



Australian Government

Department of the Environment

**SUBMISSION TO THE
SENATE STANDING COMMITTEE
ON
EDUCATION AND EMPLOYMENT**

**Social Security Legislation (Green Army
Programme) Amendment Bill 2014**

Department of the Environment

INTRODUCTION

1. The Department of the Environment welcomes the opportunity to make a written submission to the Senate Standing Committee on Education and Employment Inquiry into the Social Security Legislation (Green Army Programme) Amendment Bill 2014. This Submission includes an annexure in support of the Submission and prepared by the Department of Employment – Annexure A.
2. The Bill was introduced into the House of Representatives on 24 February 2014 and supports the Government's election commitment to create a Green Army.
3. This submission has been prepared in consultation with the Department of Social Services and the Department of Employment. The Submission outlines the policy context for the Programme and resulting administrative arrangements required to give effect to the Programme.
4. The Department of the Environment is responsible for delivering the Green Army Programme, to commence from July 2014.
5. The Programme's primary objective is to deliver conservation outcomes for Australia. Green Army Teams will be engaged in activities that help communities deliver local priorities that will also contribute towards meeting a number of national and international obligations. The Programme has four strategic objectives:
 - *Environmental Conservation:* Support the delivery of enduring environment and heritage conservation outcomes at the local, regional and national level.
 - *Community Engagement:* Work cooperatively with community groups, and help raise awareness of environment and heritage values in the community.
 - *Green Army Participation:* Engage and deploy young Australians to participate in Green Army Teams, having highest regard for Participant safety, wellbeing and personal need and development.
 - *Experience, skills and training:* Provide Participants with opportunities to undertake training recognised under the Australian Qualifications Framework, in a range of areas which increase their skills and qualifications.
6. The Council of Australian Governments (COAG) Reform Council's latest reports on education and skills show that not all young (17 – 24 year olds) people are making a smooth transition from school to study or employment. The Government acknowledges the opportunities for young Australians who elect to become Green Army Participants and offers strong incentives for this cohort to become involved. For example, an allowance which is generally higher than social security benefits will be given to Participants who participate for the full-time, 30 hours per week. Opportunities for young Australians to explore careers and enhance their employment prospects will also be offered and will include on-ground training and skills development, formal competency based training and accreditation and personal development coaching.
7. The Programme is not an employment programme. Participants electing to engage in the Programme are not considered employees. It is a work experience type programme that offers short term (up to six months) on-ground and accredited training opportunities that may lead to employment, training or further studies in a diverse range of areas.

The Programme

8. The Green Army will make a real difference to the environment and local communities through projects such as restoring and protecting habitat, weeding, planting, cleaning up creeks and rivers and helping to conserve heritage places. Fostering teamwork, local ownership and community spirit, the Green Army will deliver tangible benefits for the environment and a range of skills development for thousands of young Australians.
9. The Programme will be delivered by an external Service Provider(s) who will be responsible for recruiting, establishing and managing Green Army Teams across Australia to engage in approved projects, alongside communities, that support local conservation priorities.
10. Participation in the Programme will be voluntary and available to a diverse spectrum of young people, including Indigenous Australians, school leavers, gap year students, graduates and unemployed job seekers. Up to nine eligible Participants and at least one Team Supervisor will constitute a Green Army Team. Participants will be eligible to receive a Green Army allowance while participating in the Programme, and will also have the opportunity to undertake training. The Service Provider(s) will be responsible for the disbursement of Green Army allowances and the provision of training. The Team Supervisor will be employed by the Service Provider and paid a wage.
11. Project proposals will be submitted to the Department of the Environment by individuals and organisations, such as local groups, councils and natural resource management bodies. A Green Army Project involves a Green Army Team undertaking conservation activities over a 20-26 week period.
12. The Programme will commence in 2014–15 with the rollout of 250 Green Army Projects and approximately 2,500 people undertaking on-the-ground environmental activities in the first financial year. By 30 June 2017, the Programme will have had 1,500 Green Army Projects and 15,000 placements undertaken. The Programme will scale up to 15,000 placements and 1,500 Projects per annum from 2018–19.
13. At the time of this inquiry the Department had undertaken a consultation process through the release of the *Green Army Draft Statement of Requirements*, which attracted over 100 submissions from industry and the public. Submissions informed the detail of the *Green Army Programme Guidelines 2014 -17*, and *Request for Tender for the Green Army Programme, 2014 – 2017*, which is currently seeking tenders from potential Service Providers. The *Green Army Project Guidelines, Round 1* have also been released, which call for applications from eligible community organisations for Green Army Projects. Both sets of guidelines, which provide further detail about the Programme, and further information can be found at <http://www.environment.gov.au/greenarmy>

SOCIAL SECURITY LEGISLATION (GREEN ARMY PROGRAMME) AMENDMENT BILL 2014

14. The Bill was introduced into the House of Representatives on 24 February 2014 to help facilitate the implementation of the Green Army Programme. The Bill was drafted in consultation with relevant Australian Government agencies and considered issues raised during a public consultation process on the Green Army Draft Statement of Requirements from 21 January to 4 February 2014.

15. The Bill will make amendments to the *Social Security Act 1991* and the *Social Security (Administration) Act 1999*. Specifically, the amendments will:

- specify that a person receiving a Green Army allowance under the Green Army Programme cannot also receive a social security benefit or social security pension and that a determination made in this regard may be backdated;
- specify that Participants of the Green Army Programme will not be considered workers or employees for the purposes of various Commonwealth laws including the *Work Health and Safety Act 2011*, the *Safety Rehabilitation and Compensation Act 1988*, and the *Fair Work Act 2009*; and
- specify the income testing arrangements that will apply to a person receiving a social security pension if their partner is receiving a Green Army allowance. These arrangements will be similar to comparable schemes under the *Social Security Act 1991*.

16. This submission provides further information about the specific amendments, clarifies the status of Participants engaged in the Programme with respect to Commonwealth laws and importantly the legislative and non-legislative framework established to ensure Participants are afforded adequate work, health and safety protection.

The status of Participants and Team Supervisors

17. The Green Army Programme will be a voluntary 'opt-in' programme that will involve short-term work experience' style placements in a Green Army Team and offer Participants a range of training opportunities.

18. Green Army Participants are not considered to be employees on the basis that they are undertaking short-term work experience type placements. For the purposes of the Green Army Programme, Participants are considered fulltime at 30 hours per week (rather than 38 hours per week). To reflect the short term nature of the placements, flexible arrangements have been established for Participants that allow them to easily reconnect with the social security system as required.

19. The status of Participants is aligned with similar programmes, such as the previous National Green Jobs Corps and Green Corps programmes. Under these schemes Participants were not considered workers or employees (see Annexure A).

20. While Green Army Participants will not be considered employees for the purposes of the *Fair Work Act 2009*, the following entitlements are specified for Participants under the Programme Guidelines:

- 10 days personal leave for each six month placement,
- access to a dispute resolution process and a complaints hotline,
- all necessary health and safety training (to be provided by Service Providers),
- the provision of safe working conditions including site safety (to be provided by Service Providers and Project Sponsors)
- insurance cover for injury and accident (to be provided by the Commonwealth)

21. Participation in the Green Army Programme will not guarantee employment at the end of a placement or displace employees already engaged or employed in natural resource management activities. Green Army teams will provide additional assistance to support projects being undertaken by Landcare groups, volunteer groups and other employment-related initiatives across government.
22. Team Supervisors will be employed and managed by Service Provider(s) directly. Service Provider(s) will be responsible for negotiating and paying supervisors' wages, terms of employment, performance, leave, superannuation, taxation, workers compensation and insurance. Team Supervisors must be at least 18 years of age and have relevant qualifications and experience to supervise and provide basic training to Participants, including:
 - a. a current First Aid Certificate; and
 - b. accredited work health and safety training.
23. A determination within the legislation confirms that Green Army Team Supervisors are considered workers or employees of the Service Providers. As such the *Work Health and Safety Act 2011*, the *Safety Rehabilitation and Compensation Act 1988*, and the *Fair Work Act 2009* will apply.
24. Team Supervisors will be paid under a relevant award, such as the Gardening and Landscaping Services Award.

Green army allowance, tax and benefit payments

25. In general, Participants in the Green Army Programme will receive an allowance ranging between \$608.40 per fortnight to \$987.00 per fortnight (indexed annually), depending on a Participant's age and educational level and is generally higher than income support payments such as:
 - a. Newstart Allowance (the basic rate of which ranges between \$460.90 - \$713.20 per fortnight); and
 - b. Youth Allowance (the basic rate of which ranges between \$226.80 and \$713.20 per fortnight).
26. Full-time Participants in receipt of income support will move to the Green Army allowance and will be suspended from their income support arrangements for up to 30 weeks. This will include suspension of any concession cards linked to receipt of a social security pension or benefit. Participants, however, will be eligible to apply for the Low-Income Concession Card.
27. The Bill does not propose changes to family assistance and child care payments which will remain payable to Green Army Participants, where eligible.
28. With the operation of the proposed legislative amendments, the transition from Green Army back to income support will be seamless with no requirement to re-claim payment. Participants will be able to notify the Department of Human Services prior to the completion of their Green Army placement of their intention to return to income support. Upon timely notification, Participants will be able to recommence their income support payment as soon as they exit the programme, where they remain eligible.

29. Upon completing a 26 week placement in the Green Army, Participants will have 4 weeks to reconnect with their income support arrangements without a new claim being triggered. If a Participant is in the Green Army Programme for a shorter placement (between 20 – 26 weeks), or opts out of the Programme early, they can reconnect with their income support arrangements provided this is within 30 weeks from the time they commenced their Green Army Placement. This is a unique arrangement implemented for Green Army Participants.
30. The Green Army allowance will be taxable income and changes to the *Taxation Administration Regulations 1953* to be implemented prior to commencement of the Programme will ensure that Service Providers undertake Pay As You Go Withholding taxation arrangements for Participants. Given the status of Participants, regulatory amendments will also be made to the *Superannuation Guarantee (Administration) Regulations 1993* to exclude the Green Army allowance from salary/wages that are subject to superannuation payments. This approach is similar to that taken for the previous National Green Jobs Corps and Green Corps programmes (see Annexure A).

Workplace safety coverage for Participants

31. All Participants in the Programme will be afforded the relevant protections under existing state and territory legislation and any applicable Commonwealth laws. In addition, all parties will be required to hold relevant insurances and Service Providers will report regularly to Government on the management of Participants and project delivery and an audit and compliance scheme will manage contractual breaches.
32. Management of Work Health and Safety is of utmost importance to the Department in implementing the Green Army Programme. The Department of the Environment acknowledges the risks associated with the delivery of the Programme, has a fully developed risk management system in place to provide for the health and safety of all those engaged in, and relevant to, its implementation.
33. The Department will oversee Work Health Safety (WHS) management for the Green Army Programme and in doing so will work closely with Green Army Service Providers and monitor their compliance with legislative and Programme WHS requirements.
34. Service Providers will hold primary responsibility for the health and safety of Green Army Teams while the teams undertake Green Army Project activities. Detailed WHS requirements for Service Providers are outlined in the Green Army Programme Guidelines and are included within the Deed of Standing Offer which will be agreed between the Department and Service Providers. Appointment of Service Providers will be based on and assessed against specified selection criteria including in relation to managing Work Health and Safety in accordance with Australian Standards.
35. Project Sponsors have shared responsibility for providing a safe work environment for Green Army Teams, including safe access to the site where work is being carried out. Detailed WHS responsibilities for Project Sponsors are outlined in the Green Army Programme Guidelines and are included in their Project Agreements with Service Providers.
36. Green Army Participants will be responsible for taking reasonable care of their own safety, and that of others, while undertaking Green Army Project activities. Details of Participants' responsibilities are outlined in the Green Army Programme Guidelines and in the Participant Agreement, which is to be signed by the Participant and the Service Provider.

37. Consistent with its overarching responsibility in the management of WHS for the Green Army Programme, the Department:

- will develop, maintain and administer a comprehensive risk management plan for the Green Army Programme;
- will provide executive level oversight, including with respect to WHS, in the design and delivery of the Green Army Programme;
- has engaged an expert WHS consultant to advise on areas of WHS risk to the Programme, the WHS roles and responsibilities of the various parties involved in the Programme, and the design and delivery of the WHS components of the Programme;
- has clearly described the WHS roles and responsibilities of parties involved in the Green Army Programme in relevant Programme documentation;
- has included selection criteria for the Service Provider tendering and project selection processes that focus on an applicant's ability to meet their stated WHS roles and responsibilities;
- will purchase additional personal accident and products and public liability insurance to cover all Green Army Participants, ensuring equity in the amount of cover and identical application processes for all Participants, should claims be required – this will be additional to insurances purchased by Service Providers; and
- adhere to the work health and safety framework, developed in collaboration with the Department of Employment, for management of Work Health and Safety issues. Assurance activities within this framework include but are not limited to:
 - : the ongoing monitoring of hazards and incidents, including through a WHS Audit Scheme that uses accredited WHS auditors;
 - : the analysis of reported WHS data to determine whether any improvements can be made, in accordance with the principal of continuous improvement to WHS performance; and
 - : the possibility of sanctions, where WHS requirements are not met.

Training

38. A key component of the Programme is the provision of training. Training under the Programme will include mandatory training, vocationally oriented accredited training qualifications or nationally endorsed skill sets to be delivered under the Australian Qualifications Framework by a Registered Training Organisation. Registered Training Organisations must be registered for a minimum period of 12 months and on-the-job training. The vocationally oriented accredited training or nationally endorsed skill sets may be undertaken in areas such as work-readiness, conservation and land management, heritage conservation, project and human resource management, Work Health and Safety, and trades (for example construction skills).

39. Training in first aid and Work Health and Safety must be included for all Participants within each Project. The Work Health and Safety module must equip Participants with adequate and practical training in work safety practices relevant and prior to the tasks they are

performing. Participants without these basic training requirements cannot commence activities on the Project.

40. Service Providers are also required to conduct cultural awareness training where Teams have Indigenous and non-Indigenous Participants or where activities concern Indigenous communities, heritage or places.
41. The training will not be rigid in its delivery, nor mandate minimum hours or what type of training must be undertaken. Participants will be given training which meets the needs of their individual circumstances to ensure that young people's experience in and outcomes from the training is maximised to the greatest extent. In addition, training will be delivered in a way which recognises the different education levels of Participants.
42. Service Providers contracted for the Programme will be required to develop and agree an individual training plan with each Participant. This will involve an assessment of Participants' training needs, existing skills and any special needs, including coaching in literacy and numeracy and other life skills to make a successful transition into employment and education.
43. These training plans will help to assist Participants in moving on from their Green Army Placement.

Regulatory Impact Analysis

Regulatory impact considerations were undertaken during development of the Green Army Programme. The relevant agencies determined that as the Programme involved the purchase of services to contract service provider(s) there would be no regulatory impacts for industry or for the not for profit sector.

Annexure A

Submission from the Department of Employment

The Department of Employment is responsible for the provision of employment assistance, through its mainstream employment services programme, Job Services Australia.

The majority of job seekers assisted through Job Services Australia are on income support and therefore have a requirement under social security law to look for work and undertake activities to improve their employment prospects. Activities may include participation in Work for the Dole or specified work experience activities. While participating in these programmes, the job seeker remains connected with their employment service provider.

There are currently around 207,113 job seekers aged between 17 and 24 years being assisted through Job Services Australia (as at 31 March 2014). Green Army offers a structured programme of practical work experience combined with accredited training—it is therefore likely to be an attractive alternative to Job Services Australia for many young job seekers. Should the job seeker return to Job Services Australia, they will have a new qualification and recent practical project experience, allowing them to be more competitive in the labour market.

If accepted into the programme, it is proposed that the job seeker would generally be suspended from income support, and therefore their obligations under social security law would no longer apply. Instead, the Green Army Participant would move onto Green Army Allowance (which is commensurate with a training allowance, and higher than Newstart Allowance or Youth Allowance)¹. In addition, the job seeker would no longer be required to report to, or work with, their Job Services Australia provider, although may choose to do so.

Although Green Army participants are not on income support, the proposed framework for the Green Army programme is similar to that which governs current Work for the Dole and activities under Job Services Australia, and which previously governed the Green Corps Programme and National Green Jobs Corps Programme.

Background and context

Work for the Dole

Work for the Dole is a group-based or individual work experience activity hosted in not-for-profit organisations (including social enterprises) or government organisations or agencies. The aim of Work for the Dole is to provide flexible work-like placements for job seekers that benefit local communities. Job seekers may undertake Work for the Dole activities for 26 weeks or 48 weeks depending on their requirements and young job seekers generally participate for between 12 and 15 hours per week.

Work for the Dole can also be combined with other activities such as accredited training. Work for the Dole activities can vary significantly depending on the scale, type, location and tasks undertaken. Two examples include:

- constructing a skate park on a disused basketball court, in which job seekers gain skills in metal fabrication, concreting and erection of timber sound barriers
- a job seeker gaining retail and administrative experience in a charity op-shop

¹ Part-time participants will have the option to choose either a pro-rata Allowance or retain their income support payment in addition to an Approved Programme of Work Supplement.

Work for the Dole activities must not compete with established businesses, must not fulfil a commercial role for the host organisation, and must not involve work that would have otherwise been undertaken by a paid employee.

Status of Participants

Social Security Act 1991 provisions

Under section 631C and equivalent provisions of the *Social Security Act 1991*, income support recipients who are participating in an approved programme of work are taken not to be employees for the purposes of various acts including the *Fair Work Act 2009*, the *Safety, Rehabilitation and Compensation Act 1988*, and the *Work Health and Safety Act 2011*, merely by reason of that participation. The proposed Green Army Bill replicates this exemption in relation to participation in the Green Army Programme.

Alignment with previous programmes

Prior to Job Services Australia, Green Corps was a separate programme, running from 1997 to 2009. Under this programme, participants completed 35 hours per week (including training) in environmental activities over six months and received a fixed rate of training allowance.

National Green Jobs Corps was a component of the previous Government's Green Jobs and Training Places package, announced in mid-2009. National Green Jobs Corps was a two year voluntary work experience and training programme that commenced on 1 January 2010. It delivered 10 000 places nationally for young people aged 17 to 24. Participants completed 26 weeks of work experience and training, and remained on income support. Participants also received the National Green Jobs Corps fortnightly supplement of \$41.60.

Work Health and Safety

Under Job Services Australia, activities are delivered or facilitated by Job Services Australia providers or their subcontractors (Host Organisations).

While the *Social Security Act 1991* confirms that Work for the Dole participants are not employees for the Commonwealth for the purposes of the *Work Health and Safety Act 2011*, merely by reason of participation in those programmes, these job seekers are still offered protection under state and territory work health and safety laws.

In addition, the Department of Employment adopts a whole of programme approach to duty of care and risk management in the administration of Work for the Dole.

Department of Employment responsibilities

The Department of Employment takes a risk-based approach ensuring the integrity of employment services programmes. It is informed by:

- *The Employment Services Deed 2012-15* and associated Guidelines that set out the providers responsibility to ensure a safe working environment, appropriate supervision and adequate training;
- programme and provider risk assessment and management;
- a network of State based account managers and contract managers;
- a detailed Compliance and Assurance Framework and Charter of Contract Management; and

- the results of risk prevention, detection and correction activities such as desktop monitoring and provider or activity site visits.

In addition, under the current Work for the Dole arrangements the Department of Employment purchases personal liability and accident insurance for participants, in addition to requiring service providers (through contractual arrangements) to obtain relevant insurance coverage, see below.

Provider and Host Organisation responsibilities

When delivering Work for the Dole activities, Job Services Australia providers have a contractual obligation to:

- ensure there is a safe working environment for undertaking activities, including that participants are equipped to take part;
- maintain supervision with regard to health, welfare, safety and working with vulnerable people, including children;
- prepare comprehensive risk assessments;
- adhere to all relevant Federal, State and Territory legislation, regulations and by-laws, including the Anti-Discrimination Act and the relevant work health and safety laws; and
- hold prescribed levels of insurance coverage, to protect their personnel and other parties, including job seekers as required.

Job services Australia providers must also prepare and document a risk assessment for each Work for the Dole or work experience activity to identify potential risks and hazards associated with the activity. In preparing the risk assessment, Job Services Australia providers take into account not only their role, but also the roles of subcontractors and host organisations involved in the delivery of the work experience activity as well as the nature of, and job seeker involvement in, the activity.

Job seeker responsibilities

Job seekers on Work for the Dole and Job Services Australia work experience activities have obligations to ensure the health and safety of themselves, and to take reasonable care to ensure their conduct does not affect the health and safety of others around them. In addition, job seekers must comply with all reasonable directions and instructions issued by their Job Services Australia provider or Host Organisation, and comply with all reasonable policies and procedures.