

Labor Senators' Dissenting Report

1.1 Labor supports constructive plans that help young Australian's find work. However, Labor Senators are concerned that major elements of the Youth Jobs PaTH program – which would be supported by the passage of this legislation – is poorly constructed and we note the community concerns that exist which point to the possibility of this program resulting in jobs displacement, reduced wages and potential exploitation.

1.2 Labor Senators note the high proportion of submissions that raised concerns in relation to:

- Participants completing work activities receiving a below minimum wage income;
- The likelihood of entry level jobs being displaced by temporary, government-subsidised employees;
- The undermining of wages;
- “Churning” of interns by businesses instead of hiring entry level employees;
- Lack of adequate safety and protections for participants, including access to workers compensation arrangements;
- The failure to properly define what constitutes an “intern”, with the legal concerns that are triggered by this;
- Inadequate support for people engaged in training or a placement to help with transport and other barriers to participation;
- Poor integration with the rest of the jobactive network and youth employment strategies; and,
- An overall failure by the government to genuinely consult and consider feedback while developing the program and legislation.

1.3 Labor Senators believe these concerns amount to a piece of legislation giving effect to a flawed program. The concerns around the overall program should be concretely addressed before assent is given to this legislation.

1.4 We acknowledge how important it is to give young jobseekers the best possible help to get into work, and we note that there is benefit in improving the employability skills of young unemployed. However, this legislation and the broader program doesn't appear to do that well enough.

1.5 It should be noted, that in a weakened labour market characterised by record under-employment and record low wages growth, the Turnbull Government is about to add 30 000 subsidised workers per annum into that same market.

1.6 The concerns around this program should not be dismissed. We also note that this rushed approach to implementing the program without regard for community

concern was reflected in the committee's refusal to hold public hearings into this legislation.

1.7 There is little confidence at this stage that the Government has seriously considered concerns – or developed genuine responses to those concerns – that are then reflected in adequate safeguards around job displacement, the undermining of wages or protections for young and vulnerable participants.

1.8 The Department of Employment submission outlined the undefined and troubling situation young Australian jobseekers will be placed in through this program. The submission makes it clear participants will perform work activities, for a company that makes a profit, but that those participants will not be treated as employees by the Government or the department.

1.9 The department defends the legislative framework for this program putting 120 000 young people over the life of the program in an exploitative limbo:

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.¹

1.10 Then the department severs any connection these young people would have to adequate workplace support, cover and payment. The submission clearly states the Department does not view participants as employees.² Uniting Care Australia and Interns Australia raise serious concerns about this definition leaving participants in limbo and whether the term “internship” or “intern” is suited to this application.

1.11 The short length of the inquiry has hampered a fuller analysis of the implications of this government/employer/participant relationship, of the Bill and the broader program.

1.12 Multiple submissions have said the truncated consultation was concerning and that the program should be halted until flaws are fixed and adequate protections are provided for young jobseekers.

1.13 The Government has not listened to repeated warnings about the outcomes of this program and legislation. Consultation has been minimal and the answers to Members in Parliament and Senate Estimates have been vague.

1.14 The combined submission by Youth Action and other youth organisations summarised the rushed and inadequate public consultation for Youth Jobs PaTH and concluded:

We express our concerns that the investment in the program will be wasted and will not ensure quality outcomes for youth employment without

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

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

appropriate community-government stakeholder engagement that ensures the program is relevant to young people's experience.³

Below minimum wage payment

1.15 Labor Senators note the number of submissions that commented on the payments that would be received by participants would be below the national minimum wage. The Government's decision to pay an additional \$200 per fortnight on top of income support to participants in the program leaves thousands of people performing work in companies making a profit earning less than the national minimum wage.

1.16 ACOSS's submission noted:

Payment rates and hours of work for the internships mean that many people will work for less than the equivalent of the minimum wage:

Since participants will be working whether 'employed' or not, they should be properly remunerated. Fortnightly hours for internships should be capped at 30 instead of 50 so that participants are remunerated at least to the equivalent of the relevant hourly minimum wage.⁴

1.17 Interns Australia also noted:

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.⁵

1.18 The ACTU raised its concerns:

There must also be significant concern however that PaTH may serve to 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.⁶

1.19 Jobs Australia raised issues with the minimal rate of pay:

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).⁷

3 Youth Action, Submission 7, pp. 3–4.

4 Australian Council of Social Service, *Submission 15*, p. 3.

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

6 ACTU, *Submission 10*, p. 2.

7 Jobs Australia, *Submission 11*, p. 5.

1.20 Jobs Australia further made recommendations that the payment should be legislated fully, not in the undefined manner of the current Bill:

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)...⁸

1.21 Per Capita also advised:

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...⁹

1.22 Interns Australia said creating a class of under-paid interns undermined their status in law:

We wish to see a definition of ‘intern’ under Australian law that: ... Allows for appropriate remuneration for an intern, whether that be provided by the businesses engaging the intern or by government funding...¹⁰

1.23 An amendment to the Bill to reduce the hours worked each week to 15 or to increase the incentive payment could lift the participant’s income above the minimum wage.

Inadequate safety and protection provisions

1.24 Labor Senators are extremely concerned that participants in the Youth Jobs PaTH program may not be adequately covered by state’s workers compensation and other legislative workplace protections.

1.25 The Government’s decision to classify an intern under the program as a “volunteer” despite them performing work tasks, throws their protections into doubt.

1.26 We do not believe a program designed to put 120 000 young jobseekers over the life of the program into workplaces without adequate protections is fair or reasonable.

1.27 Labor Senators also notes that the Government has failed to release details of its internal review into the tragic fatality of a young Work for The Dole participant in April this year. The Government should demonstrate how the relevant findings and recommendations of such an internal review will be applied to the workplace health and safety arrangements that will be observed under the PaTH program.

8 Jobs Australia, *Submission 11*, p. 3.

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

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

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- 1.28 ACOSS made a scathing assessment of the protections of participants:
There is no legislative assurance that the health and safety of participants in the internships will be adequately protected.¹¹
- 1.29 ACOSS commented further:
The Department has its own scheme for participants in employment programs but we understand this generally provides lesser benefits than State Workers Compensation schemes, no periodic payments, and no entitlement to rehabilitation. Either participants should be covered by State Workers Compensation scheme or equivalent coverage should be negotiated by the Department.¹²
- 1.30 Interns Australia also pointed out the vague rights of interns:
...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.¹³
- 1.31 Jobs Australia also called for the Government to implement strengthened protections for participants:
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.¹⁴
- 1.32 Uniting Care Australia drew attention to the Government's definition of a volunteer intern, by referencing the Fair Work Ombudsman definition of what constitutes work activity:
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.¹⁵
- 1.33 This serious issue of adequate protections could be improved by amending legislation so that participants of Youth Jobs PaTH were properly covered by state workers compensation, or by creating effective Commonwealth coverage that includes workplace rights, workers compensation, rehabilitation payment and income support.

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

12 Australian Council of Social Service, *Submission 15*, p. 5.

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

14 Jobs Australia, *Submission 11*, p. 6.

15 Uniting Care Australia, *Submission 4*, p. 5.

Displacement of jobs and placement churning

1.34 Overwhelming concerns about the prospect of broad displacement of entry level jobs and possibly churning of interns by businesses were put to the committee.

1.35 ACOSS said the Bill as it stands would not protect Youth Jobs PaTH from becoming an exploited program:

A set of rules should be formalised by Legislative Instrument to restrict the scope for displacement and churning and ensure that host organisations that engage in these practices cannot host more interns under the program.¹⁶

1.36 ACOSS added:

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.¹⁷

1.37 Interns Australia pointed out that the nature Schedule 2 of the Bill (relating to the Hire component of the program) shows the Government must have some concern about the prospect of exploitation:

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, 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.¹⁸

1.38 Jobs Australia drew attention to failed attempts at similar programs internationally, that became known for exploitation:

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.¹⁹

16 Australian Council of Social Service, *Submission 15*, p. 5.

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

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

19 Jobs Australia, *Submission 11*, p. 5.

1.39 Interns Australia raised the financial incentive, on top of free labour, for businesses to churn:

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.²⁰

1.40 The ACTU gave further examples where there are incentives to exploit in ways that would displace other jobs or suppress wages and conditions across industry:

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.²¹

1.41 Per Capita's submission made clear the potential cost-saving avenues for business that could lead to fewer job openings:

The potential exists for employers to replace positions that are fully paid with PaTH program participants purely as a cost-saving measure. While this provides the PaTH participant with potentially valuable experience, it comes at the cost of a job for somebody else.²²

1.42 National Employment Services Association (NESA) drew attention to the work that an employment service provider will have to do to find participant's positions are legitimate, on top of regular compliance activity:

Service providers will be critical in finding and assessing the appropriateness of internship placements. They will need to consider whether an employer is genuine about providing a real job if the job seeker works out. At the same time the service provider must ensure the placement is not displacing a real job and that the employer will be offering adequate supervision.²³

1.43 Jobs Australia drew the committee's attention to the way exploitation and displacement could take place by asking vulnerable young Australians to work during unusual hours or during times when penalty rates would apply:

...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

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

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

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

23 National Employment Services Association, *Submission 13*, p. 2.

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)...²⁴

1.44 Jobs Australia went further and requested that employers found to do the wrong thing under Youth Jobs PaTH should be made public:

...Recording and publication and dissemination of details of employers found to be unsuitable for provision of internship places to referring employment services providers...²⁵

1.45 The ACTU outlined a concerning best possible scenario for 120 000 young jobseekers in the program:

When these concerns have been raised in the past, much has been made of analysis which will be done to detect employers who are abusing the program and prevent them from hosting further intern placements. It seems that the absolute best outcome such a system could achieve would be that thousands of vulnerable young people are only exploited, for profit, once.²⁶

1.46 Uniting Care and Anglicare Australia also raised concerns about churning through interns and using free labour to displace job opportunities for young people to become normally employed.

1.47 Anglicare Australia put it in the context of a jobs market that continues to deteriorate for young Australians under this Government:

In the context of a serious shortage of entry-level vacancies, we do not accept that internships alone will help many people overcome structural exclusion from the workforce. We can see no evidence that this program will do anything to ease the existing pressures created by the decreasing number of entry-level jobs. In this respect we also hold serious concerns that introducing up to 30,000 government-subsidised interns to this market will make an already grim situation worse.²⁷

1.48 ACOSS made a point – seemingly clear to everyone besides the Government – that legislation is needed to protect young jobseekers:

There is no clear legislative protection against exploitation of interns to the extent that they are not classified as employees. Either participants should be classified as employees (with a wage subsidy) or the program should not allow work beyond standard working hours (averaged over a fixed period) or a times that would attract penalty rates of pay if the person was employed (such as weekends).²⁸

24 Jobs Australia, *Submission 11*, p. 5.

25 Jobs Australia, *Submission 11*, p. 6.

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

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

28 Australian Council of Social Service, *Submission 15*, p. 3.

1.49 The Australian Chamber of Commerce and Industry submission assures the committee that “industry has the places to meet the demand of the program” but did not adequately justify why those places couldn’t be filled now by hiring the many hard working young Australian job seekers.

1.50 One of the Department of Employment’s references that could be used to satisfy the vague definition of a “reasonable prospect” of a job was that there could be a current vacancy in the host organisation.

1.51 Given the ACCI has already indicated industry has enough places for 120 000 young people Labor Senator’s would prefer those young people be employed in those positions rather than ask the Government to provide free and subsidised labour.

1.52 The issues of churn, jobs displacement and exploitation should be addressed by amended legislation before the Government proceeds with this program or attempts to pass the Bill.

Lack of rights and support for participants

1.53 Labor Senators draw the Senate’s attention to the many concerns about vulnerable young Australian’s being pushed towards a work-like environment in a large Government program without clearly understanding their rights or having adequate support in place. The submissions make it clear the program puts the position of participants into a significant employment grey area.

1.54 The Children With Young People And Disability submission said vague definitions left it unclear what protections participants would receive:

CYDA has some concerns regarding the internships component of the Youth Jobs PaTH initiative. ‘Internships’ have not been clearly defined within the Bill, aside from being referred to as “unpaid work experience” within the Explanatory Memorandum. It is therefore unclear how appropriate protections will be afforded for young people with regard to working conditions.²⁹

1.55 Jobs Australia noted that legislation is needed to ensure participants receive all the relevant protections that employees get, whether they are officially recognised as employees or not:

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.³⁰

29 Children and Young People with Disability, *Submission 8*, p. 5.

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

1.56 ACOSS said clear requirements are needed for explaining the rights and expectations of a participant before they begin a placement:

Employment services providers (or better still an independent mentor) should be required to explain to participants their rights in the workplace before an internship commences (both verbally and in writing), and offer advice and assistance in the event that those rights are at risk.³¹

1.57 Jobs Australia also asked the Government:

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)...³²

1.58 Jobs Australia further advised there should be:

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.³³

1.59 Jobs Australia noted that the voluntary nature of the placement phase of the program must be made extremely clear and that no harsh penalties should be applied to participants given it is voluntary:

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)...³⁴

1.60 The Multicultural Youth Advocacy Network said rights must be made clear in languages other than English to make sure young people of different backgrounds are aware of their rights and expectations:

We would recommend that, as a minimum, information about the internship and its potential benefits should be provided to the job seeker clearly in their preferred language. The information should also clearly communicate the voluntary nature of their participation.³⁵

1.61 Labor Senators bring to the Senate's attention the range of concerns about lack of support for people in poor financial circumstances trying to comply with the training and trial part of the program.

31 Australian Council of Social Service, *Submission 15*, p. 3.

32 Jobs Australia, *Submission 11*, p. 6.

33 Jobs Australia, *Submission 11*, p. 6.

34 Jobs Australia, *Submission 11*, p. 5.

35 Multicultural Youth Advocacy Network, *Submission 12*, p. 3.

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- 1.62 Jobs Australia said travel costs should be covered by the Government:
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...³⁶
- 1.63 ACOSS reiterated:
There is no assured financial assistance with travel costs for the compulsory training:
Participants will have to undertake 25 hours a week of training for two rounds of 3 weeks and this will involve significant travel costs, especially in rural areas.
The Work for the Dole supplement of \$20.80 per fortnight should extend to participants in the Youth jobs PaTH training and the internships and should be doubled to \$41.60, at least for this purpose.³⁷
- 1.64 Uniting Care Australia also noted:
It is important to note, however, that the additional allowance may not sufficiently compensate for the many costs, hidden and apparent, associated with employment.³⁸
- 1.65 Uniting Care Australia also believed the program needs to specifically address health and safety training to support participants:
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...³⁹
- 1.66 The Multicultural Youth Advocacy Network noted that some more vulnerable participants will need closer monitoring during the process in order to succeed:
Some form of case management during the internship will provide support for participants and protection from exploitation. In particular, those less familiar with Australian culture and workplace systems and structures are likely to need greater support.⁴⁰
- 1.67 The Government could resolve issues of workplace protections by amending legislation so that participants in the program are protected in the same way as any

36 Jobs Australia, *Submission 11*, p. 5.

37 Australian Council of Social Service, *Submission 15*, pp. 3–4.

38 Uniting Care Australia. *Submission 4*, p. 7.

39 Uniting Care Australia, *Submission 4*, p. 6.

40 Multicultural Youth Advocacy Network, *Submission 12*, p. 3.

others that perform work tasks, and strengthening the process for helping participants identify their rights and responsibilities.

Lack of definition for an intern of internship

1.68 The Bill introduces the notion of a government subsidised internship to legislation. Submissions raised this issue with the committee.

1.69 Interns Australia noted:

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’”...⁴¹

1.70 Uniting Care Australia were concerned there isn’t a clear definition available:

Firstly, Uniting Care 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.⁴²

1.71 Interns Australia raised concerns that proceeding with an unclear definition would lead to flawed assumptions in the program and in the broader employment market.

1.72 They suggested changes were required before proceeding with the new term:

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.⁴³

1.73 And:

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. It has been strongly suggested by leading employment law academics that these relationships ‘are likely to be lawful’, meaning they are more clearly defined relationships. Use of these alternative terms would prevent the creation of an ‘internships culture’ and would be supported by Interns Australia.⁴⁴

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

42 Uniting Care Australia, *Submission 4*, p. 5.

43 Interns Australia, *Submission 1*, p. 5.

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

1.74 Interns Australia said the definition of internship needed broader thought and more legal links than what is offered in the Bill:

We wish to see a definition of ‘intern’ under Australian law that: ... Is linked to appropriate regulation of internships in Australia, by ensuring interns fall under the authority of the Fair Work Ombudsman.⁴⁵

1.75 The Government could fix the definition of an intern by amending legislation and either providing a definition relevant to employment law or using another term.

Sunset or review clause

1.76 Labor Senators note that the Government hasn’t yet completed a review of its current National Work Experience Program. Yet they are proposing to begin another one, but increasing it in volume to 120 000 participants over the life of the program, or at least five times as many every year than under the old one.

1.77 NESA noted:

However, the details of this are being developed without a broad consultation process and we urge caution. NESA recommends that there be a built-in opportunity to review the effectiveness of processes and amend as required.⁴⁶

1.78 ACOSS reiterated:

Given that this program is experimental and has significant potential implications for people who are unemployed, along with their fellow workers, it should be trialled over a fixed period (such as two years) and lapse unless renewed by legislation.⁴⁷

1.79 The Government could amend the Bill to include provision that the program must be independently reviewed in two years or that it lapse if the review isn’t undertaken.

Bill gives effect to a flawed program

1.80 Labor Senators draw the Senate's attention to submissions that note the wider program is flawed and must be fixed before proceeding.

1.81 While the Government will argue this Bill is non-controversial Labor Senators note submissions that show how it gives effect to a program that is not well designed.

1.82 The ACTU noted:

The PaTH program represents a significant disappointment - it is poorly designed, will not deliver positive outcomes and is unlikely to make a significant difference in the unacceptably high youth unemployment rate. Experience of programs similar to PaTH, including Northern Ireland’s Youth Employment (YES) Scheme and the UK’s Youth Jobs Scheme

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

46 National Employment Services Association, *Submission 13*, p. 3.

47 Australian Council of Social Service, *Submission 15*, p. 6.

demonstrate the failure of these programs to deliver meaningful employment opportunities.⁴⁸

1.83 Youth Action's combined submission noted how lack of consultation means key issues are still not addressed:

However, we are concerned that there is a push to instate legislation despite poor consultation, vague policy detail, a failure to address key issues that are vital to its success, as well some concerning elements of the bill itself.⁴⁹

1.84 The Australian Unemployed Workers Union pointed out flawed assumptions behind the program design:

Through its persistent focus on the need to make younger Australians more 'employable', the paper appears to be suggesting that if only young Australians had basic levels of employability then we would not have a youth unemployment crisis. This assumption, however, is completely at odds with the reality of the Australian labour market. Currently according to the most recent data collected by the Australian Bureau of Statistics and the Department of Employment, there are 19 job seekers competing for every job vacancy. When you consider low-skill jobs – the sort of jobs young unemployed Australians will most realistically be considered for – this rate is even higher. Clearly, it is this dearth of low-skill jobs in the Australian labour market that has been the leading cause for Australia's youth unemployment crisis.⁵⁰

1.85 Interns Australia believed three problems will arise if the program as it is currently designed is implemented:

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;

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.⁵¹

48 Australian Council of Trade Unions, *Submission 10*, p. 1.

49 Youth Action, *Submission 7*, p. 3.

50 Australian Unemployed Workers Union, *Submission 3*, pp. 3–4.

51 Interns Australia, *Submission 1*, pp. 3–4.

1.86 The ACTU pointed out other similar programs tried internationally that did not work:

The United Kingdom government tried a similar scheme in 2013, the Youth Employment Scheme (YES), which launched in January 2013 and was wind up in July 2014 with fewer than half the estimated placements having been made and no clear increase in real job placements. The YES scheme, like the PaTH program, had a top up element for the participant, a subsidy for the employer, took place over two tranches, a shorter work experience component and a longer skills development component. It is our view that adopting a failed program from the United Kingdom is not an effective or efficient way of reducing youth unemployment.⁵²

1.87 NESAs noted that the program needs a clearer design and context:

Otherwise, confusion, duplication and lack of clarity will create administrative burdens and inequity and waste precious resources and opportunities. The initiative needs to be understood by the key stakeholders who will implement it. For example there needs to be a clear articulation of the logic for eligibility and procurement policy for the various forms of employability skills training, the internships and the wage subsidies across youth cohorts.⁵³

1.88 NESAs explained the vast and interconnected network of youth employment initiatives currently in place and tried to find where Youth Jobs PaTH might fit:

In addition to the Youth Job PaTH there is Transition to Work, ParentsNEXT and Empowering YOUth. There are also the major programmes which all deliver services to young jobseekers such as jobactive, Disability Employment Services and the Community Development Programme. There is the priority Investment Approach fund which will target three youth cohorts in its first round anticipated to be announced in December. In addition there is a great number of State and Territory Government funded initiatives, either related to education or directly intended to address youth unemployment... Service providers and employers also report confusion about how the proposed elements of Youth Job PaTH 'bolt-on' to an already complex service system... There is also frustration reported that some previously effective models do not appear to have been recognised or drawn from. For example, the Job Search Training and Job Club initiatives were effective at developing employability skills via employment service providers' in-house training. Resourcing for this kind of programme has been removed.⁵⁴

1.89 The Government could address these concerns by not proceeding until safeguards are legislated and proper consultation with a view to fixing flaws in the program has taken place.

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

53 National Employment Services Association, *Submission 13*, p. 5.

54 National Employment Services Association, *Submission 13*, p. 6.

1.90 Labor Senators bring to the Senate's attention a wide range of concerns voiced in the submissions – despite the short amount of time they were given – and notes that the Government has not provided adequate legislative support to assure Members or the community this program will operate well.

Recommendations

Recommendation 1

1.91 That the Bill not be supported in its current form, until genuine concerns about the overall program design have been concretely addressed.

Recommendation 2

1.92 That the Government provides genuine safeguards protecting participants from exploitation and inadequate workers compensation coverage, along with guarantees that employers won't churn through participants and that the jobs of existing Australian employees won't be displaced and their wages and take home pay won't be undercut.

Recommendation 3

1.93 That the Government amends legislation to enact a system to help participants understand their rights and responsibilities in the program and work environments.

Recommendation 4

1.94 That the Government amends the Bill to ensure the program conforms with Australia's minimum wage laws. This could most easily be achieved by writing into legislation a lower maximum number of fortnightly hours which ensures program participants receive weekly payments equivalent to the National Minimum Wage.

Recommendation 5

1.95 Given the significant concern about elements of the program which are currently intended to be delivered through by departmental guidelines, it is recommended that the major components of the program be written into legislation or regulation and tabled before the Parliament.

Senator Gavin Marshall

Deputy Chair