

Submission to the Senate Standing Committee on Education and Employment Legislation Committee - Inquiry into Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial, Hire) Bill 2016

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1. INTRODUCTION

1.1 ABOUT JOBS AUSTRALIA

Jobs Australia is the national peak body for non-profit organisations that assist unemployed people to prepare for and find employment. Jobs Australia helps members to make the most effective use of their resources to promote the need for services and support that will help unemployed people to participate fully in society.

We provide an independent voice for members who range from large charitable organisations to small local community-based agencies. Jobs Australia is the largest network of employment and related service providers in Australia and is funded and owned by its members.

Typically, Jobs Australia members do some or all of the following:

- Deliver services under Commonwealth and/or State Government funded programs, such as jobactive (including Work for the Dole), Disability Employment Services, Community Development Program (formerly the Remote Jobs and Communities Program), Skills for Education and Employment, and similar State Government programs.
- Deliver accredited or non-accredited training for unemployed people as Registered Training Organisations, Group Training Organisations, apprenticeship centres, social enterprises and other non-profit training and education institutions.
- Deliver similar employment and training services to unemployed people without any government funding.

Jobs Australia supports its members by offering support such as industrial relations and human resources advice, tailored insurance products, advice on tenders and funding applications, and policy research and advocacy services.

1.2 ABOUT THIS SUBMISSION

The views expressed in this submission are the views of Jobs Australia. While our views are informed by our consultations with our members and other key stakeholders, they should not be taken to be the views of any particular provider or group of providers.

2. THE LEGISLATION

Jobs Australia has expressed its in-principle support for the Youth Jobs PaTH initiative which was announced in the 2016 Budget as a welcome new measure to address unacceptably high levels of youth unemployment and long term youth unemployment in particular.

The provision of combinations of “unpaid” work experience and training (and incentives for employers) for a small but significant proportion of the 130 000+ young Australians who are unemployed should improve job outcomes for many of the young people who participate in the program, provided it can be effectively implemented.

There are, however, a number of potentially serious risks and concerns in relation to the internships element of the Youth Jobs PaTH Program. These need to be comprehensively addressed to ensure that young people participating in the program are adequately remunerated, to ensure that interns are not exploited and do not displace existing or prospective new employees, and that their health and safety is adequately protected.

We note that the government’s proposed legislation for Youth Jobs PaTH provides for changes to the Social Security legislation which only deal with income test treatment of the proposed fortnightly “incentive payment” for young people and other changes to facilitate a return to income support for young people after their participation in subsidised employment. The government proposes to address a number of other significant issues related to the administration, implementation and operation of the internship element of Youth Jobs PaTH by administrative means rather than through legislation.

This is a matter of concern, given the number of young citizens involved and the nature of some of those issues and the risks of exploitation, in particular, to which young people could be exposed during their participation in the internship element of the Program.

The Youth Jobs PaTH internships involve provision by young people of their labour with payment of income support and incentives and is being described as “unpaid work experience” but which may, depending upon the actual circumstances of each placement, actually constitute an employment relationship. In that event, they should be treated as employees with all of the relevant entitlements, safeguards and protections of the Fair Work Act 2009 and other relevant legislation which has been developed over many years and which applies to all other Australian workers.

Other aspects of Youth Jobs PaTH internships, in addition to those set out in the Bill, should therefore be the subject of legislation which can be considered and scrutinised by the parliament, rather than being implemented by administrative means which might seek to exempt interns and the employers providing placements from the provisions of the Fair Work Act and other relevant legislated workplace protections and requirements.

In addition, the Department should ensure that relevant agreements between employers, interns and employment services providers and other guidance materials for the program are framed in ways which ensure interns are not treated like employees. The Department should also take all necessary steps to ensure that placements are closely vetted and monitored to ensure that interns are not treated and actually operating as employees engaged in “unpaid” work trials. In the event that these responsibilities are assigned to contracted

employment services providers, the government should allocate them sufficient additional service fees to meet the costs of appropriate and necessarily high levels of vetting and monitoring.

In respect of “internships” as a means of assisting young unemployed people, we note in particular, the Irish Job Bridge program on which Youth Jobs PaTH is at least partially based (and which unfortunately came to be known as “Scam Bridge”) has been discontinued as a consequence of high levels of exploitation of young people and displacement of existing workers and the controversial experience of a similar program in the UK. This overseas experience points to some of the risks involved in Youth Jobs PaTH and reinforces the need to implement robust safeguards to ensure that the Australian program does not experience the same problems and that young people get the best possible experience to help them on the way to a job.

Although it is accepted that many of the necessary safeguards and protections could and can be expected to be implemented administratively by the Department of Employment and its contracted service providers, it is desirable that some other aspects of the proposed arrangements should be covered in legislative instruments.

Specifically, the proposed legislation should be amended to incorporate and address the following issues:

- to incorporate the “incentive payment” and its quantum and indexation arrangements in the legislation itself (to ensure that the quantum of the payment is not reduced and its value is maintained over time);
- to incorporate a clear stipulation that participation in internships is voluntary and that there will be no income support penalties as a consequence of failure to attend or participate or for ceasing a placement (to ensure there are no subsequent adjustments to administrative arrangements which would result in participation being mandatory and relevant job seekers being subject to penalties);
- to ensure that young people engaged in the compulsory training element of Youth Jobs PaTH should receive adequate reimbursement of travel costs associated with attendance at that training through an income support supplement like the current Work for the Dole arrangements (at least doubled to reflect actual transport costs) - (Transport costs – for up to 90 minutes each way each day for 2 blocks of three weeks are likely be significant and otherwise unaffordable – especially in regional areas - and will further and severely impoverish many young people already receiving well below poverty-level income support unless they get supplementary payments – which should be guaranteed);
- to ensure that hours of “work” or unpaid work experience are limited to ensure that young interns receive income at least equivalent to the prescribed minimum wage (if this does not occur, interns will effectively be working for less than the minimum wage – an established and long-standing legal entitlement for all other Australian workers – and this could increase the risk of their being exploited);
- to ensure that times of “work” or unpaid work experience are restricted so that interns are not required to “work” during times which would attract penalty payments under relevant awards – (the risks of exploitation and displacement of existing workers are extremely high in these circumstances and particularly in industries with highly variable levels of employment and of casual work – where it could be difficult to discern whether displacement is occurring);

- to incorporate a requirement that prospective interns are given adequate information about their rights and obligations in the workplace (including occupational health and safety) in writing and verbally prior to placement (to make certain that all interns are fully and adequately informed about their rights and obligations); and
- a requirement that young interns have timely access to independent advice and assistance about those rights (including occupational health and safety) and to address and provide timely assistance about any concerns that arise during the course of placements.

Other matters which can be addressed by administrative means and implemented by the Department (and some of which are already being developed) include:

- comprehensive workplace or occupational health and safety pre-placement vetting and monitoring during placements – by competent personnel engaged by employment services providers;
- in the event that interns are not covered by state and territory Workers' Compensation arrangements (and this may vary in different jurisdictions), provision of Personal Accident insurance coverage with terms which mirror and match the relevant Workers' Compensation entitlements – as well as adequate liability cover for participating interns;
- rigorous vetting and monitoring of all placements by the Department itself and by contracted employment services providers,
 - to ensure interns are not exploited and that they do not displace existing or prospective paid employees (noting that this will be difficult to discern in workplaces and industries with high levels of casual and irregular employment) and prohibition of further involvement in the program by employers which have breached these requirements;
 - to ensure interns have adequate and competent induction and supervision and that numbers of interns are limited to a reasonable and not excessive number in each workplace;
 - to ensure that employers do not and are unable to "churn" through repeated interns without offering reasonable numbers of completing interns ongoing employment and prohibition of further involvement in the program by employers which have breached this requirement;
- recording and publication and dissemination of details of employers found to be unsuitable for provision of internship places to referring employment services providers;
- prohibition of the provision of internships in workplaces undergoing significant downsizing; and,
- provision and ongoing development and dissemination of a wide range of information, advice and guidance materials which inform and promote good and best practice in all aspects of internship placements for employers, for interns themselves and for referring employment service providers.