

The Senate

Education and Employment
Legislation Committee

Social Security Legislation Amendment
(Green Army Programme) Bill 2014
[Provisions]

May 2014

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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.

CHAPTER 1

Introduction

1.1 On 17 March 2014, the Senate referred the Social Security Legislation Amendment (Green Army Programme) Bill 2014 (Bill) to the Education and Employment Legislation Committee (committee) for inquiry and report by 13 May 2014.¹

1.2 The Bill had previously been referred to the Community Affairs Legislation Committee for inquiry and report by 25 March 2014.² That committee determined that the issues raised in relation to the Bill would best be considered within the Education and Employment portfolio. Accordingly, the Community Affairs Legislation Committee tabled its report on 17 March 2014, recommending that the Bill instead be referred to the committee.³

Background

1.3 The establishment of a 'Green Army Programme' (GAP) was a Coalition commitment at the 2010 and 2013 federal elections.⁴ Following the 2013 federal election, the Coalition Government committed \$300 million over the forward estimates toward the new measure.⁵ The cost of the measure is expected to be partially offset by a reduction in income support payments in the Social Services portfolio.⁶

1.4 The GAP is a voluntary initiative for young people aged 17 to 24 years to participate for up to 30 hours per week in a variety of environmental conservation projects. The projects include activities such as restoring and protecting habitat, weeding, planting, cleaning up creeks and rivers, and conserving cultural heritage sites. Each project must be undertaken over a continuous period of 20 to 26 weeks.

1 *Journals of the Senate*, No. 19 – 17 March 2014, p. 612.

2 *Journals of the Senate*, No. 18 – 6 March 2014, pp 576-577.

3 *Journals of the Senate*, No. 19 – 17 March 2014, p. 612.

4 See: Liberal Party of Australia and The Nationals, 'The Coalition's plan for real action on the environment, climate change and heritage', *Coalition policy document*, Election 2010; Liberal Party of Australia and The Nationals, 'The Coalition's policy for a Green Army', *Coalition policy document*, Election 2013.

5 The Hon. Joe Hockey MP, Treasurer, and Senator the Hon. Mathias Cormann, Minister for Finance, Mid-Year Economic and Fiscal Outlook 2013-14 (MYEFO 2013-14), p. 141. A further \$222.1 million and \$289.2 million have been earmarked for the financial years 2017-18 and 2018-19, respectively.

6 The Hon. Joe Hockey MP, Treasurer, and Senator the Hon. Mathias Cormann, Minister for Finance, MYEFO 2013-14, p. 142.

1.5 One or more external service providers are to deliver the GAP, including the recruitment of participants, and the establishment, management and training of the teams which will implement approved projects (Green Army Team). Green Army Teams will be comprised of nine participants and one team supervisor.

1.6 Participants will receive a 'green army allowance' (allowance) of between \$10.14 per hour and \$16.45 per hour. Team supervisors are employed by the relevant external service provider and are paid a wage, as negotiated between the individual and the employer.

1.7 Participants in the GAP will also have the opportunity to undertake vocationally-oriented accredited training qualifications (Certificate I/II) or nationally endorsed skills sets, to be delivered under the Australian Qualifications Framework by Registered Training Organisations.⁷

1.8 The GAP will commence on 1 July 2014, with 250 projects approved and undertaken in its first financial year. The number of approved projects is expected to increase to 1,500 projects in 2018-19:

The Coalition will create a standing 'Green Army' that will gradually build to a 15,000 strong environmental workforce. We will create and properly resource the Green Army, as a larger and more lasting version of the former Green Corps. It will be Australia's largest-ever environmental deployment.⁸

1.9 On introduction of the Bill into the Parliament, the Hon. Greg Hunt MP, Minister for the Environment, emphasised that the GAP is 'both an environment and a training program'.⁹ Further, at the broader level:

[T]he Green Army is a central component of the government's cleaner environment plan which is focused on the four pillars of clean air, clean land, clean water and heritage protection.¹⁰

Purpose and key provisions of the Bill

1.10 The Bill seeks to amend the *Social Security Act 1991* (Act) and the *Social Security (Administration) Act 1999* (Administration Act), to clarify social security arrangements for participants receiving the allowance paid under the GAP.¹¹

7 Australian Government, *Green Army Programme Guidelines 2014-2017*, March 2014, p. 36.

8 Liberal Party of Australia and The Nationals, 'The Coalition's policy for a Green Army', *Coalition policy document*, Election 2013, p. 4. Also see: the Hon. Greg Hunt MP, Minister for the Environment, Second Reading Speech, *House Hansard*, 26 February 2014, p. 3; Explanatory Memorandum (EM), p. 1. The Green Corps – Young Australians for the Environment programme was established in 1996, to provide young people aged 17 to 20 years with the opportunity to participate in environmental conservation and restoration projects for up to six months.

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

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

11 EM, p. 1.

1.11 Item 2 of Schedule 1 inserts new Part 1.3A – Green Army Programme into the Act to:

- clarify that a social security benefit or social security pension is not payable to a person who is receiving an allowance (proposed new section 38H);¹²
- provide that certain persons participating in the GAP are not workers or employees for the purposes of various Commonwealth laws, including: the *Work Health and Safety Act 2001*; the *Safety, Rehabilitation and Compensation Act 1988*; and the *Fair Work Act 2009* (proposed new section 38J);
- outline income test arrangements for a person's social security pension, if an allowance is payable to the person's partner during the same instalment period (proposed new section 38K).

1.12 In addition, item 5 of Schedule 1 will amend current section 118 of the Administration Act, to specify that a determination relating to the non-payment of a social security benefit or social security pension to a person receiving an allowance may be backdated (proposed new subsection 118(2C)).

Conduct of the inquiry

1.13 The committee advertised the inquiry in *The Australian* on 2 April 2014. Details of the inquiry, including a link to the Bill and associated documents, were placed on the committee's website at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment. The committee also wrote to 91 organisations and individuals, inviting submissions by 17 April 2014. Submissions continued to be accepted after that date.

1.14 The committee received five submissions, which are listed at Appendix 1 and published on the committee's website.

Acknowledgements

1.15 The committee thanks those organisations and individuals who made submissions to the inquiry.

12 The Social Security Legislation Amendment (Green Army Programme) Bill 2014 does not affect entitlements to family assistance and child care payments, which will remain payable to participants, where eligible.

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).¹ 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.²

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.³

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).⁴

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 44th 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.⁵

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.⁶

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.⁷

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).

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.⁸

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.⁹

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).¹⁰

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.¹¹

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.¹² 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 trainees¹³ or ordinary casual workers.¹⁴

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).¹⁵ Further:

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.

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.¹⁶

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.¹⁷

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.¹⁸ Both the National Union of Students (NUS) and the Law Council alluded also to the high incidence of injury and death among young workers.¹⁹

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.²⁰

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.²¹

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.²²

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.²³

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,²⁴ 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.²⁵

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.

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[.]²⁶

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.²⁷

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.²⁸

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.²⁹

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.³⁰

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.³¹ These insurances cover accidental bodily injury or accidental death sustained while participating in an approved activity and medical expenses not covered by Medicare.³²

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].³³

Efficacy of the programme's training component

2.31 Two submitters – the NUS and The Australia Institute³⁴ – 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:³⁵

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

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.³⁶

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.³⁷

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.³⁸

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.³⁹

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

Army Programme Guidelines 2014-17), as well as the development of the Bill.⁴⁰ 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

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

AUSTRALIAN GREENS DISSENTING REPORT

Introduction

1.1 This program is an ill-conceived response to the enormous environmental damage our community faces and does not adequately address the most important environmental challenge of our time - climate change.

1.2 It is very unlikely to deliver genuine, lasting environmental outcomes and it fails to support young people in finding meaningful work. It is very likely to entrench young people in unemployment and poverty, while diverting energy and resources away from more effective environmental programs.

1.3 It devalues the work of those who have trained for and pursued careers in environmental protection and, due to the voluntary nature of the individual training component, offers no genuine pathways into ongoing employment for those who participate in the program.

1.4 For those who participate, there is no guarantee that it will be any more effective or less degrading than the previous incarnations of this program, such as the Green Corp and Work for the Dole.

1.5 On the weight of the evidence supplied to the committee, the Australian Greens do not believe that this Bill should be passed.

1.6 This dissenting report will outline some of our key reasons why this Bill should not be passed and this remains our overarching position, however this report will also take the opportunity to provide some recommendations that could lessen, but not completely offset, the negative impacts of this program if it were to proceed.

The lack of accredited training pathways

1.7 While improving on previous incarnations of this program by introducing flexible accredited training options, this program still fails to provide appropriate training and support to applicants.

1.8 In the Green Army Programme, accredited training is an optional extra to be negotiated with each individual rather than a core feature of the program. This has the potential to be flexible and responsive to the individual needs of the program participant, however, the National Union of Students submission notes that:

We are concerned that young people looking for work will be in an unequal bargaining position when trying to negotiate training outcomes with providers.¹

1.9 For young people who are disengaged from learning and the workforce, it is unlikely that they will know in advance of starting the program what sort of training might lead to a positive personal outcome. Beyond a minimum level of initial on-the-job training, the training component is actually optional, and there is no reason given as to why participants are likely to opt-in to additional activity requirements.

1.10 This is coupled with the fact that there is no incentive within the program funding for program coordinators to introduce another level of complexity to their program by encouraging participants to develop a genuinely tailored training plan or deliver specific training programs. The program selection criteria only asks organisations who are submitting an application to identify suitable training programs ‘where possible’ rather than requiring that accredited training programs be integrated into the program design.

1.11 The Australian Greens agree with the National Union of Students that beyond the initial project safety and cultural awareness training, accredited training with a registered provider should be a core element of the Green Army Programme and not an optional extra.

1.12 Furthermore, in order to offer genuine training opportunities which lead to long-term outcomes there should be a built in periodic review of individual Participation Agreements that provide an opportunity for participants to seek additional training as their experience and skills develop.

Recommendation 1

1.13 That beyond the initial WHS and cultural awareness training, accredited training with a registered provider is implemented as a core element of the Green Army Programme rather than an optional extra, and that service providers and team supervisors are contractually obligated to ensure that participants are fully informed of their training options.

Recommendation 2

1.14 That participant program plans include a built in periodic review of individual Participation Agreements and that all training options are presented to the participant as part of this review.

1 National Union of Students, *Submission 3*, p.4.

The denial of workers conditions and insurance

1.15 The Australian Greens are also extremely concerned that participants in the Green Army Programme will not have access to an appropriate number of hours or the basic employment protections that other trainees are entitled to.

1.16 Suspending access to income support payments is extremely problematic if the programs do not at least meet the income provided through a social security payment.

1.17 Because there is no minimum guarantee of hours, it is possible for individuals under the program to be worse off than if they were on Youth Allowance.

1.18 The Australia Institute submission points out that:

The program plans to pay people for up to 30 hours a week for up to 26 weeks but we do not know if the hours are to be regular nor how they are to be agreed between the ‘employer’ and participant. It would be a cruel outcome if participants were motivated to join but found they were earning less than they had been on Newstart because the hours were not there. Likewise someone who is sick or has other sudden family caring responsibilities may suffer a drop in income. It is not clear that there are leave arrangements that would be available to ordinary workers.²

1.19 In effect participants are engaged in casual work and should either be guaranteed a minimum number of hours, and appropriate sick and carer leave provisions under the Bill, or should be able to retain access to income support payments, with the income obtained through the program being treated as it would be from any other source – i.e. effectively reducing the income support payable.

Recommendation 3

1.20 That the Green Army Programme either be considered as ordinary income and participants remain eligible for income support OR there is a mandated minimum number of hours per week that ensures that the amount received by the participant is not less than the amount they would have received under Youth Allowance. If the age limit of the scheme is expanded, this guarantee of income should be pegged to the amount received under Newstart for those eligible for the Newstart payment.

1.21 The Bill removes Commonwealth protections for Green Army Programme participants. Participants in the Green Army Programme are not regarded as employees or trainees. Participants will not be entitled to the protection of workplace health and safety laws and workers compensation laws, superannuation, leave, job protection, anti-discrimination protection or fair dismissal procedures.

1.22 While this is consistent with earlier programs such as Green Corps – as outlined by the Department of Employment Annex attached to the Department of Environment Submission – there is no good reason why this Bill should continue this practise.

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

1.23 Continuing this practise of denying participants the status of trainees suggests that for all the rhetoric about ‘having highest regard for Participant safety, wellbeing and personal need and development’ along with providing ‘opportunities to undertake training recognised under the Australian Qualifications Framework’³, this program is not a genuine training program and will continue many of the disempowering and exploitative practises of those earlier programs.

1.24 Given that many program participants are likely to be highly vulnerable, with some having just left school, they should be afforded the strongest possible workplace protections.

1.25 When a program participant is not considered an employee, the practical effect is that:

Even where insurance is in place, it 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, particularly given the physical and outdoor nature of the tasks they are doing.⁴

1.26 The Law Council expands on the consequence of denying Green Army Programme participants adequate legal protections:

The Green Army Programme Guidelines do provide that Project Sponsors and their subcontractors must comply with the provisions of all relevant work health and safety laws, provide a safe working environment, and develop project specific work health and safety plans...However there is a significant difference between a contractual obligation to ensure safety (which might, if breached, mean that a service provider has their contract terminated) and the sanctions of criminal law that come with being bound by workplace health and safety legislation.⁵

1.27 The Australian Greens agree with the Law Council, that formal legal protections, rather than contractual ones, are the appropriate way to ensure that those who are engaged in the scheme are properly protected from injury at work. Delegating this responsibility to the service provider clearly does not provide adequate protection and the law society demonstrates the main consequence of this as being 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... The provision of insurance cover will mitigate the risk to some extent, but it is not clear why voluntary workers

3 Department of the Environment, *Green Army Project Guidelines Round 1*, 2014. Available at: <http://www.environment.gov.au/system/files/resources/66ba56e8-e7f7-4de4-8163-edbdfa73f26f/files/green-army-project-guidelines2.pdf> (accessed 11 May 2014).

4 National Union of Students, *Submission 3*, p. 3.

5 Law Council of Australia, *Submission 2*, p. 6.

should be disadvantaged relative to other trainee employees in relation to workplace health and safety and income protection.⁶

1.28 The submission by the Law Council goes on to recognise that these participants are also not covered by the Commonwealth Volunteers Protection Act 2003 (Cth) as participants will be receiving Commonwealth remuneration for their activities.⁷ This means that the normal protections against workplace discrimination are also weakened by this Bill.

1.29 Under previous schemes participants were covered by state and territory employment laws, but this will no longer be the case. Since most states and territories referred their industrial relations powers to the Commonwealth in 2010, the Fair Work Act 2009 and the National Employment Standards contained in it have been the framework for a national workplace relations system which includes all private sector employment, other than employment by non-constitutional corporations in Western Australia.

1.30 Workers who are injured at work should be able to receive compensation for that injury. Workers who are harassed, bullied or discriminated against should be able to turn to the relevant Commonwealth Ombudsman. The structure of this Bill does not offer these guarantees.

1.31 The Australian Greens will not support any ‘workforce’ program where the workers are not legally workers and have no workplace rights.

Recommendation 4

1.32 That the failure to provide adequate legal protections be addressed in the Bill.

The absence of administration funding

1.33 The Australian Greens recognise that providing ongoing training and support, and designing and implementing programs that will lead to genuine outcomes, requires administration funding for both the Sponsor and Service Provider organisations. Yet, the project guidelines do not demonstrate that this funding will be provided for.

1.34 A lack of administrative funding will prevent organisation from delivering quality programs that have genuine environmental and social benefits.

6 Law Council of Australia, *Submission 2*, p. 6.

7 Law Council of Australia, *Submission 2*, p. 5.

Recommendation 5

1.35 That administrative funding be included in the program funding to sponsor organisations, and where appropriate, service providers.

The failure to address work readiness

1.36 Even if the concerns about training, program design and workers legal conditions can be resolved, the Australian Greens are unconvinced by the statements made by the Department of Environment to this inquiry that this program will lead to work-readiness or genuine environmental outcomes.

1.37 The Department of Environment submission asserts that this program will ensure that job seekers will be more competitive in the labour market:

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.⁸

1.38 Yet the Department has elsewhere acknowledged that the skills obtained by the participants through the program are unlikely to lead to employment in the environmental area. This is best demonstrated in the information provided by the Department about the project guidelines.

1.39 The concerns of those organisations that participated in the Department's consultation process were acknowledged and summarised by the Department as follows:

There is likely to be a lack of employment opportunities for Participants, upon completion of their Green Army placement, due to the low availability of jobs in the NRM industry. They may also need longer to acquire the relevant skills and experience to be competitive in this industry. It was also suggested that these qualifications can be obtained relatively easily outside the programme and that Certificates I and II are not normally competitive in seeking work (Cert III is often a minimum requirement).⁹

1.40 And the direct response from the Department was not to address these concerns but rather to acknowledge that:

The primary focus of the Programme is the delivery of environmental and heritage conservation projects. The Programme is not a job placement initiative. Training will be provided to assist Participants to obtain a Certificate I or II qualification but will also provide nationally endorsed

8 Department of the Environment, *Submission 4*, p. 9.

9 Department of the Environment, *Thematic Issues Raised by Submissions on Draft Green Army Programme Statement of Requirements*, 2014, p.1. Available at: <http://www.environment.gov.au/system/files/pages/46eb6bb3-ba0f-43c3-85a3-3da68d32f7b7/files/summary-sor.pdf> (accessed 11 May 2014).

skill sets to assist Participants' readiness to move into study and employment.¹⁰ (Emphasis added)

1.41 Participants are likely to have been attracted to the program, in part, because they will not have to satisfy mutual obligations requirement to look for work.

1.42 If accepted into the program, 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. In addition, the job seeker would no longer be required to report to, or work with, their Job Services Australia (JSA) provider, although may choose to do so.¹¹

1.43 The result of this is that job seekers are no longer actively looking for permanent work or connected to their job service agency.

1.44 A training program should lead to clear employment prospects but given that accredited training is not necessarily a part of the program, there is no guarantee that participants will build their skill level to that required for further employment. As discussed in the section on training, there is no guarantee that this program will boosted their skills enough for them to be considered job ready. See our comments and earlier recommendations on training.

1.45 Given this program does not guarantee an employment outcome, it should at least ensure ongoing links with a job service provider who is obligated to provide trainees with ongoing advice and support and quickly transition participants into other training or employment opportunities at the end of the program. While the program guidelines state that participants can volunteer to remain in contact with their JSA, the policy settings are such that job service providers are not incentivised to maintain these links.

Recommendation 6

1.46 That the interaction between participation in this program and access to ongoing support from a job service agency be clarified and strengthened.

Recommendation 7

1.47 That there is a clear exit pathway from this program back to a job service agency and access to stream 2 or higher levels of support that ensure participants are quick transitioned to employment or study.

10 Department of the Environment, *Thematic Issues Raised by Submissions on Draft Green Army Programme Statement of Requirements*, 2014, p.1. Available at: <http://www.environment.gov.au/system/files/pages/46eb6bb3-ba0f-43c3-85a3-3da68d32f7b7/files/summary-sor.pdf> (accessed 11 May 2014).

11 Department of the Environment, *Submission 4*, p. 9.

The failure to invest appropriately in environmental protection

1.48 Even if the recommendations above were implemented, the readiness to move into study or employment is not particularly useful if there are neither jobs nor transition pathways available to the program participants.

1.49 The reality is that this Government is putting more pressure on environmental funding and is likely to reduce rather than increase the number of employment opportunities available to young people in natural resource management. The dismantling of the Biodiversity fund, which would have injected millions of dollars of program funding into NRM is a prime example of this.

1.50 Previous programs that directed unskilled workers to undertake environmental protection work have been largely unsuccessful in delivering significant and lasting environmental outcomes.

1.51 For example, Murdoch University Professor of Sustainability Glenn Albrecht is reported as having said:

If it's really just weeding and tree planting, similar to the sorts of things that were done under the Howard government's programs, a lot of that work, particularly in periods of savage drought, was simply undone because there was no long-term follow up.¹²

1.52 These programs could offset this by providing a genuine entry into environmental management for young people, and provide a new generation of skilled workers who can deliver the environmental services that Australia desperately needs if we intend to undo the damage that has been done by poor land management policies in the past.

1.53 In considering the role that the Green Army will play in the provision of environmental services, The Australia Institute cautions that:

Special care needs to be taken to ensure that program sponsors are not merely substituting activities they would normally undertake with an ordinary workforce with Green Army Social Security Legislation Amendment (Green Army Programme) Bill 2014 workers on cheap casual wages with fewer on-costs. It should not be a program for providing and alternative cheap workforce for rural and regional employers.¹³

1.54 The Green Army Programme may increase the number of people working on the landscape but, by its very nature, as a training program it cannot replace the work of skilled environmental workers. Yet, if Landcare and Natural Resource Management funding is cut further, there will not be enough funding to continue the environmental strategies that this program is meant to supplement.

12 G Moore, 'Abbott's recycled Green Army policy', Newmatilda.com, 13 August 2013. Available at: <https://newmatilda.com/2013/08/13/abbotts-recycled-green-army-policy> (accessed 11 May 2014).

13 The Australia Institute, *Submission 1*, p. 3.

1.55 The Australian Greens are concerned that this program will be used in exactly that way, to replace rather than expand our pool of environmental workers and will further undermine the quality of Australia's conservation workforce by taking away well-paid, well-protected jobs and replacing them with low-paid, unsafe jobs.

Recommendation 8

1.56 That this Government invest in environmental services and expand rather than cut current programs such as Caring for Our Country, Landcare and the Biodiversity Fund.

Conclusion

1.57 It is nothing short of exploitative to direct tens of thousands of unskilled young people into short term projects which will not lead to permanent employment simply to cover up the fact that this Government is not prepared to take genuine action on environmental issues. This is particularly disturbing given that this Government is also cutting back on both higher education funding and the supports that are available to help young people enter the workforce on a permanent basis.

Recommendation 9

1.58 That this Bill not be passed, until such time as participation in environmental training programs is backed up by long term ongoing funding in natural environment and heritage projects that would generate employment pathways for those who complete appropriate training programs that have been designed in partnership with the environment and job services sectors.

Senator Lee Rhiannon
Australian Greens

Senator Rachel Siewert
Australian Greens

APPENDIX 1

Submissions received

- 1** The Australia Institute
- 2** Law Council of Australia
- 3** National Union of Students
- 4** Department of the Environment
- 5** Australian Services Union (ASU)