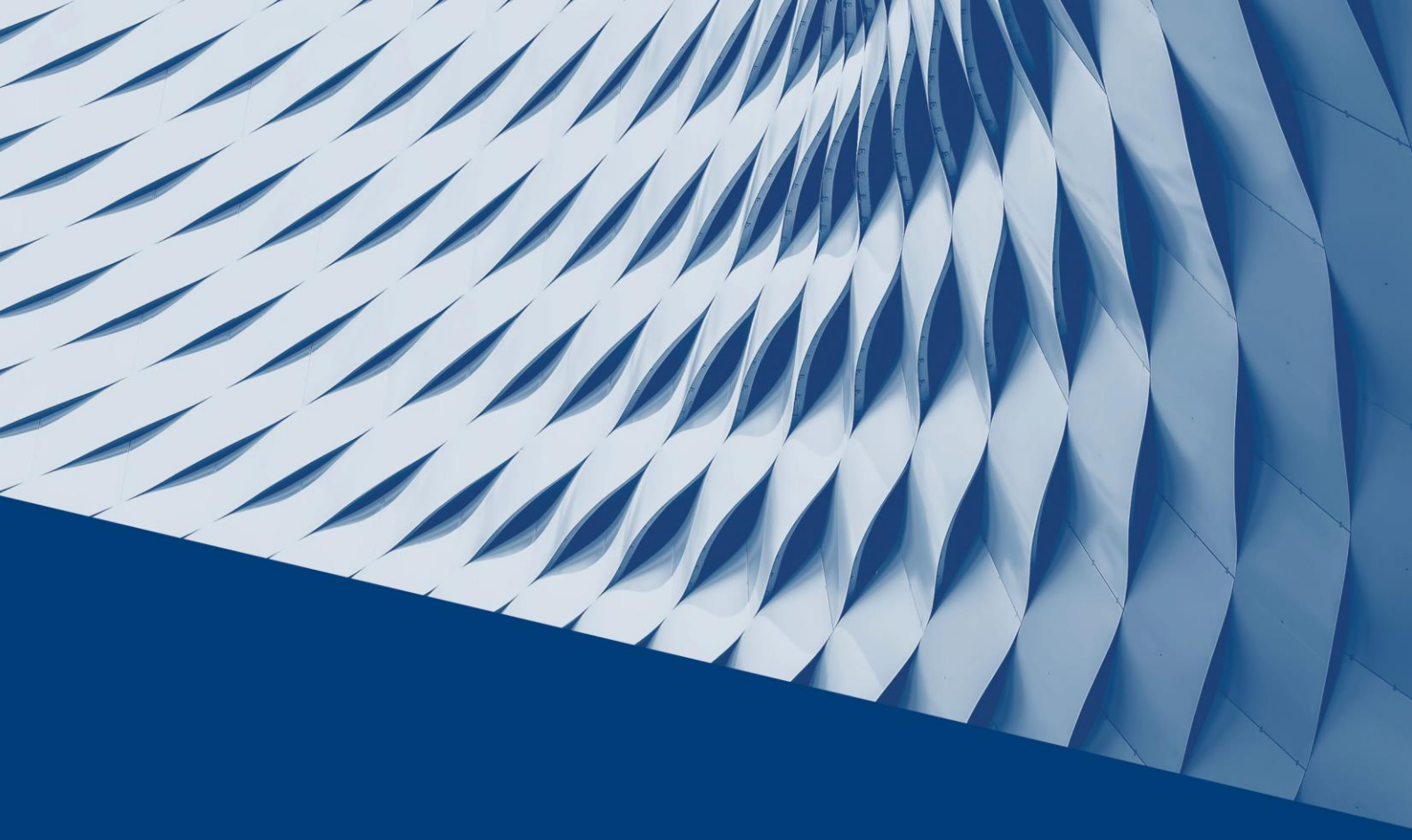

‘Exempted’ from rights.

ACTU submission to the inquiry into the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021

ACTU Submission, 9 June 2021
ACTU D. No 29/2021

ACTU
australian council of trade unions

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Introduction

The ACTU, formed in 1927, is the peak body for Australian unions and is the only national union confederation in Australia. For more than 90 years, the ACTU has played the leading role in advocating for the rights and conditions of working people and their families. The ACTU is made up of 39 affiliated unions and trades and labour councils, and we represent almost 2 million working people across all industries. As the peak body for working people, we welcome the opportunity to provide our view on the Social Security Legislation Amendment (Streamlined Participation Requirements and Other Measures) Bill 2021.

The main concerns of the ACTU regarding this legislation relate to Schedule 6 which, in our view, not only further codifies an undesirable element of the existing legislation but also appears to avoid parliamentary oversight over programs which deny unemployed Australians basic protections and entitlements while they undertake work or 'work-like' activities. This short submission will focus primarily on our issues with this schedule but should not be considered to be an endorsement by the ACTU of the other schedules' details or aims.

ACTU issues with the Bill

As stated above, the ACTU's issues with the Bill as presented primarily relate to two aspects of Schedule 6. We are concerned that this Schedule further codifies a loss of rights for unemployed Australians when they are engaged in work as part of their unemployment mutual obligation requirements. It is also concerning that this Schedule appears to facilitate the creation of programs which involve this loss of rights with greater ease and with a low level of parliamentary oversight.

Our concern with his Bill, both in general and in terms of Schedule 6 specifically, is that it appears designed to facilitate a significant future expansions of free labour programs masquerading as 'employment programs' without any detail about protections against exploitation within those programs, instead focussing on entrenching existing inequalities.

It is our view that this Schedule requires significant amendment to remove the ability of the Government to deny unemployed Australians basic workplace rights while they are engaged in work activities as part of their mutual obligation requirements or at least establish parliamentary oversight of the designation of 'employment programs'.

Further Codification of the loss of basic workplace rights

The ACTU has long held the position that it is unacceptable for jobseekers, when engaged in work or work-like activities, to be denied access to basic protections in the workplace such as those delivered by *the Fair Work Act 2009*, *the Work Health and Safety Act 2011*, *the Safety, Rehabilitation and Compensation Act 1988* and the *Superannuation Guarantee (Administration) Act 1992*. Programs like Work for the Dole, the Community Development Program and the Youth Jobs PaTH program all involve unemployed Australians undertaking work-like activities, often in actual workplaces and, in many cases, to the financial benefit of the organisation for which they are working. It is the view of the ACTU that these situations are, in practicality, essentially indistinguishable from employment if not for the convenient legal fiction that participants are 'not employees'.

Through this fiction these workers are denied access to basic workplace rights, minimum wages and even the protection of occupational health and safety legislation. This cements the position of unemployed Australians as second-class citizens in their workplaces. In some of the programs named above this has resulted in jobseekers working in normal workplaces alongside conventionally employed employees undertaking identical tasks to those employees and yet the jobseekers are covered by far inferior, or no, workplace and safety protections. We consider this to be an unacceptable outcome – everybody working in a workplace should enjoy the minimum rights and protections in that workplace, regardless of their reason for being there.

While we recognise that the Government has attempted to ameliorate long-held concerns about occupational health and safety rights through the use of insurance arrangements, which is acknowledged in the Explanatory Memoranda for the Bill, it is our view that the tragic death of Joshua Park-Fing on a Work for the Dole site in 2016 and the subsequent issues experienced by his family in learning about the circumstances around his death and what was being done to prevent future fatalities show the inadequacy of these measures. The fact that Mr Park-Fing was denied protections that extend even to volunteers in a workplace under the *Fair Work Act 2009* while being asked to operate in a clearly unsafe environment, for which he received inadequate training, is a scathing indictment of the Government's existing arrangements for safety. There is the additional question of why taxpayers, rather than employers, should be footing the bill for the insurance of jobseekers undertaking these activities when it is often the employers who are the main beneficiaries of the activity, especially in the case of programs like PaTH where the employer is directly paid to take on the free labour they receive.

Additionally, these measures do nothing to address the loss of basic workplace rights such as minimum wages which has seen jobseekers expected to work for paltry $4 an hour wages as in the PaTH program or indeed no additional remuneration as per WfD and the CDP. We consider the Government's attempts to replace basic workplace protections with insurance and a clearly insufficient 'commitment' to workplace safety to be inadequate and we do not support the implementation of the changes in Schedule 6 which further codify the ability of the Government to deny jobseekers access to basic workplace protections.

A loss of parliamentary oversight

The ACTU is also concerned that the Bill as proposed, again in Schedule 6, appears to create a power for the Secretary of Employment to, through a notifiable instrument, declare that programs, outside of approved programs of work or the Employment Pathway Plan process, are 'employment programs' when undertaken by jobseekers and that the protections of the Acts outlined above do not apply. We are concerned about this part of Schedule 6 for a number of reasons.

Firstly, this change appears to be aimed at making it easier to create programs which do not provide jobseekers with basic workplace protections, bypassing legislated restrictions like those applied by Section 28 of the *Social Security Act 1991* to 'approved programs of work' and the Employment Pathway Plan processes which at the very least created some administrative restrictions and jobseeker awareness and choice (though choice is often negated through the use of mutual obligation requirements) around the institution of these programs.

Allowing a Departmental Secretary to simply declare these programs to be employment programs, separate from the Approved Programs of Work category under the Act, appears to be an attempt to minimise barriers to the creation of these programs – a move we fully oppose. If, as is argued

in the Explanatory Memorandum, this is unlikely to result in material change for jobseekers and it is not the case that this change is intended to loosen the regulatory environment around these programs, we are forced to question its purpose in this Bill.

Secondly, the ACTU is concerned that the proposal in the Bill to allow the Employment Secretary to make these declarations through a notifiable instrument may allow the Government to avoid parliamentary oversight of these declarations and the programs to which they relate. As distinct from legislative Instruments, there is no general power for the Parliament to disallow a notifiable instrument.[1] The Legislation Act 2003 (Cth) s 7 provides this explanation: *"Generally, unlike legislative instruments, notifiable instruments are not subject to parliamentary scrutiny, nor are they subject to automatic repeal 10 years after registration."*

The ACTU is concerned that the assignment of this power of determination to the Employment Secretary, by way of a notifiable instrument, reflects a deliberate intention to avoid the scrutiny and oversight of parliament in relation to programs which deny jobseekers access to basic workplace rights and to significantly reduce the ability of decisions to deny jobseekers those rights to be challenged. It is our view that this is an unacceptable attempt to legislate a reduced capacity of the parliament to oversee Government action and that this element of Schedule 6 must be removed or substantially amended prior to the passage of this legislation.

In summary

The ACTU is of the view that Schedule 6 of this legislation both further codifies the denial of basic workplace rights to jobseekers while working or undertaking work-like activities and appears to attempt to make it easier, with minimal or no parliamentary oversight, to institute such programs. We consider these to be unacceptable features of this legislation and oppose the passage of the Bill while it is inclusive of these changes.

[1] see *the Legislation Act 2003* (Cth) s 42

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