



Submission to the Senate Inquiry on the
Social Security Legislation Amendment
(Youth Jobs Path: Prepare, Trial, Hire)
Bill 2016

UnitingCare Australia
15 November 2016

Contact:
Martin J Cowling
Acting National Director
UnitingCare Australia

Table of Contents

UnitingCare Australia	3
Submission	4
Recommendations	6
Attachment A	8



UnitingCare Australia

UnitingCare Australia is the national body for the UnitingCare Network, one of the largest providers of community services in Australia. With over 1,600 sites, the network employs 40,000 staff and is supported by the work of over 30,000 volunteers. We provide services to children, young people and families, Indigenous Australians, people with disabilities, the poor and disadvantaged, people from culturally diverse backgrounds and older Australians in urban, rural and remote communities.

UnitingCare Australia works with and on behalf of the UnitingCare Network to advocate for policies and programs that will improve people's quality of life. UnitingCare Australia is committed to speaking with and on behalf of those who are the most vulnerable and disadvantaged.



Submission

UnitingCare Australia welcomes the opportunity to make a submission to the Committee's Inquiry into the *Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial, Hire) Bill 2016* (Youth Jobs PaTH Bill).

UnitingCare Australia broadly welcomes the introduction of the Youth PaTH program as one of the Government's key social investment measures to assist young people into employment. UnitingCare Australia particularly welcomes the focus on evidence and data that underpins the Government's social investment approach and the shift from more punitive, yet less effective, approaches to dealing with long term unemployment.

UnitingCare Australia believes the program will complement the Government's Try, Test and Learn fund and considers that innovative and proactive programs are required to address the many problematic issues associated with youth unemployment, skills and educational deficits.

To that end, UnitingCare Australia has partnered with the Government to conduct an employment program to assist people, predominantly women, into the workforce after long periods without employment. The Women's Employment Demonstration Project (WEDP), an innovative partnership with the Department of Prime Minister and Cabinet, Department of Employment, jobactive providers, UnitingCare Australia and Uniting Care employers, has successfully recruited, trained and employed more than 40 people, some of them young unemployed people, in the past 12 months.

The WEDP is a real and practical demonstration of what can be achieved through positive partnerships with Government, jobactive providers, training organisations and employers. The success of the program lies not just in the strength of the partnerships, but also in its strong focus on recruitment for personal attributes, classroom and on-the-job training, mentoring and post-employment support. UnitingCare Australia believes that the values and commitment of a faith based organisation have also been critical to the program's success, as much of the design and support work for the program was provided 'in-kind' with no financial compensation.

Key learnings from the WEDP include:

- The importance of having real employment outcomes as the overall objective of the training, mentoring and job-readiness activities.
- Commitment from employers to providing support and mentoring to assist people's successful transition through training, and then into employment (and post-employment).
- Coordination and clear communication between the employer, training organisation and jobactive providers to ensure that 'no harm is done' to participants taking part in the program, particularly with regard to income support payments being ceased unnecessarily.

UnitingCare Australia believes there are a number of important similarities between the WEDP and the Youth Jobs PaTH, including the training component and positive partnerships with employers. As with all employment programs, however, UnitingCare believes the design of the Youth Jobs PaTH program is critical – not just to its long term success but also in ensuring young people are protected in the workforce and not subject to unsafe work practices, exploitation or ‘churning’.

Firstly, UnitingCare Australia is concerned that the legislation lacks clarity on the definition of ‘intern’ and, in particular, how the nature of the internship is viewed in employment terms. To that end, we draw your attention to the guidance offered by the Fair Work Ombudsman which distinguishes between unpaid internships and employment relationships (Attachment A). The guidance offered by the Ombudsman seems to suggest the Youth Jobs PaTH program internships may constitute employment relationships and as such should enjoy the protections offered to those relationships. Alternatively, the program could be considered as part of the National Work Experience Program, but greater clarity is required to determine the nature and treatment of the internships.

UnitingCare Australia also draws the Committee’s attention to the Fair Work Ombudsman’s report, *‘Unpaid work arrangements – exploitation or experience’*¹. In its summary and response document, the Fair Work Ombudsman states:

“In particular, it appears that a significant number of workers, particularly young workers, are asked or required to undertake unpaid job trials or unpaid training which go beyond what is reasonably required to assess an applicant’s ability or suitability. Such arrangements effectively require the performance on an unpaid basis of work that would normally be undertaken by a paid employee.”

“The report concludes that there is reason to suspect that a growing number of businesses are choosing to engage unpaid interns to perform work that might otherwise be done by paid employees.”

“Some of the views represented in the report express a belief that unpaid internships are mutually beneficial arrangements that should not be discouraged or suppressed.”

The report recommended that “the Fair Work Ombudsman (FWO) determines the legality and legitimacy of unpaid work experience in order to inform its approach to education and its operational decisions regarding investigations, and potentially prosecutions, by assessing the

¹ Fair Work Ombudsman. 2013. *Experience or Exploitation? The nature, prevalence and regulation of unpaid work experience, internships and trial periods in Australia*. Available at: <https://www.fairwork.gov.au/.../763/Unpaid-work-report-summary.pdf.aspx>

seriousness of any unpaid work issues. In particular, this requires the FWO to determine its view regarding each element of the 'vocational placement' exception in the Fair Work Act 2009."

The Fair Work Ombudsman responded by indicating it "intends to develop its position on what constitutes unlawful unpaid work arrangements, with particular attention to the 'vocational placement' exception under the Fair Work Act 2009. This position will inform the FWO's education and compliance initiatives."

UnitingCare Australia notes the mix of views in relation to internships and, on balance, endorses their use providing sufficient protections are in place to protect against exploitation. To that end, UnitingCare Australia endorses the approach indicated by the Fair Work Ombudsman.

UnitingCare Australia also notes concerns regarding young people's access to workers' compensation schemes in the event of them experiencing a workplace incident or accident whilst participating in the PaTH program. It is unclear the extent to which different schemes operating in states and territories will extend to provide the appropriate protections for young people undertaking PaTH. As previously noted, this issues largely relates to ambiguity around the nature of work that will be undertaken whilst participating in the program, and if this subsequently defines participants as 'volunteers' or 'employees' – the former may prevent their ability to access workers' compensation. Further consideration is required regarding how protections can be provided for young people voluntarily undertaking work placement through the program.

Recommendations

Taking the above into account, UnitingCare Australia believes that the PaTH program must:

- Be truly voluntary so that young people are neither coerced into internships or inappropriate placements, nor penalised for withdrawal;
- Ensure that appropriate protections for workplace incidents and injuries are afforded to young people participating in PaTH;
- Ensure that young people receive adequate health and safety training and protections and that proper assessments are made prior to young people commencing internships or employment;
- Ensure that employers do not 'churn' through employees to receive wage subsidies without a longer term commitment to employment;
- Ensure that interns are not used to replace paid staff or reduce the need for, or hours worked by, paid staff;
- Have adequate oversight to ensure young people have reasonable employment conditions, hours of work, and are treated fairly;

- Ensure that all intern programs have clear training and skills outcomes and from which both the employer and intern/employee can benefit;
- Ensure young people actually receive the appropriate training and skills they need and are not exploited as a cheap source of labour for unattractive work;
- Ensure that, if a young person ceases employment before the end of 12 months since their participation in the program, their income support payments will be restarted without them having to reapply;
- As far as possible, meet all the National Employment Standards as set out in the Fair Work Act; and
- Have an accessible and transparent complaints process.

Whilst UnitingCare Australia acknowledges the role and value of internship programs, it is essential that all young people are treated fairly, not exploited, benefit from the program and are fairly remunerated for their efforts. In relation to fair remuneration, UnitingCare Australia understands that the remuneration for training may be set below minimum award rates, and the program proposes a fortnightly allowance in addition to social security benefits.

It is important to note, however, that the additional allowance may not sufficiently compensate for the many costs, hidden and apparent, associated with employment. Based on our experience with the WEDP, these costs include transport, child care, clothing, grooming, study supports and meals outside of the home. Accordingly, UnitingCare Australia believes the allowance should be increased and the interns should also be able to apply for additional support from the Government and/or jobactive providers.

In conclusion, UnitingCare Australia supports the intentions and general directions of the program and would be pleased to support its roll-out, provided the appropriate protections for young workers are implemented.



Attachment A

Fair Work Ombudsman

Work experience & internships

Should the person get paid?

Unpaid work experience and unpaid internships that are not vocational placements are okay as long as the person isn't in an employment relationship. People in employment relationships are employees of a business and entitled to:

- a minimum wage
- the National Employment Standards
- the terms of any applicable award or registered agreement.

How do I tell if someone's an employee?

You can use the below indicators to help work out whether a work experience participant or intern is an employee:

Reason for the arrangement

Is the purpose of the work experience or internship to give the person work experience or to get the person to do work to help with the ordinary operation of the business? The more productive work that's involved (rather than just observation), the more likely it is that the person's an employee.

Length of time

Generally, the longer the period of the arrangement, the more likely the person is an employee.

Significance to the business

Is the work normally done by paid employees? Does the organisation need this work to be done? If the person is doing work that would otherwise be done by an employee, or it's work that the business / organisation has to do, it's more likely the person is an employee.

What the person is doing

Although the person may do some productive activities, they're less likely to be an employee if they aren't expected or required to come to work or do productive activities.

Who's getting the benefit?

The person who's doing the work should get the main benefit from the arrangement. If a business or organisation benefits from engaging the person, it's more likely the person is an employee.

Example: Unpaid internship

A local council has advertised an internship program for high school or university students interested in government processes. The internships have been advertised as unpaid positions and students are allowed to select the hours they spend at the council office over a 2 week period.

The council is careful to make sure that the role is mainly observational and there's no expectation that the students will do productive work. The students are getting the main benefit from the arrangement.

In this example there's no employment relationship and the interns don't have to be paid.

Example: Paid internship

Jonathon is a final year accounting student. He agreed to do an unpaid internship with an accountancy firm and was promised a job once he graduates.

Jonathon attended the firm for 3 days a week. He prepared customer tax returns and company financials. The firm charged clients for the work he did.

Although Jonathon had agreed not to be paid, he did work that would have otherwise been done by a paid employee. This indicates an employment relationship existed. As such he should be paid for all the hours he worked.

jobactive National Work Experience Program

jobactive is the Australian Government's way to get more Australians into work.

A person looking for work who is genuinely taking part in the National Work Experience Program through a jobactive provider is not an employee. They're doing an Approved Programme of Work under Social Security Legislation.

The National Work Experience Program gives a person looking for a job short-term work experience to help them get a job.

Find out more about the National Work Experience Programme.