Occupational Health and Safety: a key legal literacy for learning in and about the workplace

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The development of employability skills has become a dominant theme in discussions about university curriculum. Governments and universities point to an increasing need for graduates who can work creatively, are sensitive to emerging economic and cultural challenges and who can apply a broad range of employability skills (DEST 2002). Universities adopt various approaches to developing employability skills but work-integrated learning (WIL) dominates (Patrick et al. 2009).

Legal educators at Victoria University (VU) in Melbourne have identified a significant gap in the employability skills of VU’s students and VU’s WIL programs: Occupational Health and Safety (OHS). Arguably, OHS knowledge is crucial for employability. Universities, too, have OHS obligations and a duty of care to students.

This paper discusses a project called Occupational Health and Safety: Safe students and an essential element of work readiness for all VU graduates. The project developed a range of online OHS resources to develop students’ understanding of mandatory legal requirements for workers and workplaces. The project assumes that an understanding of OHS is essential for all students to both ensure that they contribute to their own and others’ safety and as an essential employability skill. The project uses a competency from Vocational Education – Contribute to Workplace Safety – as the basis for the resources that aim to ensure that VU graduates can contribute to workplace safety. OHS awareness, as part of a broader set of legal literacies, has been identified, as a way to enhance a diverse range of employability skills – including problem solving, communication skills and information literacy.
Background: employability skills

Governments and universities point to an increasing need for graduates who can work creatively, are sensitive to emerging economic and cultural challenges and who can apply a broad range of employability skills (DEST 2002). Universities adopt various approaches to developing employability skills but work-integrated learning (WIL) dominates (Patrick et al. 2009). Government enthusiasm for the development of employability skills in Australian higher education curriculum has been thoroughly documented in government-funded reports (Bradley et al, 2008), business-commissioned reports (Precision, 2007; AIG & Deloitte, 2009) and various papers by academics and support staff who implement, support and evaluate programs and curriculum designed to ensure graduates are “people with high-level knowledge, skills and understandings” (Bradley et al, 2008: 15).

Over the last decade, most universities in Australia have attempted to enhance graduates’ transition into the professions or the workplace through a range of elective, selective or mandatory initiatives and support such as career development units (Smith et al, 2009), curricular initiatives including multidisciplinary professional development units devoted to developing generic skills (Woodley, 2010) and extra-curricular initiatives such as leadership programs, mentoring programs and networking events (Rae, 2007) that seek to develop professional skills and provide an entrée into various industries. Universities have tried to make employability skills sound less narrowly vocational by conceptualising them as graduate attributes or graduate capabilities which suggest the higher order thinking skills that might inform skills at this level. The basic skill set, however, remains similar across universities and disciplines despite different Australian Qualification Framework (AQF) levels and considerable diversity - even inconsistency - in how such skills, attributes, abilities or capabilities might be developed or assessed. The worth of all of this activity in universities
is yet to be properly evaluated in part because “the boundaries between and relative value of part-time positions, vacation work, internship and job placements remain unclear” (Jackson, 2009: 54) and because the ongoing development of what is essentially cultural capital (Barker, 2004) is hard to measure. In other words, generic skills are developed in various activities, including university-based activities, but it is difficult to discern where the learning occurs or what level the learning is at.

Despite the challenges of measuring student learning of employability skills, legal educators at Victoria University (VU) in Melbourne have identified a major gap in the employability skills of VU’s students and in the curriculum of VU’s WIL programs; namely, Occupational Health and Safety (OHS). Nearly 20 years ago, reports about alarming levels of verbal and physical violence as well as fear experienced by social work students on placement lead to calls for curriculum change (Tully, Kropf & Price, 1993). Interestingly, that study suggests that the age and student status of students contribute to their vulnerability regarding OHS. Recently, Emslie (2010) suggested the need for urgent action about OHS education for students on placement could be met by separate OHS modules, OHS curriculum integrated into the curriculum and OHS training on site. There is general agreement that universities have a duty of care to prepare students about OHS for placement (Bates, Bates & Bates, 2007) but there is little mention of the need for a more inclusive program of broad OHS awareness for all students – including students who do not undertake placement.

In any Australian workplace, workers assume certain legal responsibilities under OHS legislation. OHS knowledge is a critical element of work readiness and contributes to graduate employability. Universities, too, have OHS obligations and a duty of care to students. Arguably, employability skills should include some types of knowledge and
information which are of practical use to students, which empower students either graduating to the workplace or currently in a workplace and which fulfil universities’ legal obligations to students. The project discussed in this paper, *Occupational Health and Safety: Safe students and an essential element of work readiness for all VU graduates*, is based on the belief that some legal knowledge is a prerequisite for employability and is especially important for students undertaking work placement as a part of their degree. In particular, OHS is one of eight legal areas that should comprise a set of legal literacies required in the workplace around which other, more generic, employability skills might be developed. OHS is an area that demands more attention in the employability curriculum discussion that should include the idea of legal literacy as a base from which to further develop employability skills. This paper, then, has a dual purpose: firstly, to increase awareness of the need for legal literacies especially in an employability curriculum; and, secondly, to demonstrate how VU has addressed one aspect of legal literacy education with a focus on OHS.

Employability, Legal Literacy and Cultural Capital

A basic idea of literacy refers to the ability to function in a particular context. An influential Canadian study limits legal literacy to being able to operate in judicial systems. Hunter et al (1992) in *Reading the Legal World* suggest an operational definition of legal literacy that is centred on people actually using the legal system. If people involved in the legal system can negotiate that system, identify issues as legal in nature or as having legal solutions, recognize their legal rights or responsibilities, know how to find legal information and how to help themselves in a legal situation and, more problematically, “have confidence that the legal system will provide a remedy, and understand the process clearly enough to perceive that justice has been done” (Hunter et al 1992: 51), then that person is deemed legally literate.
More recently, meanings of legal literacy have incorporated the ability to function in various work and social contexts – all of which have legal elements – and to understand the legal obligations, rights, systems and the legal discourse inherent in everyday contexts, including work roles. Legal literacies involve general as well as quite specific meaning making within a legal discourse. Being legally literate includes, for example, legal grammar and expression, learning new words or learning to use familiar words in a new way (Beattie, nd). Legal literacy in its broadest sense is not necessarily about being competent to read legal documents and only to some extent does it concern making the law more accessible. Rather, the idea of legal literacy as it relates to students, employability and citizenship is more far-reaching and more pervasive: it refers to the ability of lay people to understand legal concepts and the legal context of language and behaviours that apply to them in everyday situations as workers and citizens. Being legally literate in the sense of being able to ‘read’ legal discourse means more than being able to understand it or react to it. Rather, being legally literate is about being able to participate in a legal situation in an active way; to be interactive, communicative and participatory in a legal context.

The workplace in Australia provides a complex legal context and OHS constitutes just one legal thread in a sometimes explicitly legal situation. Australian workplaces are regulated by such all-encompassing legislation as the *Equal Opportunity Act 2010*, several anti-discrimination laws, the *Fair Work Act 2009*, the *Australian Workplace Safety Standards Act 2005*, the *Safe Work Australia Act 2008*, the *Accident Compensation Act 1985* (Vic), the *Privacy Act 1988*, the *Copyright Act 1968* (Commonwealth), the *Whistleblowers Protection Act 1993* and the *Occupational Health and Safety Act 2004*. In Australia, interaction between people and between people and organisations and government is also governed by common law principles such as duty of care and negligence. How many graduates would be familiar
with the laws that apply to every workplace and their own behaviour, even in a general sense?

**Employability, Legal Literacies and Meaningful Work Readiness**

Legal literacy for any group that suffers from the power imbalance of a legalistic culture means empowerment in that they are better able to know, protect and advance their interests and more likely to function effectively in positions of responsibility. Recent graduates who are new to a workplace or to a profession are likely to benefit from enhanced legal literacy. Some degree of legal literacy - in addition to workplace- or discipline-specific legal knowledge - is required of every role in every workplace. Several areas of legal literacy are essential for all workers. Legal educators at the Sir Zelman Cowen Centre in VU have identified eight areas of legal literacy that are common to all workplaces and work roles and which all workers should understand. These legal areas offer an essential foundation for a broader set of employability skills required of the workplace. The recommended set of legal literacy areas includes:

- Occupational, Health and Safety
- Duty of care
- Equal Opportunity
- Discrimination
- Privacy
- Conflict of Interest
- Legislative and Policy Regulatory Frameworks
- Codes of Conduct.

Clearly, these legal areas overlap: but they can be taught and developed as discrete modules.

**OHS and the Workplace**

While campaigns about safety in the workplace typically focus on drivers, manual workers and machine operations and while news items about workplace deaths highlight the personal and social damage by workplace negligence, the cost to businesses of neglecting OHS in the workplace (including the wider range of health and safety issues that come under OHS such as psychosocial dangers like overwork, stress and bullying) is simply huge with one estimate
suggesting that “the cost of workplace injuries on businesses could be around 6% of the profit (Woods, 2009). An earlier 2006 report suggests that “the direct cost of workplace injury and disease in Australia has been estimated at over $7 billion per year” (VicHealth, 2006, emphasis mine). The Australian Safety and Compensation Council report, *The Costs of Work-related Injury and Illness for Australian Employers, Workers and the Community*, estimates “The total economic cost [of workplace injury and disease]…to be $57.5 billion, representing 5.9 per cent of GDP for the 2005-06 financial year” (2009: 2 ). Consider also the age range of the typical university student (over 50% of VU’s students are between 18 and 24), the fact that young workers are at particular OHS risk due to their immaturity, high rates of casualisation and little exposure to OHS training (Pisaniello et al, 2010) and the prevalence of mental health issues in the 16 – 24 year old age group (ABS, 2007). It is crucial that a systematic approach to developing an understanding of OHS for students be adopted.

Compared to the costs of mitigating or alleviating workplace risks, the actual cost of work-related injury or illness seems to be a significant social and economic issue and one that educators could do more to address under a growing umbrella of generic skills that contribute not only to students’ employability, capacity for citizenship and lifelong learning but also their safety, health and productivity in the workplace and beyond.

**Work-readiness and a legal wherewithal**

An Australian Industry Group (AIG) report succinctly notes: “Employers put a priority on work readiness and expect universities to do the same” (AIG & Deloitte, 2009). Given that a “degree of competence in legal discourse [is] required for meaningful and active life in our increasingly legalistic and litigious culture” (White, 1985) and given that work roles have particular legal emphasis, it is surprising that so little attention has been given to legal literacies in the wider employability discussion. Jackson’s comprehensive international survey of the concept of graduate employability offers an overview of academic discussion
and employers’ assessments of employability skills over a ten-year period (Jackson, 2009). In
the hundreds of attributes, skills and attitudes discussed in the survey, only twice are legal
skills mentioned: according to two different sources, graduates need to have knowledge of
legislation and know about litigation. A survey of all of the graduate attributes in Australian
universities reveals only one, at Australian National University, that requires explicit legal
knowledge and that is quite specific: ANU graduates are expected to have “occupational
health and safety knowledge to apply new technology” (ANU, 2011); and that employability
skill is from the 2002 report from the Department of Education Science and Training
(DEST), *Employability Skills for the Future*. Other legal knowledge implicit in Australian
universities graduate attributes aligns to the eight legal literacies identified: ethical
behaviours (duty of care, conflict of interest), social inclusion or sensitivity and cultural
awareness (equal opportunity, discrimination), use technologies appropriately (privacy) and
responsible and professional behaviours (codes of conduct); however, these legal areas are
not explicitly mentioned. Given this clear need for legal literacies curriculum to support WIL,
what follows is VU’s response to the development of one legal literacy, OHS.

**Occupational Health and Safety: Safe students and an essential element of work
readiness for all VU graduates**

The project *Occupational Health and Safety: Safe students and an essential element of work
readiness for all VU graduates* created a range of online OHS resources to develop students’
understanding of mandatory legal requirements for workers and workplaces and to raise their
awareness of OHS more broadly. The project assumes that an understanding of OHS is
essential for all students to both ensure that they contribute to their own and others’ safety
and as an essential employability skill. A Vocational Education competency from the Public
Sector Training Package – *Contribute to Workplace Safety* – was used as the basis for the
resources that aim to ensure that VU graduates can contribute to workplace safety, even if
that workplace is the university. This competency was selected as it is a minimum level requirement for the Australian public service. Some OHS resources were trialled in 2011 with different cohorts. They are currently being reviewed by staff from various disciplines and sectors with a view to using them both in the curriculum and in extra-curricular programs.

All too often, OHS is treated as a separate lot of training or information that educators or employers have to ‘cover’. In a typical business degree at VU, it would be difficult to pinpoint where OHS might be covered at all despite students undertaking Learning in the Workplace and Community activities, having students working in teams, teaching students in a physical place that might require evacuation, using a range of everyday tools that might create risk if not cause actual injury such as swivel chairs, computers, extension cords, power sockets and having a timetable that could well encourage students to carry bags chock full of heavy books in order to complete their contact time in a short time frame. So where, in the student experience, is OHS? Not for engineering students using machinery or chemistry students using dangerous chemicals but for business students, professional writing students or would-be lawyers? How do the knowledge workers of the future come to develop an understanding of their OHS rights and responsibilities or learn to identify hazards and risk?

The aim of the *Occupational Health and Safety: Safe students and an essential element of work readiness for all VU graduates* project was, in the first instance, to gather together the existing OHS resources around the university and to make them available to others. While some areas of the university were exemplary in their OHS training for discipline-specific and professional requirements of their students (such as health sciences, sport, chemistry and engineering), many other areas of the university had adopted a tokenistic approach to OHS with one-pagers handed out at orientation or resources available online. Some staff involved
in arranging work placement for students, for example, ‘covered’ OHS by advising students to locate the OHS representative in their workplace. External engagement, then, was regarded as an OHS risk but a more general program or resources did not exist. Internal engagement – that is, just being a student – did not seem to be regarded as involving OHS risk. While there were some Learning Outcomes in some units of study that mention OHS and some elective units devoted to OHS, there was no evidence of a systematic approach to a range of OHS issues that affect all students on campus, in the classroom or studying online anywhere. It was necessary to develop OHS resources pretty much from scratch.

**OHS Curriculum**

Pisaniello et al (2010) synthesise recommendations from a range of studies examining school-based OHS curriculum. The OHS curriculum developed in this project complies with these recommendations in that it can be embedded not just in one subject but all subjects in a whole-of-course approach and the content is generic rather than technical. Given that the curriculum needed to be suitable for every VU student in every discipline, the team was confronted with the real paradox that OHS within particular disciplines, professions and workplaces is highly specialised and yet OHS as a general competency is extremely broad and might encompass most situations. There is, as the Australian Learning and Teaching Council (ALTC) report *Safeguarding Australians: mapping the strengths and challenges toward sustainable improvements in OHS education and practice* emphasises, a lack of an agreed core body of knowledge for OHS: “While strength results from harnessing elements from physics, chemistry, engineering, law, health, medicine, business and behavioural sciences to underpin practice, the challenge is to secure a cogent blend of knowledge and skills from the disparate disciplines” (Toft et al, 2010: 3). The project, then, aimed to transcend – if not completely ignore – discipline-specific OHS issues and focus on the common characteristics and behaviours of students as students, as graduates needing to
address OHS criteria in the recruitment process and as future workers needing to have a general sense of their legal rights and responsibilities in the workplace.

The OHS curriculum developed by the project team uses everyday situations and objects that students and workers in a knowledge economy might encounter habitually – at home as well as at work and university. In this respect, it is underpinned by sound constructivist learning theory informed by Paiget and others which encourages students to create their own knowledge and understanding of OHS. The curriculum uses what students already know as a starting point from which to build (Biggs, 2003). As well as the more dramatic tripping, slipping, falling and other physical injuries, the curriculum uses everyday topics and artefacts such as stress, teamwork, pens, computers, chairs, the internet and headphones as discussion points and aims to shift students’ perspectives about what constitutes OHS, heighten their awareness of risk and develop their capacity to mitigate risk. The aim is not to develop a technical proficiency that would mitigate risk in a particular profession or location but to achieve a conceptual shift about health and safety, to understand what situations or factors might contribute to risk and to understand who is responsible for reporting, addressing and preventing risk in the workplace. As Biggs succinctly notes: “education is about conceptual change, not just the acquisition of information” (Biggs, 2003: 13). Too often, OHS training seems to involve the transfer of information.

The OHS teaching and learning activities are available online but students are encouraged to complete some activities in real spaces – including work spaces. The activities are modularised into sections: OHS Legislation, OHS for Students, OHS and Learning in the Workplace and Community (LiWC) Activities and Addressing OHS Questions at Interview. This last set of activities is particularly designed to help students think about and articulate a
response to what is often a mandatory criterion in the recruitment process: OHS. How can students demonstrate an awareness of and commitment to OHS, as they are frequently required to do, if it has not been an explicit part of their degree? The activities in Addressing OHS Questions at Interview enable students to positively demonstrate in a mock interview or in their written application a broad understanding of OHS, how it contributes to both workplace productivity and a positive workplace culture. One activity encourages students to use examples from previous work and study to demonstrate their appreciation of OHS.

The curriculum can be delivered in a range of ways including being distributed throughout a students’ degree from Orientation activities to weekly icebreakers in class-based teaching to an entirely self-paced online mode of delivery. Ideally, the curriculum would be delivered to students before or during work placement. The curriculum adopts a combination of teaching and learning approaches including observation, reflection and scenario-based problems to engage students in OHS as an everyday concern – and one that is of immediate relevance to them. Students might be asked to identify potential risks in a workplace or on the way to university. Scenarios, for example, might depict work or study situations with which students are too familiar such as disturbing messages from classmates via social media sites or feeling unsafe in the library at night. Students will be asked how they mitigate the risk and who is responsible for managing risk. Reflections might include a consideration of incidents already encountered by the student in a workplace. Students become familiar with legal concepts, such as “reasonably practicable”, “duty of care” and “risk” and come to understand that everyday activity is riddled with legal rights and responsibilities. How well the curriculum works will be evaluated over the course of 2012. It is being used differently in different programs in the expectation that is ‘everyday’, customisable and flexible.

Conclusion
An OHS curriculum should form part of a broader set of legal literacies in any higher education curriculum. Through OHS scenarios and themes, it is possible to enhance a diverse range of employability skills – including problem solving, communication skills, information literacy and, a quality of increasing interest to employers and governments globally, ethics (Jackson, 2009). As new industries emerge alongside increasingly flexible work roles using ever-changing technologies, OHS will be a moveable feast. Newness, change and diversity can be stressful for workers. New technologies and work practices bring with them challenges and potential risks – from nanotechnology to the impacts of radiation from transmitters for mobile telephone networks or the risks of being technologically enabled to work 24/7. Development and changes bring risks that need to be identified and mitigated.

If developed countries require graduates with highly developed employability skills in order “to maintain the intellectual capital based required to compete globally” (Jackson, 2009), at a microcosmic level, businesses – already struggling into deal with a myriad of changes all requiring ongoing staff development – require graduates who have generic skills to complement and extend their discipline knowledge but who also have useful, practical legal wherewithal that is simultaneously generic in that it is required of all people and can transcend particulars – but which is specifically legal in essence. Workers with legal literacy can identify legal issues, can help to mitigate risk in numerous workplace scenarios and are better able to prevent harm and advance themselves as essentially legal entities in an inherently legalistic world.
References


