

# CHAPTER 2

## Key issues

2.1 Submitters acknowledged that the Green Army Programme (GAP) is an environment and training initiative, as highlighted by the Hon. Greg Hunt MP, Minister for the Environment (Minister).<sup>1</sup> The Law Council of Australia (Law Council), in particular, supported the creation of a volunteer environmental 'workforce', noting that similar programmes have previously resulted in positive employment outcomes for disadvantaged and vulnerable participants.<sup>2</sup>

2.2 Submitters voiced specific concerns in relation to the programme, including the:

- suspension of income support payments;
- rate of the 'green army allowance' (allowance);
- exclusion of Green Army participants from Commonwealth legal protections;
- efficacy of the programme's training component.

### Suspension of income support payments

2.3 Proposed new section 38H provides that a social security pension or social security benefit is not payable to a person who is receiving an allowance. The Minister explained:

This is designed to ensure that people who receive government-funded support through the [GAP] do not also receive similar support through the social security system. This provision mirrors long-standing social security provisions that prevent a person from double-dipping.<sup>3</sup>

2.4 Full-time participants in the programme, who received income support prior to their placement on a Green Army team, will receive the allowance. Part-time participants might have a choice between receiving their social security pension or social security benefit, with an additional Approved Program of Work Supplement (\$20.80 per fortnight), or the allowance (pro-rata based on their part-time hours).<sup>4</sup>

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1 Second Reading Speech, *House Hansard*, 26 February 2014, p. 3.

2 *Submission 2*, pp 4-5.

3 Parliamentary Joint Committee on Human Rights, *Fifth Report of the 44<sup>th</sup> Parliament, Bills introduced 17-20 March 2014; Legislative instruments received 1-7 March 2014* (PJC-HR Fifth Report), quoting the Hon. Greg Hunt MP, Minister for the Environment (Minister), response dated 17 March 2014, p. 1.

4 PJC-HR Fifth Report, quoting the Minister, response dated 17 March 2014, pp 1-2. The Minister provided two examples of the circumstances in which a participant might be able to exercise a choice – that is, the case of a person with an assessed partial capacity to work due to care responsibilities or disability.

2.5 In either case, GAP participants who receive the allowance will have their income support payments suspended for up to 30 weeks. On completion of their Green Army placement, these participants will then have four weeks to reconnect with their income support arrangements:

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 to ensure a seamless transition with no requirement to re-claim payment. Upon timely notification by the participant, participants can resume their income support payment as soon as they exit the [GAP], provided they are still eligible.<sup>5</sup>

2.6 The Australia Institute did not support proposed new section 38H. In its view, Green Army participants are casual workers who should be entitled to claim income support payments, subject to the income test, just like any other casual worker.<sup>6</sup>

### **Rate of the allowance**

2.7 The allowance to be paid to GAP participants (excepting team supervisors) will be aligned with the National Training Wage. According to the Department of the Environment (Department), which will administer the programme:

The allowance ranges from \$608.40 to \$987 a fortnight, depending on a participant's age and educational level. All allowances are considered taxable income and [participants] will receive a pay as you go (PAYG) withholding summary at the end of the financial year.<sup>7</sup>

2.8 The Department's allowances are calculated based on the rate of \$10.14 per hour to \$16.45 per hour, as detailed in the *Green Army Programme Guidelines 2014-17* (Table 2.1 below).

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5 PJC-HR Fifth Report, quoting the Minister, response dated 17 March 2014, p. 2.

6 *Submission 1*, p. 3.

7 *Green Army FAQs*, p. 8, available at: <http://www.environment.gov.au/system/files/pages/9aab5105-273e-47d4-a32d-0e5ee217487b/files/green-army-faqs2.pdf> (accessed 8 May 2014). Also see: Department of the Environment (Department), *Submission 4*, p. 6, which described consequential amendments to the *Taxation Administration Regulations 1953* and the *Superannuation Guarantee (Administration) Regulations 1993*.

**Table 2.1 – Allowance rates per hour**

Participant allowances	Current allowances		
	Year 10	Year 11	Year 12
School leaver		\$10.14	\$11.75
School leaver plus 1 year	\$10.14	\$11.75	\$13.21
School leaver plus 2 years	\$11.75	\$13.21	\$14.76
School leaver plus 3 years	\$13.21	\$14.76	\$16.45
School leaver plus 4 years	\$14.76	\$16.45	\$16.45
School leaver plus 5 years	\$16.45	\$16.45	\$16.45
School leaver plus 6 years	\$16.45	\$16.45	\$16.45
School leaver plus 7 years	\$16.45	\$16.45	
School leaver plus 8 years	\$16.45		

Source: Department of the Environment, *Green Army Programme Guidelines 2014-2017*, p. 32, available at: <http://www.environment.gov.au/cleaner-environment/clean-land/green-army/green-army-programme-guidelines-2014-2017> (accessed 8 May 2014).

2.9 In a recent Bills Digest, the Parliamentary Library commented on the base rate of the allowance which, combined with the suspension of income support payments and their various associated concession cards, supplements and allowances, could financially impact GAP participants:

[A] number of programme participants are likely to receive not much more than they would were they in receipt of income support payments.<sup>8</sup>

2.10 The Australia Institute submitted that participants could in fact find themselves earning less than their income support payments due to uncertain work hours caused by, for example, irregular hours or personal and carers' leave entitlements.<sup>9</sup>

### ***Department response***

2.11 The Department and the Minister have stated that the allowance is higher than income support payments, such as Youth Allowance and Newstart Allowance:

8 *Social Security Legislation Amendment (Green Army Programme) Bill 2014*, Bills Digest No. 49, 2013-14, p. 7.

9 *Submission 1*, p. 2.

[U]nder the [GAP], a 21 year old participant will receive an hourly rate of between \$14.76 and \$16.45 and a fortnightly allowance of between \$885.60 and \$987.00...The basic rate of Youth Allowance for an unemployed young person aged 21 is generally between \$272.80 per fortnight and \$542.90 per fortnight, depending on individual circumstances (supplementary allowances, such as the Clean Energy Supplement and Rent Assistance, may also be payable in addition to the basic rate).

A comparison of possible payment rate scenarios for Newstart Allowance and Youth Allowance recipients, including relevant supplementary allowances, has found that in most cases, a full-time participant is better off receiving Green Army allowance. The exception is for a 17-19 year old Youth Allowance recipient who is single, has a youngest child aged at least eight years of age and is exempt from the activity test for Youth Allowance due to special circumstances, such as having 3 or more children, or home schooling or facilitating distance education for their child(ren).<sup>10</sup>

2.12 The Department acknowledged that the suspension of income support payments simultaneously suspends any related concession cards, but advised that GAP participants will be eligible to apply for the Low Income Health Care Card.<sup>11</sup>

### **Exclusion of Green Army participants from Commonwealth legal protections**

2.13 Proposed new section 38J provides that certain persons participating in the GAP are neither workers nor employees for the purposes of various Commonwealth laws.<sup>12</sup> Submitters commented on the proposed exclusion from Commonwealth legal protections for Green Army participants, arguing that the usual protections should apply to participants as either trainees<sup>13</sup> or ordinary casual workers.<sup>14</sup>

2.14 The Law Council, which argued that GAP participants should be considered trainees, submitted that the programme is 'in essence a social enterprise job scheme' and 'other social enterprises pay award rates under employment conditions' (such as the BoysTown Employment Service and Enterprises).<sup>15</sup> Further:

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10 PJC-HR Fifth Report, quoting the Minister, response dated 17 March 2014, pp 1-2. Also see: Department, *Submission 4*, p. 5.

11 *Submission 4*, p. 5. In its submission, the Department erroneously referred to the Low Income Health Care Card as the Low Income Concession Card.

12 These Commonwealth laws cover workplace health and safety, workers compensation, superannuation, leave, job protection, anti-discrimination protection and fair dismissal procedures: see Law Council of Australia, *Submission 2*, p. 5.

13 Law Council of Australia, *Submission 2*, p. 6; National Union of Students, *Submission 3*, p. 3.

14 The Australia Institute, *Submission 1*, p. 2.

15 *Submission 2*, p. 6.

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Green Army participants do not appear to be covered by the *Commonwealth Volunteers Protection Act 2003* (Cth) as participants will be receiving Commonwealth remuneration for their activities.<sup>16</sup>

2.15 The Australia Institute, which argued that Green Army participants are essentially engaged in casual work, submitted that the Bill provides these workers with 'far fewer rights than ordinary casual workers', particularly as regards Commonwealth legal protections.<sup>17</sup>

### ***Workplace health and safety***

2.16 Submitters considered whether the Bill should exempt GAP participants from Commonwealth protections for workplace health and safety. These participants will be young people, including disadvantaged and vulnerable persons.<sup>18</sup> Both the National Union of Students (NUS) and the Law Council alluded also to the high incidence of injury and death among young workers.<sup>19</sup>

2.17 The NUS expressed its principal concern for the young people, 'many of whom have never been in full-time work [and who] should have the same or equivalent workplace protections and rights as other trainee workers'. The NUS submission argued that 'the publicly released information on [such] matters so far is scanty at best'. Further:

[T]he legislation should require that easily understood and clear information about participant workplace rights and protections must be provided to all potential participants prior to their decision to undertake the program.<sup>20</sup>

### ***Government's response***

2.18 The Department acknowledged that delivering the GAP will involve an element of risk and that the Department has a 'fully developed risk management system in place to provide for the health and safety of all those engaged in, and relevant to, [GAP] implementation'. This system includes existing legal protections, insurance cover, a risk management framework, regular reporting by service providers, and an audit and compliance scheme.<sup>21</sup>

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16 *Submission 2*, p. 5.

17 *Submission 1*, p. 2.

18 EM, p. 1.

19 Law Council of Australia, *Submission 2*, p. 6; National Union of Students, *Submission 3*, p. 3. Also see: Safe Work Australia, *Work-related injuries experienced by young workers in Australia 2009-10*, March 2013, p. viii, which reported that in 2009-10, 20% of Australian work-related injuries were experienced by workers aged under 25 years (a rate of 66.1 per 1,000 workers, 18% higher than the rate of 56.2 per 1,000 for workers aged over 25 years).

20 *Submission 3*, p. 3.

21 *Submission 4*, p. 6.

2.19 In relation to workplace health and safety, the Department and the Minister have consistently rejected the suggestion that Green Army participants are not covered by statutory protections:

[T]hey will be...afforded all the necessary work health and safety protections. The health and safety of participants engaged in the programme will remain governed by relevant statutes, regulations, by-laws and requirements of the state and territory regulations in respect to anti-discrimination and work health and safety laws.<sup>22</sup>

2.20 While service providers bear primary responsibility for the health and safety of Green Army participants, the Department noted that the Australian Government has also assumed a degree of responsibility:

The safety and wellbeing of Green Army participants is of paramount importance to the Australian Government. We want all participants – and their parents or guardians – to feel confident they are entering a safe working environment and know that appropriate protections and safeguards are in place. The Australian Government will work very closely with the service providers to ensure a range of workplace safety procedures are firmly in place including an agreed risk management framework [the Work Health and Safety framework] for project delivery. The Australian Government will also implement a Work Health and Safety audit and compliance scheme, involving audits of service providers and projects.<sup>23</sup>

2.21 On-the-ground measures designed to ensure the safety of GAP participants include the requirement for team supervisors to hold a current First Aid Certificate,<sup>24</sup> service providers to furnish a first aid kit for each project, and participants to complete mandatory first aid training prior to the commencement of a project.<sup>25</sup>

### ***Workers compensation insurance***

2.22 Service providers will be required to obtain and maintain all relevant insurances for the GAP. These insurances are: public liability insurance for not less than \$10 million per occurrence; workers' compensation insurance; motor vehicle insurance; compulsory third party motor vehicle insurance; personal accident insurance; and products liability insurance.

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22 PJC-HR Fifth Report, quoting the Minister, response dated 17 March 2014, p. 2. Also see: *Green Army FAQs*, p. 11. The Department of the Environment (Department) noted that the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Age Discrimination Act 2004* continue to apply to Green Army participants.

23 *Green Army FAQs*, p. 12.

24 Department, *Submission 4*, p. 5; Department, *Draft Deed of Standing Offer*, p. 27, available at: <http://www.environment.gov.au/system/files/pages/c93f88a9-2f8c-4aa8-b894-6c7837cccd63/files/deed-standing-offer-draft.pdf> (accessed 8 May 2014).

25 Department, *Green Army Programme Guidelines 2014-2017*, pp 35-36, available at: <http://www.environment.gov.au/cleaner-environment/clean-land/green-army/green-army-programme-guidelines-2014-2017> (accessed 8 May 2014).

2.23 Submitters focussed upon the provision of workers compensation insurance, with both the NUS and the Law Council intimating that the Bill does not sufficiently protect Green Army participants.

2.24 The NUS submitted that the Bill does not address the extent to which service providers will be required to provide workers compensation insurance, which itself:

...differs from workers compensation cover in that an injured participant is likely to have to demonstrate negligence by the provider. These disputes can take many years and great expense to resolve, and young volunteers are highly unlikely to have the resources to singlehandedly pursue such claims however meritorious they may be. As such, compared to workers generally, a lower standard of protection is being offered to Green Army participants[.]<sup>26</sup>

2.25 The Law Council remarked also on the obligation of project sponsors and service providers to ensure the safety of GAP participants. However, its submission contended that there is a significant difference between a contractual (civil) obligation and the sanctions of the criminal law which arise from workplace health and safety legislation:

A contractual obligation can be effectively delegated to someone else. A workplace health and safety law cannot be avoided by a contract. It is the surest way to ensure that those who are engaged in the [GAP] are properly protected from injury at work.<sup>27</sup>

2.26 The Law Council submitted further that a contractual obligation to the Commonwealth to protect workers from injury does not provide the workers themselves with any compensation or redress if they are injured at work:

It is a well-established principle that workers who are injured at work should be able to receive compensation for that injury. The failure to provide for such compensation is a matter of great concern. The provision of insurance cover will mitigate the risk to some extent, but it is not clear why voluntary workers should be disadvantaged relative to other trainee employees in relation to workplace health and safety and income protection.<sup>28</sup>

### ***Government's response***

2.27 The Department submitted that proposed new section 38J is consistent with similar programmes (which operated from 1997 to 2012) and section 631C of the *Social Security Act 1991*, which provides that income support recipients who are participating in an approved programme of work are not employees for the purposes of various Commonwealth Acts, including those specified in the proposed provision.<sup>29</sup>

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26 *Submission 3*, p. 3, quoting Mr Andrew Giles MP, Member for Scullion, *House Hansard*, 24 March 2014, p. 2886.

27 *Submission 2*, p. 6.

28 *Submission 2*, p. 6.

29 *Submission 4*, p. 4 and Annexure A at p. 10.

2.28 Further:

The programme is not an employment programme...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.<sup>30</sup>

2.29 On the issue of insurance, the Department noted that the Commonwealth will provide personal accident, public liability and products liability insurance to participants in the programme.<sup>31</sup> These insurances cover accidental bodily injury or accidental death sustained while participating in an approved activity and medical expenses not covered by Medicare.<sup>32</sup>

2.30 Further, in addressing the concerns of the Law Council, the Department advised that the Bill does not affect the application of state and territory laws to GAP participants:

Participants will be covered by relevant State and Territory laws in the same way as others in similar circumstances outside the [GAP]. The level of protection provided...will vary between jurisdictions.

Whether a participant who is injured while working on a project as part of the [GAP] would have an entitlement to receive workers' compensation payments will depend on the coverage of the State or Territory law which applies in the jurisdiction in which the service provider undertakes activities. The Bill does not affect State and Territory work health and safety laws or workers' compensation laws and therefore participants will not be disadvantaged relative to others in similar circumstances as a result of their participation in the [GAP].<sup>33</sup>

### **Efficacy of the programme's training component**

2.31 Two submitters – the NUS and The Australia Institute<sup>34</sup> – queried the efficacy of the GAP in providing participants with the skills and training which might lead to employment outcomes.

2.32 The NUS expressed doubts that the programme will deliver on its 'core aim of getting young unemployed people into meaningful full-time employment', citing research suggesting that the GAP will actually reduce participants' chances of finding on-going employment:<sup>35</sup>

Participation in the [Work for the Dole] program is found to be associated with a large and significant adverse effect on the likelihood of exiting

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30 *Submission 4*, p. 2. Also see: PJC-HR Fifth Report, quoting the Minister, response dated 17 March 2014, p. 2; Department, *Green Army FAQs*, p. 9; Explanatory Memorandum (EM), p. 4.

31 *Submission 4*, p. 4.

32 *Supplementary Submission 4.1*, p. 1.

33 *Supplementary Submission 4.1*, p. 1.

34 *Submission 1*, p. 2.

35 *Submission 3*, p. 3.

unemployment payments. The main potential explanation is existence of a 'lock-in' effect whereby program participants reduce job search activity.<sup>36</sup>

2.33 The NUS submitted that completion of an accredited qualification would mitigate this adverse effect, but highlighted that accredited training is a negotiable component of the GAP:

We are concerned that young people looking for work will be in an unequal bargaining position when trying to negotiate training outcomes with providers. The [NUS] submits that accredited training with a registered provider must be a core element of the [GAP] and not an optional extra.<sup>37</sup>

### ***Government's response***

2.34 The primary objective of the GAP is to deliver conservation outcomes for Australia, with Green Army teams 'engaged in activities that help communities deliver local priorities that will also contribute towards [sic] meeting a number of national and international obligations'. One of the programme's four strategic objectives is to provide participants with opportunities to undertake training which is recognised under the Australian Qualifications Framework.<sup>38</sup>

2.35 The Department indicated that the Australian Government's intention is to provide Green Army participants with flexible and individually tailored training, which best meets their needs:

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.

Service providers contracted for the [GAP] 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.

These training plans will help to assist participants in moving on from their Green Army placement.<sup>39</sup>

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36 Borland, J. and Tseng, Y. (2004), 'Does 'Work for the Dole' work?', University of Melbourne, Department of Economics and Melbourne Institute of Applied Economic and Social Research, Melbourne Institute Working Paper No. 14/04, Abstract.

37 *Submission 3*, p. 4.

38 *Submission 4*, pp 2 and 7.

39 *Submission 4*, p. 8.

## Conclusion

2.36 The Bill seeks to facilitate implementation of the Green Army Programme [GAP] by amending two Commonwealth Acts to clarify social security arrangements for persons participating in the programme. Submitters generally chose not to comment on the provisions of the Bill, electing instead to remark upon the policy underpinning both the Bill and the GAP.

2.37 The committee accepts that the GAP is first and foremost an environmental initiative, which additionally aims to deliver work-oriented training opportunities for young Australians. Evidence from the Department and the Minister clearly indicate that Green Army participants are not considered to be workers (casual or otherwise) or trainees under the National Training Award.

2.38 In regards to remuneration, the committee notes that the 'green army allowance' (allowance) potentially amounts to more than another form of income support to which the participants might otherwise be entitled. This is contingent on Green Army participants engaging in approved projects for up to 30 hours per week. The committee is of the view that the scheme should mandate a minimum number of work hours per week or per project to ensure that participants are provided with a base allowance, particularly in view of proposed new section 38H.

2.39 Submitters raised the very important issue of whether Green Army participants will be afforded sufficient protections as they engage in the programme. The Australian Government has emphasised that the health and safety of the young people undertaking approved projects is of fundamental importance. The committee agrees and commends the Department for proactively addressing this issue through a wide range of measures.

2.40 The committee acknowledges that Green Army participants will be covered by a 'risk management system', which includes the provision of various insurances by service providers and the Commonwealth, as well as the application of state and territory laws. In particular, the committee notes that workers' compensation laws will afford participants the same protections that are available to workers outside the programme.

2.41 At present, there are also practical measures built into the GAP to immediately address on-site injuries, including a requirement for team supervisors to hold a current First Aid Certificate. The committee endorses this requirement but considers that it would be highly beneficial for all members of a Green Army team to hold a First Aid Certificate and not simply receive mandatory first aid training of an unspecified nature. Not only does the holding of this certificate ensure the best possible response in the event of an emergency, it also contributes to a young person's formal skills and qualifications as they enter the workforce.

2.42 Finally, although few submissions were received for this inquiry, the committee notes that the Department recently undertook a consultation process in respect of the GAP, including with relevant government agencies. Over 100 submissions were received and used to construct the detail of the programme, which has been published online in a number of up-to-date documents (such as the Green

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Army Programme Guidelines 2014-17), as well as the development of the Bill.<sup>40</sup> The committee encourages the Department to continue making this information readily available to all persons and organisations interested in the programme.

2.43 In view of its conclusions above, the committee makes the following recommendations.

**Recommendation 1**

**2.44 The committee recommends that all participants in a Green Army team be required to hold a current First Aid Certificate prior to the commencement of an approved project.**

**Recommendation 2**

**2.45 The committee recommends that the Green Army Programme mandate a minimum number of hours per week or per project for all participants.**

**Recommendation 3**

**2.46 The committee recommends that the Bill be passed.**

**Senator Chris Back**

**Chair, Legislation**

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40 Department, *Submission 4*, p. 3.