

Chapter 3

Issues raised by submitters

Introduction

3.1 The committee received 15 submissions regarding the bill, and the majority of these submissions are generally supportive of the bill and the PaTH program.

3.2 For instance, the Australian Chamber of Commerce and Industry (ACCI), submitted that it strongly supports the Youth Jobs PaTH initiative 'as an important avenue to secure jobs for young unemployed Australians'.¹ ACCI indicated that the PaTH program is:

...vital in ensuring jobseekers have a better chance to be well prepared for the workplace, with the ultimate aim of securing a job. Tens of thousands of young Australians will get their first opportunity in the workforce via the Youth Jobs PaTH program, with PaTH providing "real job" work experience that many young job seekers lack.²

3.3 The Brotherhood of St Laurence also supported the bill and the PaTH program:

The demands of a rapidly changing modern Australian economy are proving profoundly testing for a significant proportion of young Australians. Youth unemployment – at around 13 per cent nationally – now sits at double the rate of overall unemployment. The Brotherhood of St Laurence (BSL) welcomes the introduction of the Prepare, Trial, Hire (PaTH) program as a positive investment in addressing this issue, by providing young unemployed people with the opportunity to gain the real world work experience they need to move into employment.³

3.4 Submitters were united in their views on the impact of youth unemployment and the urgent need to provide the means for young job seekers to find secure work. For example, the Australian Council of Social Service (ACOSS) submitted:

It is unacceptable that in Australia there are 130,000 young people who are unemployed, and over half a million people of all ages who are unemployed long-term.⁴

3.5 Organisations such as Interns Australia, UnitingCare Australia, Per Capita, Anglicare Australia, Jobs Australia, ACOSS, and Children and Young People with Disability Australia (CYDA) raised several issues with the bill and the PaTH program, including for example:

- lack of definition around the term 'internship';

1 Australian Chamber of Commerce and Industry, *Submission 5*, p. 1.

2 Australian Chamber of Commerce and Industry, *Submission 5*, p. 1.

3 Brotherhood of St Laurence, *Submission 9*, p. 1.

4 Australian Council of Social Service, *Submission 15*, p. 1.

- absence of greater detail about the operation of the PaTH program in general;
- amount of the incentive payments provided to interns under the program; and
- development of a 'churn' culture.

3.6 This chapter examines these issues.

Definition of 'internship'

3.7 Interns Australia noted that the bill refers to payments made to an individual placed in an internship, but it does not provide a definition of 'internship'. As highlighted in Chapter 2, the only definition of internship is in the Explanatory Memorandum. Interns Australia expressed concern about the lack of a definition:

The term is not defined in Australian employment law, and recent case law has highlighted that many internships are employment relationships. 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'...⁵

3.8 UnitingCare Australia raised similar concerns about the need for a definition of internship. Its submission cited the Fair Work Ombudsman's 2013 report *Unpaid work arrangements – exploitation or experience* and argued that:

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.⁶

3.9 UnitingCare Australia also reported concerns about interns' access to workers' compensation schemes, given the ambiguity around the definition of internship:

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.⁷

3.10 The Department of Employment's submitted that host businesses would be required to comply with state and federal workplace health and safety legislation and

5 Interns Australia, *Submission 1*, pp. 1–2.

6 UnitingCare Australia, *Submission 4*, p. 5.

7 UnitingCare Australia, *Submission 4*, p. 5.

will, as part of participation in the PaTH program, undergo a risk assessment by employment service providers.⁸

3.11 Further, the Department explained that it has insurance arrangements in place to cover job seekers and these will be extended to interns in the PaTH program.⁹ The arrangements include:

- Group Personal Accident Insurance which covers job seekers that are injured while participating in approved activities, including travel to and from the activity;
- Combined Liability Insurance which covers job seekers' liability arising from their negligence that cause personal injury to third parties or damage to third parties property while participating in an approved activity.¹⁰

3.12 According to the Department of Employment, 'unpaid work experience, including in the private sector, has been a feature of Australian Government employment services and an accepted activity for job seekers to undertake for decades.'¹¹ Further, the Department pointed out:

The importance of work experience was recognised as part of the *Social Security Legislation Amendment (Employment Services Reform) Act 2009*. These amendments were primarily designed to ensure that job seekers can undertake certain work experience activities and placements that are not approved programs of work (but are approved in the sense of being approved activities in an Employment Pathway Plan), without being treated as employees.¹²

3.13 The Department's submission is clear regarding the employment status of participants in the PaTH program:

PaTH interns are not employees. PaTH internship placements, as with National Work Experience Program placements, will be covered by these provisions and designed to be supervised work experience placements, not a job. Accordingly, merely participating in an internship in accordance with a Job Plan (Employment Pathway Plan) will not make that person an employee under the *Fair Work Act 2009*.¹³

3.14 The Explanatory Memorandum also clarifies the nature of the internships:

Both businesses and eligible young job seekers will be able to choose to participate in an internship. Further, businesses and eligible young job seekers will be able to co-design internship placements... They [interns]

8 Department of Employment, *Submission 14*, p. 8.

9 Department of Employment, *Submission 14*, p. 8.

10 Department of Employment, *Submission 14*, p. 8.

11 Department of Employment, *Submission 14*, p. 6.

12 Department of Employment, *Submission 14*, p. 6.

13 Department of Employment, *Submission 14*, p. 6.

will undertake unpaid work experience and will not be employees of their host businesses.¹⁴

Details about the operation of the PaTH program

3.15 Jobs Australia expressed concerns that the details of the PaTH program had not been included with the bill:

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.¹⁵

3.16 Interns Australia called for greater detail to be provided around:

- The creation of 120,000 new workers over four years who are classified as 'interns', 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; and
- The incentive payment of \$1,000 being provided to businesses taking on interns.¹⁶

3.17 Interns Australia's submission argued that without detailed information about these issues included in the bill, including how such issues would interact with the Fair Work Act, the PaTH program would result in confusion for job seekers.¹⁷

3.18 A joint submission by a group of youth advocacy organisations also raised concerns about the lack of detail about the PaTH program. The organisations maintained that the consultation process conducted by the Department of Employment on the first phase of the PaTH program was inadequate:

This is an important piece of policy and legislation. However, the consultation process is flawed. The first piece of consultation conducted by the Department of Education allowed only two weeks for response. The consultation was conducted on the first phase of the program and despite 'welcoming feedback' on other elements of PaTH there was no process.

14 Explanatory Memorandum, p. 4.

15 Jobs Australia, *Submission 11*, p. 4.

16 Interns Australia, *Submission 1*, p. 3.

17 Interns Australia, *Submission 1*, p. 4.

While the Department received over 70 submissions, the response to feedback on the first phase was a mere 2 pages.¹⁸

3.19 These youth organisations considered that the bill ought to be delayed until the details of the PaTH program are finalised:

As the bill enacts the PaTH initiative, we urge the Committee to recommend that the passage of the bill be delayed until the policy details are clear, until community-government stakeholder relationships are in place to support the program, and until the government is satisfied that its investment will achieve the stated program objectives.¹⁹

3.20 The Department of Employment's submission, whilst not committing to include further particulars in the bill, does set out a range of program parameters and lists various safeguards related to the PaTH program.²⁰

Incentive payments to interns

3.21 Interns Australia raised concern about the amount of the incentive payments offered to interns as part of their placement. The Explanatory Memorandum indicates that the fortnightly incentive payments would be \$200, in addition to the job seeker's income support payments. Internships would require between 15 and 25 hours of work per week, or 30 to 50 hours per fortnight. Interns Australia raised the following concerns about the incentive payments:

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.²¹

3.22 Per Capita also expressed concerns about the incentive payments to interns and argued that these payments should be in line with the minimum wage:

We believe that the Trial (internship) part of the program should be designed such that interns receive at least the minimum wage. This could be accomplished by either limiting the number of hours, or by increasing the weekly supplement above \$100 where required to meet minimum wage levels.²²

18 Youth Action, Australian Youth Affairs Coalition, the Youth Affairs Council of Victoria, Youth Coalition of the ACT, Youth Affairs Network Queensland, Youth Network of Tasmania, Youth Affairs Council of Western Australia and the Youth Affairs Council of South Australia, *Joint Submission 7*, pp. 3–4.

19 Youth Action, Australian Youth Affairs Coalition, the Youth Affairs Council of Victoria, Youth Coalition of the ACT, Youth Affairs Network Queensland, Youth Network of Tasmania, Youth Affairs Council of Western Australia and the Youth Affairs Council of South Australia, *Joint Submission 7*, p. 3.

20 Department of Employment, *Submission 14*.

21 Interns Australia, *Submission 1*, p. 2.

22 Per Capital, *Submission 2*, p. 1.

3.23 The Australian Council of Trade Unions (ACTU) argued that the PaTH program's intern placement would 'undermine the minimum wage system':

The current program settings, hours worked and additional payments per fortnight, mean that the interns in this program are paid below minimum wage, potentially creating pressure on existing employees' wages or conditions. The ACTU is concerned that the scheme may encourage employers to replace existing minimum wage workforces with government sponsored interns or to reduce their wages or conditions. Interns are not paid superannuation or subject to worker's compensation and so represent a significant saving to employers when compared to regular employees. While the Minister has dismissed this concern, it is not clear how employers will be prevented from utilising a series of interns, for whom the employer is paid by government, to replace either current or future paid workers. This would not only result in the program failing to achieve its aims of moving unemployed young people into work, but would also devalue the work and labour of currently employed young people.²³

3.24 Conversely, ACCI stated that the payments for interns would provide a significant incentive for job seekers to undertake a placement:

Industry has the places to meet the demand of the program; however employer experience shows that unemployed youth require considerable support when moving from unemployment into entry level positions. The \$200 payment is an important incentive for young people participating in the program and should be seen as recognition of the young person's determination to gain better job prospects.

Apart from its role as an incentive, from a practical perspective the extra \$200 on top of their NewStart or Youth Allowance will assist the young person in covering costs associated with participating in the work experience. Therefore, it is essential to preserve the maximum value of the additional fortnightly payment through it not impacting on other income sources.²⁴

3.25 The Brotherhood of St Laurence (BSL) also appeared to endorse the amount of the incentive payment:

The BSL supports the Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial, Hire) Bill 2016. The legislation will enable the successful implementation of the PaTH program by ensuring young jobseekers on income support receive an additional \$200 per fortnight to compensate them for costs involved in undertaking a PaTH internship (e.g. transport).²⁵

3.26 The Department of Employment noted that the incentive payment supplements a participants regular income support payment:

23 Australian Council of Trade Unions, *Submission 10*, p. 2.

24 Australian Chamber of Commerce and Industry, *Submission 5*, p. 2.

25 Brotherhood of St Laurence, *Submission 9*, p. 1.

The \$200 fortnightly incentive paid to PaTH interns is on top of their income support. The incentive is paid by the Government and is not a 'wage'. If a host organisation paid a PaTH intern, the PaTH internship would cease immediately.²⁶

Churn culture

3.27 Many submitters raised concerns about the PaTH program, arguing that it would lead to a 'churn' culture. For example the ACTU argued that intern positions could displace permanent employees:

Additionally, the internship positions created under this program are likely to displace paid jobs for other young people. The fraction of 'internships' that turn into paying jobs will also not be new positions, but will replace employees that the organisation would have hired under normal circumstances. This is a fundamental flaw in both this program and in the government's approach to unemployment. There are simply not enough jobs and any program that ignores job creation is going to [be] ineffective in addressing unemployment.²⁷

3.28 Alternatively, as Anglicare Australia argued, interns may not be offered positions once the employer has received the \$1000 host organisation incentive:

There has been very little detail available on how government or employment service providers will monitor companies who might exploit the scheme. Appropriate and effective safeguards are essential to prevent businesses 'churning' through interns or displacing current or future employees in their use of the scheme. While we believe that businesses should be held accountable for exploitative practices, we also believe that the government must show leadership and responsibility in its stewardship role, particularly in the context of taking a whole new approach.²⁸

3.29 Per Capita too argued for the need to include monitoring in the PaTH program to protect interns against churn culture:

There must be appropriate monitoring of employers to ensure that they do not 'churn' interns and subsidised workers in order to reduce their staffing costs. Young workers being let go at the end of their subsidised employment period could result in decreased, rather than increased confidence and may not improve their employment prospects.²⁹

3.30 The submission from the Department of Employment set out measures to protect against churn in the PaTH program. These include:

- program guidelines, in combination with the jobactive Deed 2015–2020 and the Transition to Work Deed 2016–2020, to make clear to employment service providers the parameters of the program;

26 Department of Employment, *Submission 14*, p. 7.

27 Australian Council of Trade Unions, *Submission 10*, p. 7.

28 Anglicare Australia, *Submission 6*, p. 2.

29 Per Capita, *Submission 2*, p. 1.

- monitoring activities will help ensure that host organisations appropriately use the program; and
- department's program assurance strategy will be applied to PaTH internships.³⁰

3.31 In addition, the Department currently provides program assurance of employment services through:

- prevention – using guidelines, simple policy and IT systems
- deterrence – making clear the penalties of non-compliance
- detection – identifying non-compliance through data analytics, the Tip-off Line, the National Customer Service Line, provider audits, and the rolling random sample process
- correction – including strategies to act on non-compliance such as recovering payments, imposing additional conditions, or terminating contract arrangements.³¹

Committee view

Definition of internship

3.32 The committee notes the concerns of several submitters regarding the absence of a definition of 'internship' in the bill. However, the committee is aware that the Department of Employment has included in the Explanatory Memorandum to the bill and in its submission a clear definition of 'internship'.

3.33 These supporting materials make it abundantly clear that a young job seeker who chooses to participate in the PaTH program is engaging in unpaid, supervised work experience placements and is not entering into an employment relationship with the host business.

3.34 The committee is of the view that the inclusion of these clarifications within the Explanatory Memorandum and the Department's submission adequately addresses the ambiguity raised by submitters. The committee urges the Department of Employment to consider adding the definition to all future materials published in relation to the PaTH program.

Detail about the operation of the PaTH program

3.35 The committee recognises the concerns voiced by several submitters in relation to the limited detail about the operation of the PaTH program. However the committee notes that the bill only relates to two specific aspects of the program: internship payments and youth subsidy wage bonus.

3.36 The committee believes that the appropriate place for the program guidance requested by submitters is in supporting materials produced by the Department of

30 Department of Employment, *Submission 14*, p. 9.

31 Department of Employment, *Submission 14*, p. 9.

Employment. As with any government program of this type, guidance about the program implementation and additional information should not be bound by the necessary constraints of the legislative process. The committee considers that the responsiveness and flexibility required by the program would be best achieved through departmental publications, rather than through legislation.

3.37 However the committee is cognisant that the program is to begin in April 2017 and both job seekers and employers need to prepare to take part in the program. The committee therefore urges the department to have regard to the issues raised in submissions relating to questions about the program implementation.

Recommendation 1

3.38 The committee recommends that the Department of Employment consider the issues raised in the submissions received by the committee, and in particular work to publish clear guidance on all aspects of the PaTH program so that job seekers and employers have clarity about their rights and responsibilities.

Incentive payments

3.39 The committee notes the comments made by various submitters in relation to the adequacy of the internship incentive payments under the PaTH program. The committee views the incentive payment of \$200 per fortnight as sufficient, given that this payment is clearly designed to be an incentive and not a wage.

3.40 The first schedule to the bill allows for the \$200 incentive payment to be made in addition to the intern's income support payments. The committee considers that this measure is important to protect an intern's support payments, as well as to facilitate the incentive payment which will defray costs associated with the internship, such as transport.

Churn culture

3.41 The committee acknowledges the concerns raised by submitters in relation to the potential for the PaTH program to have the unintended consequence of creating a churn culture.

3.42 The committee considers that the safeguards outlined in the Department of Employment's submission will be adequate to prevent a churn culture in the PaTH program. These safeguards are already established as part of the Department's scrutiny of other programs, and the committee has confidence in the Department's continued vigilance.

Conclusion

3.43 A theme that recurred throughout the submissions was an acknowledgement that high levels of youth unemployment impact on the broader social and economic future of Australia. Submitters agreed that urgent action is required to help Australia's unemployed youth find secure jobs. In general, submitters were supportive of the establishment of the PaTH program.

3.44 The bill is integral to the implementation of the PaTH program. It will progress key parts of the PaTH program, including protecting income assistance payments of PaTH program interns. It is clear to the committee that unless the bill is passed, the PaTH program cannot begin as scheduled in April 2017. Accordingly the committee supports the passage of the bill.

Recommendation 2

3.45 The committee recommends that the bill be passed.

Senator Bridget McKenzie

Chair