

Submission by Interns Australia



Productivity Commission
Inquiry into the Workplace Relations Framework

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Introduction

About Interns Australia

Interns Australia is the support and advocacy body for interns and students undergoing work placements in Australia. As a non-party-political body, our goal is to engage and empower interns, employers, government and other stakeholders to create an employment landscape that is fair, regulated and protects the dignity of interns.

The policy challenge of internships, relevant Terms of Reference

Internships present benefits and risks. Where the work performed is educational, the intern gains valuable vocational skills and insights prior to entering the workforce proper, and internships allow organisations to build relationships with potential future staff, making recruitment more efficient.¹ However, if the intern performs valuable and regular work for the organisation but is not remunerated as a regular employee, not only is the intern denied fair remuneration, their unpaid work undercuts the labour value of the paid workers responsible for these tasks.² Similar to other forms of unpaid work - volunteering, unpaid trials - unpaid internships challenge a once-prevailing industrial relations norm and social standard: that work should be remunerated.³

This submission addresses the following specific matters listed in the terms of reference provided by Treasurer Joseph Hockey for evaluating the operation of Australia's workplace relations framework:

- fair and equitable pay and conditions for employees, including the maintenance of a relevant safety net
- patterns of engagement in the labour market.

Australia's internship practices

It is difficult to accurately characterise the nature and prevalence of internships in Australia, as there is a lack of legal certainty and empirical data in the field.⁴ Surveys conducted by Interns Australia have reflected a diverse range of internship practices, with significant variance in: hours of work performed;

¹ Janice Orrell, 'Work-integrated Learning', Australian Learning and Teaching Council (2011) p 5.

² Nicholas Wilson, 'Experience and exploitation: defining internships', *The Drum* (19 April 2012) <http://www.abc.net.au/unleashed/3960252.html> (accessed 18 September 2014).

³ See, for example, *Ex parte H.V. McKay* (1907) 2 CAR 1 which established a minimum, social wage in Australia.

⁴ Andrew Stewart and Rosemary Owens, 2013, Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia, Fair Work Ombudsman, available online: <http://www.fairwork.gov.au/Publications/Research/UW-complete-report.pdf>

length of the internship; supervision of work; whether remuneration is provided; whether the internships is part of a formal education course.⁵

In contrast to the Australian experience, internships in the United States have been more thoroughly documented, culminating in the seminal essay *The Employment Law Rights of Student Interns* by David Yamada as well as the influential book *Intern Nation* by Ross Perlin.⁶ In the United States, internships are overwhelmingly unpaid, and are a virtual prerequisite for employment in professional labour markets.⁷ Previously used in the medical profession to define a person with a degree but without a license to practice, internships began to gain popularity in the 1970s, expanding into the service and knowledge sectors of the labour market and replacing traditional employment practices.⁸

Stewart and Owens consider Perlin's observations to apply generally to developed economies, and specifically to Australia.⁹ Their research into unremunerated student work notes that although in 2010 only 19% of Australian students had completed performed unpaid work alongside their studies,¹⁰ this number is increasingly rapidly, and is currently "on a scale substantial enough to warrant attention as a serious legal, practical and policy challenge in Australia."¹¹

Current workplace relations framework affecting internships

Perhaps reflecting the diverse nature of industry practices, and the lack of research into the area, internships are not specifically defined or regulated by Australia's workplace relations framework. The *Fair Work Act 2009* (Cth) (FW Act) contemplates that unpaid work may be performed on as a "vocational placement" .¹² In this instance, students who perform work as part of a formal education course are not considered "national system employees"; a prerequisite status for enjoying the majority of national and industry-specific employee entitlements.

In theory, if an intern's work is not performed in satisfaction of an education course, the FW Act treats them as regular employees, entitling the intern to minimum pay and conditions. Yet non-compliance with these minimum conditions appears to be widespread; the Fair Work Ombudsman (FWO) has identified an emerging issue of exploitative, unpaid internships, as an area of interest,¹³ and recently

⁵ Interns Australia, National Internship Survey Interim Report (April 2014) Available online [http://www.mediafire.com/view/yz5x175w28I93u9/Interns_Australia_Releases_Results_of_Intern_Survey_\(Edwin\).pdf](http://www.mediafire.com/view/yz5x175w28I93u9/Interns_Australia_Releases_Results_of_Intern_Survey_(Edwin).pdf)

⁶ Verso, London, 2011.

⁷ David Yamada, 'The Employment Rights of Student Interns', 35 *Connecticut Law Review* p 215.

⁸ Clara Jordan-Baird, 'Experience Essential, Remuneration: None,' Centre for Employment and Labour Relations Law, The University of Melbourne, June 2013

⁹ Above n 1, p 21.

¹⁰ Ibid. p 2.

¹¹ Ibid. xi.

¹² *Fair Work Act 2009* (Cth) s13.

¹³ Nicholas Wilson, 'Experience and exploitation: defining internships', *The Drum* (19 April 2012) <http://www.abc.net.au/unleashed/3960252.html>.

completed its first successful prosecution of an employer for the underpayment of interns.¹⁴ In the survey conducted by Interns Australia, it has also been found that only a small portion of unpaid internships were performed under the framework permitted by the FW Act.¹⁵

Outside of the workplace relations framework, if an internship is part of a “vocational placement”, it may fall under the regulatory auspices of the Tertiary Education Quality and Standards Agency (TEQSA), empowered by the *Tertiary Education Quality and Standards Agency Act 2011* (Cth).¹⁶ However, the paid or unpaid nature of the internship is not currently monitored by the TEQSA - which enforces accredited tertiary educators’ conformance with the *Higher Education Standards Framework (Threshold Standards) 2011* (Cth) (Standards), and currently the Standards’ interest in students’ experience does not extend to, for example, financial welfare, or equitable access to internships.¹⁷ It is beyond the scope of this inquiry to consider legislative changes beyond the FW Act, but Interns Australia notes that reforms to TEQSA and the Standards may address the inefficiencies and inequities of the status quo, identified in the following sections.

Problems with the current regulatory regime

Inequalities

Persons from lower SES groups have relatively less financial resources to support themselves when performing unremunerated work and education, and are less likely to participate in these activities, than the rest of the population.¹⁸ In the absence of regulatory intervention, they are less likely to perform unpaid internships, and, as demonstrated above, are in turn are less likely to enter into the professional labour market.

This inequitable access to internships has a number of political and economic corollaries. Professional workers are almost universally more privileged than their technical and unskilled colleagues: better remunerated; healthier; more politically influential; likely to have better educated children; less likely to be in a lower SES group.¹⁹ This last outcome indicates that the problem may form a vicious cycle wherein one generation’s disadvantage compounds the next. Whether, and what amount of, economic and political inequality is or is not a problem, is a question of value and interest, and is discussed further below.

¹⁴ Fair Work Ombudsman v Crocmedia Pty Ltd [2015] FCCA 140.

¹⁵ Above n 5.

¹⁶ *Tertiary Education Quality and Standards Agency Act 2011* (Cth) s 134.

¹⁷ *Higher Education Standards Framework (Threshold Standards) 2011* (Cth) s 6.

¹⁸ Centre for the Study of Higher Education, ‘Participation and Equity’, Universities Australia (March 2008) p 23.

¹⁹ Organisation for Economic Co-operation and Development, ‘Earnings inequality, low-paid employment and earnings mobility’ *OECD Employment Outlook 1996*, Chapter 3, cited in Fred Argy, ‘Equality of Opportunity in Australia’ Australia Institute (April 2008) p 5.

Inefficiencies

Without adequate regulation and proactive policy response to the rise in illegal and unpaid internships, the public bears additional costs to fund unemployed students through direct income support costs and a reduction in government revenue via taxes. Based on 144,000 Youth Allowance and Austudy recipients in higher education, who on conservative estimates currently receive a minimum full rate of \$190 per fortnight, the amount could be projected in the order of \$213m based on 30% of current support recipients.²⁰

Furthermore, the skills mismatch or shortage can suppress earnings for new graduates as they experience delay in entry into the workforce.²¹ According to Graduate Careers Australia, reduced skill shortages and enhanced productivity assessed at a 15% improvement or margin in commencing graduate earnings for ex-interns, represent approximately \$330m annually per cohort for the first year post-graduation in foregone wages, assuming convergence thereafter to common wages for all graduates.²²

Recommendations

Reforms to the workplace relations framework

The Productivity Commission has invited empirically-based proposals for reform. Unfortunately, due to the limited research in this area, Interns Australia is unable to provide comprehensively researched options. Nevertheless, Interns Australia considers there are prima facie, sensible cases for the following actions and changes:

1. That the Commission formally recognise that there is widespread and increasing non-compliance with the FW Act provisions obliging remuneration and conditions to interns properly characterised as national system employees.
2. That the Commission formally recognise that this non-compliance leads to social inequities and market inefficiencies, including creating barriers to entry into professional labour markets for persons from lower socio-economic status groups and a diminished pool of skilled labour due to underutilisation of skills.
3. That the Commission recommend that the FWO address this noncompliance through further education and prosecution campaigns, including by raising awareness among interns and prospective interns of their workplace rights.
4. That the Commission investigate an appropriate regulatory body to oversee the compliance of 'vocational placement' programs under the FW Act.

²⁰Universities Australia, A National Internship Scheme, Position Paper (May 2008) p. 13

²¹ G. Mason et al, How Much Does Higher Education Enhance the Employability of Graduates?, London, HEFCE, August 2003). http://www.hefce.ac.uk/Pubs/rdreports/2003/rd13_03

²² Universities Australia, A National Internship Scheme, Position Paper (May 2008) p 13.

5. That the Commission review the ramifications of the internship provider industry in the sale and marketing of work experience as a product, converting the labour issue into a consumer issue, and diminishing the FWO's abilities to prosecute noncompliant businesses.

Reforms beyond the terms of reference

More public-private partnership between industry, universities and government under a National Internship Scheme would create a sustainable and efficient way of funding the program as outcomes would be enhanced were industry itself to accepted responsibility for its role in job-ready training in partnership with universities.²³

A National Internship Scheme would also boost Australia's competitive advantage in education export. As other countries are now emulating policies allowing for full-time international students to work up to twenty hours per week during study periods and unlimited hours when the course is not in session, well-designed workplace integrated learning opportunities that help international students gain employment and bridge the current skills gap can help retain skilled migration and increase the attractiveness of Australian higher education.

Additionally, Interns Australia will shortly launch the National Internship Accreditation Scheme (NIAS); Australia's first independent internship accreditation program. Developed in collaboration with employment specialists, employers, industry, government agencies, interns and students, the NIAS supports employers and interns to identify, commit to and create a culture of fair and high quality internships. The NIAS is a market-based solution that provides employers with best practice internship guidelines, accredits employers who meet these guidelines, and, through accreditation, provides prospective interns with confidence in the fairness and quality of participating internship programs.

Opportunities for further research

The Australian Research Council has provided further funding to support the research by Stewart and Owens following the broad interest generated by their 2013 FWO report. The research will span four years, providing analysis on a global and comparative context, examining policy and regulatory responses in Canada, Europe (including Britain), New Zealand, and the United States. It is expected to identify optimum approaches to the regulation of post-secondary work experience, and thereby expand policy debates and enhance future law reform.²⁴

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²³ Above n 22 p 5.

²⁴ Australian Research Council (2014) Number of Successful Discovery Projects Proposals for Funding Commencing in 2015 by State and Organisation, http://www.arc.gov.au/pdf/DP15/DP15_Listing_by_State_and_Org.pdf.

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