



Submission from Interns Australia

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

Introduction:

Interns Australia is the peak support and advocacy body for interns and students undertaking work placements in Australia. Our goal is to engage and empower interns, employers, government and other stakeholders to create an employment landscape that is fair, regulated and protects the dignity of interns.

Interns Australia does not support the Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial Hire) Bill 2016.

In particular, we have concerns with:

- (a) The use of the term 'internship' in new paragraph 8(8)(td) of the *Social Security Act 1991* (Cth) and new paragraph 5H(8)(xad) of the *Veterans' Entitlements Act 1986* (Cth);
- (b) The amount of the 'payment' considered in new paragraph 8(8)(td) of the *Social Security Act 1991* (Cth) and new paragraph 5H(8)(xad) of the *Veterans' Entitlements Act 1986* (Cth);
- (c) The inclusion of new clause 95C in the *Social Security (Administration) Act 1999* (Cth); and
- (d) Further details of the internship programme not included in the Bill, preventing the internship programme from receiving further scrutiny.

At a minimum, to support the Bill, we would require the use of an alternative term to 'internship' to describe the activities of participants. However, we strongly encourage the Committee to consider examining an alternative definition of 'intern' under Australian employment law, with clearly defined rights and protections, before this Bill is passed.

A. Use of the term 'internship'

Under new paragraph 8(8)(td) of the *Social Security Act 1991*(Cth) and new paragraph 5H(8)(xad) of the *Veterans' Entitlements Act 1986* (Cth), as contained in Schedule 1 of the Bill, the Commonwealth is empowered to make a payment to an individual placed in an 'internship'. There is no definition of an 'internship' contained in either of these Acts. The explanatory memorandum to the Bill describes the activities undertaken by the 'interns' as 'unpaid work experience'.¹

Interns Australia has strong concerns about the use of the term 'internship' to describe the participants in the Youth Jobs PaTH program. The term is not defined in Australian

¹ Explanatory Memorandum, Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial Hire) Bill 2016, 4.

Interns Australia

Inquiry into the Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial Hire) Bill 2016

employment law, and recent case law has highlighted that many internships are employment relationships.² Not only does the use of this term create confusion about the rights of the participants in the Youth Jobs PaTH program, it creates confusion about the rights of individuals undertaking internships in other areas, intensifying the creation of a corrosive unpaid internships 'culture' (as discussed further below).

Interns Australia believes that the term 'internship' should be properly defined under Australian employment law. If interns are to be considered as legally different to employees, their rights must be clearly stated. If this Bill does not define 'internship', the term should be deleted.

The use of an alternative term such as 'unpaid work experience placement' or 'work trial' have been previously used in the context of a government work experience program to assist unemployed workers.³ It has been strongly suggested by leading employment law academics that these relationships 'are likely to be lawful'⁴, meaning they are more clearly defined relationships.⁵ **Use of these alternative terms would prevent the creation of an 'internships culture' and would be supported by Interns Australia.**

Recommendation: Interns Australia recommends deletion of the term 'internship' in the Bill and removal of all references to interns in any ancillary documentation, and an alternative phrase, such as 'unpaid work experience placement' or 'work trial' used. If the term 'internship' is to be used, the Bill must clearly define what an internship is and the protections given to 'interns' under the programme.

B. The amount of the 'payment' by the Commonwealth

Under new paragraph 8(8)(td) of the *Social Security Act 1991*(Cth) and new paragraph 5H(8)(xad) of the *Veterans' Entitlements Act 1986* (Cth), as contained in Schedule 1 of the Bill, the Commonwealth is empowered to make a 'payment' to the individuals undertaking internships. The explanatory memorandum to the Bill suggests these payments will be \$200,⁶ for what has been described as 30-50 hours of work.⁷

Interns Australia questions the nature of these payments and how they interact with the interns' legal status under Australian employment law. For clarity, it would be preferable for the payments to reflect minimum wage, or equal between \$600 - \$1000 per fortnight. Alternatively, the interns could be required to work fewer hours.

Recommendation: the 'payment' made by the Commonwealth roughly equal minimum wage, or some explanation be given to justify the choice of the arbitrary amount of \$200.

² See *Fair Work Ombudsman v Crocmedia Pty Ltd* [2015] FCCA 140 (29 January 2015), *Fair Work Ombudsman v Aldred* [2016] FCCA 220 (10 February 2016) and *Fair Work Ombudsman v AIMG BQ & Anor* [2016] FCCA 1024 (31 May 2016).

³ Andrew Stewart and Rosemary Owens, Fair Work Ombudsman, *Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods* in Australia (2014), 38-40 <<https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/research-reports>>.

⁴ *Ibid* 38.

⁵ *Ibid* 38-40.

⁶ Explanatory Memorandum, Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial Hire) Bill 2016, 4.

⁷ Alex McKinnon, 'Junk Explained: Why the Government's New Internship Program is a Terrible Idea', *Junkee* (online), 4 May 2016 <<http://junkee.com/junk-explained-why-the-governments-internship-program-for-young-people-is-a-terrible-idea/77398>>.

Interns Australia

Inquiry into the Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial Hire) Bill 2016

C. The inclusion of 95C and a 'churn' culture in the Internships Programme

New paragraph 95C(1) of the *Social Security (Administration) Act 1999 (Cth)*, as contained in Schedule 2 of the Bill, states that any participant in the internship program who is subsequently employed by their organisation will have their Centrelink payments suspended, but not cancelled, for the first 26 weeks of their employment. The explanatory memorandum to the Bill states this provision is included to ensure any individuals who have their employment terminated 'through no fault of their own'⁸ are able to receive Centrelink benefits immediately.⁹

Interns Australia is surprised the Bill contemplates so directly many of these new employees being fired 'through no fault of their own'. As employers will receive a subsidy for employing these individuals,¹⁰ we have concerns this provision may encourage employers to hire an employee to receive the subsidy, terminate their employment, then hire another employee to receive the subsidy again. This will worsen a similar phenomenon created by the incentive payment to internship providers under the internship programme (as detailed more fully below). Interns Australia would like to see a counterbalance included in the Bill to prevent this 'churn culture' from developing.

Recommendation: That measures be included in the Bill to ensure no Youth Bonus wage subsidy employer has an incentive to terminate the employment of their new employees.

D. The elements of the Internship Programme not included in the Bill

Interns Australia is most concerned about the elements of the internship programme that are not contained in this Bill.

In particular, we are concerned about:

- The creation of 120,000 new workers over four years who are classified as 'interns'¹¹, without any detail on what the rights of those interns would be;
- The expansion of the notion of internships under the PaTH program into industries such as retail, hospitality and motor trades;¹² and
- The incentive payment of \$1,000 being provided to businesses taking on interns.¹³

We believe that the creation of the internship programme will lead to:

- **The creation of an 'internships culture' in Australian workplaces:** by creating 120,000 new interns in industries where internships have previously not been seen, this internship program will entrench interns in Australian workplaces without adequately clarifying what their rights are;

⁸ Explanatory Memorandum, Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial Hire) Bill 2016, 1, 6, 9, 11, 12.

⁹ Ibid 6.

¹⁰ Demonstrated by their definition as a 'Youth Bonus wage subsidy employer': see subsection (4) of new section 95C, *Social Security (Administration) Act 1999 (Cth)*, as contained in Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial Hire) Bill 2016 sch 2.

¹¹ Liberal Party of Australia, 'Creating a path to real jobs for young people' (Media Release, 3 May 2016) <<https://www.liberal.org.au/latest-news/2016/05/03/creating-path-real-jobs-young-people>>.

¹² Liberal Party of Australia, 'Australian Employers Back PaTH Program and Young Jobseekers' (Media Release, 31 May 2016) <<https://www.liberal.org.au/latest-news/2016/05/31/australian-employers-back-path-program-and-young-jobseekers>>; Alex McKinnon, 'Junk Explained: Why the Government's New Internship Program is a Terrible Idea', *Junkee* (online), 4 May 2016 <<http://junkee.com/junk-explained-why-the-governments-internship-program-for-young-people-is-a-terrible-idea/77398>>.

¹³ Department of Employment, *Youth Jobs PaTH* (5 September 2016) Australian Government <<https://www.employment.gov.au/youth-jobs-path>>.

Interns Australia

Inquiry into the Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial Hire) Bill 2016

- **Confusion over the rights of those participating in the programme:** it is unclear what workplace rights attract to the 'interns' undertaking the programme (including the applicability of discrimination and workers compensation laws), and how these rights interact with the rights of 'traditional' interns in Australian society;
- **The erosion of entry-level employment:** if businesses are given a \$1,000 incentive to take on an intern, there is a risk that they will continue to use interns to receive the incentive, rather than hiring employees. This encourages a culture of using unpaid interns rather than entry-level workers, as seen in countries across the world.

For more detail, please see our feedback submitted to the Department of Employment during the consultation stage of this Bill (**attached**). We do not believe the concerns highlighted in that feedback have been adequately addressed.

Recommendation: more information on the internship program be contained in the Bill, in particular how it interacts with the Fair Work Act, and amendments made to address the highlighted concerns.

An alternative model for internships

Interns Australia would like to see a detailed examination of interns, and the legal status and rights of interns by the Australian Parliament.

We wish to see a definition of 'intern' under Australian law that:

- **Protects the working rights of interns**, including the right to time off, protection against unfair dismissal, and protection under workers compensation and discrimination law;
- **Allows for appropriate remuneration** for an intern, whether that be provided by the businesses engaging the intern or by government funding (for example, if the intern is being provided with real training opportunities by an organisation that cannot afford to pay them); and
- Is linked to appropriate **regulation of internships in Australia**, by ensuring interns fall under the authority of the Fair Work Ombudsman.

We would like to see data collected on internships in Australian workplaces, including the amount of Australians who have undertaken internships, and how long those internships were for.

Until this examination occurs, and/or the amendments to the Bill noted above are made, we do not believe this Bill should be passed.

We reiterate, however, that the use of the term 'internship' is the most concerning element with the Bill, causing many of the problems described above. We support the use of an alternative term that has been previously used by government work experience programs. This would go a significant way to addressing many of our concerns.

Further questions

We would be keen to discuss these issues with you further. Our contact details are listed below:

Dimity Mannering
Executive Director
Interns Australia

Clara Jordan-Baird
Policy Director
Interns Australia



**PaTH: Internship Programme
Feedback from Interns Australia**

Prepare, Trial, Hire: Internship Programme

The public information available on the Internship Programme, or the ‘trial’ aspect of the PaTH program, describes the program as follows:

- The voluntary program will be open to young people between 17 and 24 years of age, who have been receiving employment services for six months or more;¹
- The internships will run between 4 and 12 weeks;²
- Business will receive an upfront payment of \$1000 to host the intern;³
- The intern will receive \$200 a fortnight (or \$100 a week) on top of their existing welfare payment for participating;⁴ and
- The program will commence in April 2017 and be open to 30,000 participants.⁵

There has been no further information provided by the Department of Employment about the nature of the work performed under the internships, how long the interns will work, or in what industries the interns will be working in.

Position of Interns Australia

Interns Australia, the peak body representing the interests of interns in Australia, does not support the Internship Programme as described above.

We believe the program will accelerate an already developing ‘internships culture’ in Australia, erode the still-unclear rights of interns in Australia, and contribute to the displacement of entry-level employment with insecure work.

1. The ‘normalisation’ of an internships culture

The proliferation of internships, of the paid and unpaid variety, has risen over the last ten years in Australia. Yet currently these are still mainly seen in industries such as the arts, media, and not-for-profit organisations.⁶ There is also significant concern that these internships are increasing in areas such as law, marketing and communications.⁷

¹ Department of Human Services, Australian Government, *Youth Jobs PaTH – Prepare – Trial – Hire* (4 May 2016) Australian Government <<https://www.humanservices.gov.au/corporate/budget/budget-2016-17/job-seekers/youth-jobs-path-prepare-trial-hire>>.

² Department of Employment, *Youth Jobs PaTH* (5 September 2016) Australian Government <<https://www.employment.gov.au/youth-jobs-path>>.

³ Ibid.

⁴ Ibid.

⁵ Liberal Party of Australia, ‘Creating a path to real jobs for young people’ (Media Release, 3 May 2016) <<https://www.liberal.org.au/latest-news/2016/05/03/creating-path-real-jobs-young-people>>.

⁶ Interns Australia, *2015 Annual Survey* (November 2015) 7.

⁷ Ibid.

This rapidly-developing culture has resulted in the creation of some paid, well-structured internships, but a large number of exploitative unpaid internships, where the intern gains little experience and little or no benefit from working at the organisation. Interns often remain silent about these experiences, hoping that eventually the internship will lead to paid employment, but research from Interns Australia indicates that this often isn't the case: only 19.83% of unpaid internships have led to the intern receiving paid employment.⁸

What constitutes an internship, and the legal rights of an intern, is currently unclear under Australian employment law.⁹ This lack of clarity is allowing exploitative internships to spread and an 'internships culture' to develop, where unpaid entry-level workers are seen as an acceptable part of a workplace.

By branding the PaTH workers as 'interns', the Federal Government is effectively adding an additional 30,000 interns to Australia's internship ranks. This will accelerate the development of an 'internships' culture in Australia without first clarifying what the rights of interns are and ensuring they are adequately protected.

In addition, information provided by the Government, as well as campaign material from the recent federal election, suggests the Internship Programme will be directed toward industries such as motor trades, hospitality and retail.¹⁰ This will accelerate the spread of internships to more areas of employment, ensuring that internships become entrenched in more types of Australian workplaces.

2. *The rights of participants in the Internship Programme*

Interns Australia has concerns about whether the employment rights of the participants in the Internship Programme are being adequately protected. We question whether the participants will be classified as 'employees' under the *Fair Work Act 2009* (Cth) and if so, why the National Employment Standards are not being met. If the participants in the Internship Programme are not workers, further clarity is required as to their status under employment law and how this interacts with 'traditional' interns in Australian society.

3. *The erosion of entry-level employment*

In many countries where an internship culture exists, the concept of an entry-level job has eroded, as employers often move from unpaid intern to unpaid intern rather than paying a worker to do the entry-level work.¹¹ Interns Australia has concerns that if business is given a \$1000 incentive to take on an intern, this culture is likely to be encouraged. There is no incentive for a business to offer an internship for a fully-paid position if they are able to receive another intern (and another \$1000 incentive) under the Internship Programme. In doing so, organisations may use the interns to perform the work that would otherwise be

⁸ Ibid, 8.

⁹ For further detail, see Andrew Stewart and Rosemary Owens, *Fair Work Ombudsman, Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia* (2014) <<https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/research-reports>>, although note recent developments in the law with *Fair Work Ombudsman v Crocmedia Pty Ltd* [2015] FCCA 140 (29 January 2015), *Fair Work Ombudsman v Aldred* [2016] FCCA 220 (10 February 2016) and *Fair Work Ombudsman v AIMG BQ & Anor* [2016] FCCA 1024 (31 May 2016).

¹⁰ Liberal Party of Australia, 'Australian Employers Back PaTH Program and Young Jobseekers' (Media Release, 31 May 2016) <<https://www.liberal.org.au/latest-news/2016/05/31/australian-employers-back-path-program-and-young-jobseekers>>; Alex McKinnon, 'Junk Explained: Why the Government's New Internship Program is a Terrible Idea', *Junkee* (online), 4 May 2016 <<http://junkee.com/junk-explained-why-the-governments-internship-program-for-young-people-is-a-terrible-idea/77398>>.

¹¹ See generally Ross Perlin, *Intern Nation: How to Earn Nothing and Learn Little in the Brave New Economy* (Verso, 2nd ed, 2012), 131.

performed by entry-level employees, further cementing internships in our society and eroding the path to a well-paying job.

An alternative model

Interns Australia supports a parliamentary inquiry to the role of internships in Australian employment law.

We seek an examination of:

- The appropriate legal status for an 'intern' under Australian employment law;
- The rights and protections that attach to this status;
- The potential for government funding for internships at organisations that meet certain criteria; and
- The current role of the FWO and the development of its enforcement powers.

Until such an inquiry has taken place, Interns Australia believes that the government should adopt best practice and ensure participants in the National Internship Scheme are classified as 'employees' (and so appropriately compensated for their work) under the Fair Work Act. This would ensure their working rights are protected.

About Interns Australia

Our Vision

Interns Australia is the support and advocacy body for interns and students undertaking work placements in Australia. Our goal is to engage and empower interns, employers, government and other stakeholders to create an employment landscape that is fair, regulated and protects the dignity of interns.

Our Mission

Interns Australia is committed to creating a culture of quality and equitable internships, to supporting interns and employers through a period of legislative uncertainty and to protecting the integrity of the industrial relations system.

Further questions

We would be keen to discuss these issues with you further. Our contact details are listed below:

Dimity Mannering
Executive Director
Interns Australia

Clara Jordan-Baird
Policy Director
Interns Australia