the legal relationship

Enabling participation and learning

No entitlement to any other payment

Dependent on enrolment

Placement hours

Non-attendance time compared with leave

Review of absences

Insurances, warranties, confidentiality

Supervisor to provide learning experience

Third party intermediaries

# Labour hire regimes – applicable?

1

Provider provides labour hire services, if in the course of carrying on a business, supplies a worker to do work

2

Provider provides labour hire services regardless of whether worker is an employee of provider

3

Provider must not provide labour hire services unless they hold a licence



# **An amended definition, and what else ...**

A vocational placement would also include a placement:

- supervised by the institute and employer at a level considered appropriate
- work, objectives and supervision agreed to prior to placement commencing
- in which work is consistent with agreed learning objectives.

# Questions



# Presenters



**Michael Nicolazzo**

Partner

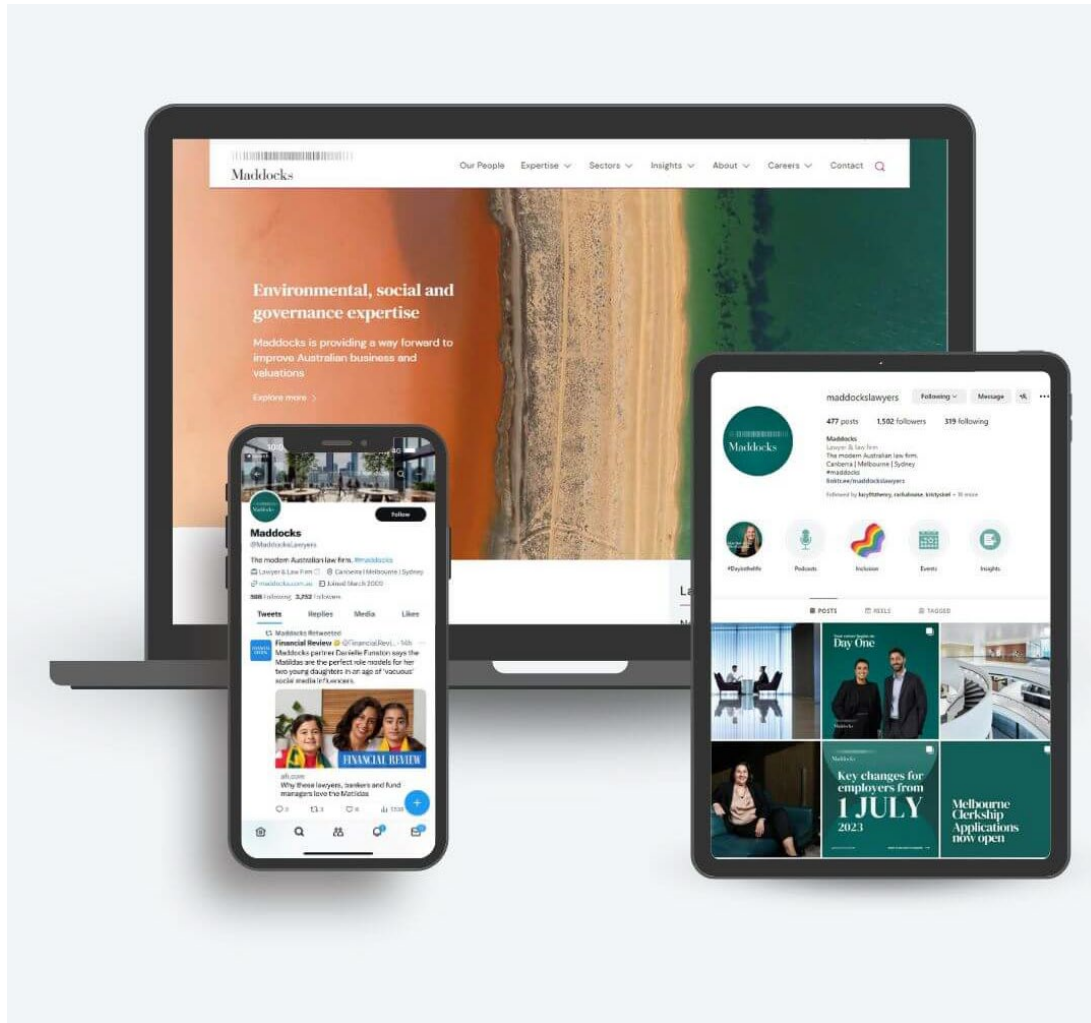
Employment Safety & People



**Kirsten Sullivan**

Senior Associate

Employment Safety & People



**in** @Maddocks

**🐦** @MaddocksLawyers

**📷** @MaddocksLawyers

**▶** @MaddocksLawyers

**W** maddocks.com.au