



Australian Government

Australian Government response to the
Education and Employment Legislation Committee Report:

Social Security Legislation Amendment
(Youth Jobs PaTH: Prepare, Trial, Hire) Bill 2016 [Provisions]

March 2017

Government response to the committee's recommendations

Recommendation 1

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.

The issues raised in the submissions received by the Committee have been considered by the Department of Employment.

The design of the PaTH Internships program will address many of the issues raised in the submissions received by the Committee. The Department of Employment is consulting with relevant stakeholders to ensure that their views are considered in the program's design. For example, recent consultations have included: Jobs Australia, the National Employment Services Association, the Australian Chamber of Commerce and Industry and the Smith Family.

The Australian Government accepts the Committee's view about the need to publish clear guidance on all aspects of the PaTH program so that job seekers and employers have clarity about their rights and responsibilities.

As is current practice, the Department of Employment will ensure that clear guidance about the program is published. Reference material, such as factsheets, will be provided to job seekers and employers to ensure that they are aware of their rights and responsibilities when considering a PaTH Internship. These will be published on a dedicated online portal which the Department will make available to support PaTH Internships.

The parameters of the PaTH Internships program will be made clear to employment services providers in both program guidelines and Deed variations, including what is expected of them when organising and managing PaTH Internships.

Prior to a PaTH Internship commencing, employment services providers will be required to provide clear verbal information and written documentation to the job seeker about their rights and responsibilities during the placement. This will include who to contact if the job seeker has concerns or needs assistance during the placement.

A PaTH Internship will be a voluntary activity in the job seeker's Employment Pathway Plan (Job Plan), not a compulsory one. Therefore, a failure to complete the PaTH Internship will not constitute non-compliance by the job seeker. The PaTH Internship Agreement and supporting factsheet will inform job seekers that PaTH Internships are voluntary and that they may end the placement at any time.

The PaTH Internship Agreement is negotiated and signed by the job seeker, provider and host business. It will provide the placement details (including the agreed attendance), the terms and conditions of the placement and the obligations of the host business, the job seeker and the provider. The PaTH Internship Agreement will also contain clauses to prevent exploitation and churn of job seekers, and host businesses terminating or reducing hours of existing workers.

Clear information will be published in relation to the other two elements of PaTH. The principles and topics of Employability Skill Training will be prescribed in the Deed and guidelines for

training providers. Information about wage subsidies, such as guidelines and factsheets, have been updated as part of changes that simplify and increase the flexibility of wage subsidies introduced from 1 January 2017, and include details about the Youth Bonus wage subsidy.

Labor Senators' Recommendation 1

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

The Australian Government does not agree with this recommendation.

The concerns raised about the program design do not relate to the amendments in the Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial, Hire) Bill 2016. The Bill is focused on assisting job seekers by ensuring that:

- the \$200 fortnightly incentive payment to encourage job seekers to take part in the program will not affect their level of income support. The legislation will prevent eligible job seekers from losing up to \$48 a fortnight of other income support payments as a result of receiving the \$200 fortnightly internship incentive payment.
- job seekers that are placed in a job via the Youth Bonus wage subsidy and lose their job through no fault of their own will be able to have their social security payments restored (without having to make a new claim) within 26 weeks. This avoids the young person having to serve any waiting periods that might otherwise apply to a claim.

See next response for how the program design will address concerns raised by stakeholders.

Labor Senators' Recommendation 2

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.

The PaTH Internships program will have comprehensive safeguards in place to protect participants from exploitation and churning, and to prevent host businesses from terminating or reducing the hours of existing employees.

The Department will apply its well-established program assurance strategy (as for all employment services) to PaTH through:

- Prevention - Program guidelines and the Internship Agreement will make the obligations and program intent clear to providers, job seekers and the host business. Providers will have access to information on a host business' PaTH Internship history showing how many interns have been employed by the business.
- Deterrence - the Internship Agreement will be clear on the requirements and that inappropriate use could result in exclusion from further access to the program.
- Detection - identifying non-compliance or triggering a review of a business' use of the program through data analytics, the Tip-off Line, the National Customer Service Line, job seeker surveys, provider audits and the rolling random sample process, and

- Correction - working with providers and host businesses to educate them on policy and requirements, terminating Internship Agreements and preventing access to the program to host businesses that use the program inappropriately.

Employment services providers will monitor how the PaTH Internship is progressing. If their monitoring suggests that an employer is not using the program appropriately, they may terminate the Internship and report the employer to the Department of Employment.

As a further safeguard, job seekers can raise concerns directly with their employment services provider or the Department of Employment through the National Customer Service Line while organising a PaTH Internship placement or during the PaTH Internship. Job seekers will stay connected to their provider during their placement, including attending their ongoing appointments.

Any host business found to be misusing the program will be excluded from future participation.

In addition, State and Territory work health and safety laws impose broad duties on employers to ensure the health and safety of anyone carrying out work for the business, or affected by the carrying out of work by the business – be it an employee, a contractor, an “intern” or a volunteer. These laws will apply to protect jobseekers doing internships under the PaTH program.

Employment services providers are also required to consider the work health and safety arrangements, including the need for additional material or equipment, when assessing the suitability of a PaTH Internship for a job seeker. This forms part of the risk assessment, which must be undertaken before a job seeker starts in the PaTH Internship.

Protections from exploitation

PaTH Internship Agreements will be signed by the employment services provider, job seeker and host business. If either the job seeker or host business is unsatisfied with the terms of the agreement, they are under no obligation to continue negotiation of the agreement and are free to back out at any time without penalty.

Clauses in the PaTH Internship Agreement will make it clear that placements cannot exceed eight hours per day and a compulsory break is required every five hours. Interns will also not be permitted to undertake placements on public holidays.

Employment services providers ensure that job seekers undertaking work experience have a level of supervision from the host business appropriate to their circumstances. As a guide, the requirements in the current *jobactive* Deed that will be applied to PaTH Internships, in addition to Work for the Dole activities, Voluntary Work and National Work Experience Programme placements, require supervisors to:

- be a fit and proper person to be involved in the activity;
- have a high level of skill or knowledge and training or experience in the activity and in working with, training and supervising people in the activity;
- have relevant workplace health and safety training; and
- have had checks as specified in the Deed and have met any additional statutory requirements before being given responsibility for the supervision of job seekers.

Employment services providers will also be required to ensure job seekers understand and are provided with documentation that explains their rights and responsibilities during the PaTH Internship.

Preventing churning of PaTH interns

The Department of Employment and employment services providers will monitor the use of the program for churn by businesses.

Providers will manage PaTH Internships based on requirements in both employment services Deeds and guidelines. Information will be available to providers on businesses' use of the program. This information will support providers to exercise judgement on whether a potential host business is trialling a job seeker appropriately.

Department of Employment monitoring activities will also help ensure that host businesses use the program appropriately. The Department conducts comprehensive program assurance of all aspects of all employment programs, including job seeker activities, to detect any non-compliant activities such as job seeker churn. The Department's program assurance strategy will be applied to PaTH Internships.

Preventing displacement of existing workers

Host businesses need to certify in the PaTH Internship Agreement that the PaTH intern will not displace existing employees or reduce their hours of work.

The scale of the PaTH Internships program and its parameters will prevent it from distorting the broader labour market, which is significantly larger. PaTH Internship placements are time-limited, with a duration of between four and 12 weeks for an average of 15 to 25 hours per week, and are designed to prevent host businesses from terminating or reducing the hours of existing employees.

According to Australian Bureau of Statistics data, each year in Australia there are approximately five million movements into employment. As only 30,000 PaTH internship placements will be available each year, the program is highly unlikely to have any perceptible distortionary impact on the labour market and wage levels.

Before commencing a PaTH Internship, providers must be satisfied that there is a reasonable prospect of employment for the job seeker with the host business. This is where the host business:

- has a current vacancy,
- will likely have a vacancy following the internship, or
- has a regular pattern of recruitment,

for a position that is aligned with the job seeker's interests, experience and qualifications.

These rules will be contained in program guidelines.

Insurance coverage

Job seekers who choose to undertake a PaTH Internship will be covered by the Department of Employment's insurance policy (or the Department of Social Services' insurance policy for DES

participants). This policy currently provides coverage for all job seekers and participants undertaking approved activities under *jobactive* and Transition to Work. This insurance coverage will be extended to include PaTH Internships.

The Department's insurance specifically provides:

- 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.

The insurance provides payouts for death, permanent total disablement, disablement and other injuries listed under the policy.

Current activities that are covered by existing insurance coverage include:

- Work for the Dole;
- Voluntary Work;
- National Work Experience Programme;
- ParentsNext activities/projects;
- Non-government programmes approved for annual activity requirement purposes;
- Other approved work experience.

Labor Senators' Recommendation 3

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

The Australian Government does not agree with this recommendation.

Prior to the commencement of any PaTH Internship, the employment services provider will be required to ensure job seekers understand, and are provided with documentation that explains their rights and responsibilities during the PaTH Internship and who can provide assistance if they require additional support or believe that the host business is not meeting the requirements of the PaTH Internship Agreement.

Legislation is not required to ensure that participants understand their rights and responsibilities in the program and work environments. Deeds and guidelines will ensure providers give sufficient information to Employability Skills Training and PaTH Internship participants about work rights and protocols.

Labor Senators' Recommendation 4

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.

The Australian Government does not agree with this recommendation.

PaTH Internships are not jobs; they are supervised unpaid work experience. The \$200 fortnightly incentive is paid to PaTH interns as an incentive to participate in a PaTH Internship. It is not a wage or an hourly payment. The incentive is paid by the Government on top of welfare payments the job seeker already receives.

Should this Bill not be passed, PaTH Interns may end up losing up to \$48 a fortnight from their income support payments as a result of the \$200 fortnightly internship incentive payment being treated as 'income' for social security and veterans' entitlements purposes as per the *Social Security Act 1991* and *Veterans' Entitlements Act 1986*.

PaTH Internship placements, as with National Work Experience Programme placements, will be covered by Social Security legislation provisions. Accordingly, merely participating in the PaTH Internships program, in accordance with an Employment Pathway Plan (Job Plan), will not make that person an employee under the *Fair Work Act 2009*.

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.

Labor Senators' Recommendation 5

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

The Australian Government does not agree with this recommendation.

As noted in the responses to the recommendations above, the conditions of PaTH Internships can be protected without changes to legislation.

The incentive does not need to be legislated for job seekers to receive it or be guaranteed it.

Elements of program design do not need to be legislated.

Placing administrative details in legislation reduces the flexibility of the program. Very few employment programs have been placed in legislation previously for this reason.