Social Security Legislation Amendment (Green Army Programme) Bill 2014

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Contents

Purpose of the Bill ................................................................. 3
Background ........................................................................... 3
Green Army programme ....................................................... 3
Green Corps programme ....................................................... 4
National Green Jobs Corps program .................................... 5
Committee consideration ....................................................... 5
Senate Standing Committee for the Scrutiny of Bills ............... 5
Parliamentary Joint Committee on Human Rights ................. 5
The right to social security .................................................... 5
The right to work ................................................................. 6
Policy position of non-government parties/independents ..... 6
Opposition ........................................................................... 6
The Greens .......................................................................... 6
Position of major interest groups ......................................... 6
Australian Council of Trade Unions (ACTU) ....................... 6
Financial implications ............................................................ 7
Statement of Compatibility with Human Rights ................. 7
Key issues and provisions ..................................................... 7
Remuneration for programme participants ......................... 7
Workplace protections for programme participants ............... 7
Green Army and the environment ....................................... 8

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Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation

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Purpose of the Bill
The purpose of the Social Security Legislation Amendment (Green Army Programme) Bill 2014 (the Bill) is to amend the Social Security Act 1991 and Social Security (Administration) Act 1999 to specify:

- that recipients of green army allowance are not also able to receive a social security benefit or pension (with the exception of family assistance and child care payments, where participants are eligible)
- the income testing arrangements that will apply to the social security pension of a green army participant’s partner and
- that participants in the Green Army programme who are not Green Army Team Supervisors are not to be treated as workers or employees for the purposes of certain Commonwealth laws.

Background
Green Army programme
The establishment of a Green Army programme was a Coalition commitment at both the 2010 and 2013 federal elections. The measure was included in the Coalition Government’s December 2013 Mid-Year Economic and Fiscal Outlook, with the Government committing $300 million over the forward estimates period towards it. This represents a reduction from the $400 million that was announced by the Coalition in the lead up to the 2010 election. It is anticipated that these costs will be partially offset by a reduction in income support payments that would otherwise be paid to many programme participants.

Under the Green Army programme, from July 2014 young volunteers aged between 17 and 24 years will participate for up to 30 hours per week in environmental conservation projects. These projects, which are to run for between 20 and 26 weeks, will undertake tasks such as tackling land degradation, cleaning up riverbanks and creek beds and re-vegetating sand dunes and mangrove habitats. Green army participants will receive an allowance of between $10.14 and $16.45 per hour and be provided with necessary work clothing and equipment. The current full-time minimum wage for adults is $16.37 per hour, with trainees, apprentices and juniors who do not have an award agreement being paid a percentage of this rate that increases with age.

In its first year, the programme is to deliver 250 projects with around 2,500 participants. By 2018–19 the Government anticipates that the programme will have grown to 1,500 projects per year, with around 15,000 participants.

It is worth noting that, beyond the basics, there is not a great deal of publicly available information about the programme, as yet. This information is largely confined to the details provided on the Department of the Environment website and in the Green Army Programme Draft Statement of Requirements Consultation Process document.

The Government has indicated on a number of occasions that in introducing the Green Army programme, it is seeking to reinstate the Green Corps programme that was started by the Howard Government as an alternative to work for the dole programs. It maintains that this programme was undermined by the Rudd-Gillard

3. The allowance figures are given in the Green Army Programme draft statement of requirements consultation process document.
4. From 1 July 2013, 17 year olds are paid $9.46 per hour (57.8%), 18 year olds $11.18 (68.3%), 19 year olds $13.51 (82.5%) and 20 year olds $16.00 (97.7%). Fair Work Ombudsman, ’National minimum wage’, webpage, accessed 13 March 2014. As such, the green army allowance figures cited in the Green Army Programme Draft Statement of Requirements Consultation Process document do not match the minimum wage rates. It is worth noting that there is no mention of whether or not the green army allowance includes things like leave entitlements and sick leave. If it does not, then the allowance is unequivocally less than the minimum wage.
Government through its being shifted away from a specific youth focus and being made into a work for the dole-like activity.\(^7\)

**Green Corps programme**

The original Green Corps programme was announced in the federal budget on 20 August 1996, commenced in 1997, and continues to operate today under Job Services Australia, albeit in a substantively different form.\(^8\) (The Green Corps programme bore some resemblance to the LEAP (Landcare and Environment Action Programme) that was established by the Keating Government in 1992. See the Appendix for a brief description of the LEAP programme and its similarities and differences to the Green Corps programme.)

In its original iteration, the Green Corps programme was open to all young Australians between 17 and 20 years of age. It gave young people the opportunity to participate in environmental conservation and restoration projects for a period of six months. While participating in these projects, participants received accredited training in skills such as bush restoration techniques, habitat protection and restoration and environmental rehabilitation. Upon completing a project, participants who moved on to accredited further education or training were able to apply for a grant of $500.

While the Department of Employment, Education, Training and Youth Affairs (DEETYA) had administrative responsibility for the programme, it consulted with Environment Australia on matters related to environmental outcomes.\(^9\) The overall running of the programme was delegated to a Green Corps Advisory Committee, which was made up of Parliamentary and Departmental Secretaries from the DEETYA and Environment portfolios. DEETYA contracted the Australian Trust for Conservation Volunteers (ATCV) to administer and manage the programme nationally on a day-to-day basis. While ATCV was able to sub-contract projects to other organisations, it was ultimately responsible for programme participants and outcomes from the projects.

While participating in the programme, volunteers were paid a training allowance that was based on the National Training Wage (in line with their age, experience and the time that had elapsed since they had left school). This allowance was paid directly by the ATCV. While many participants had previously been unemployed and receiving Job Search or Youth Training Allowance, as noted above, the programme was open to all Australians between 17 and 20 years of age.

Various changes have been made to the programme over the years, but arguably the most significant of these came with the Rudd-Gillard Government’s introduction of Job Services Australia in 2009. Job Services Australia replaced the previous model of employment services, the Job Network, which was found to be no longer appropriate to meet the needs of difficult-to-place job seekers, the long-term unemployed or the skills needs of employers.

Under Job Services Australia, three main changes were made to the Green Corps programme. Firstly, participation in the programme was confined to unemployed people who receive income support payments. Secondly, the programme was no longer youth-specific, with participation expanded to include people of all ages who were unemployed and in receipt of Job Services Australia assistance. And, thirdly, the programme was no longer, strictly speaking, voluntary. It became one of a number of other approved Work Experience Activities (such as Work for the Dole and Drought Force) that were compulsory for job seekers who had been registered as an eligible job seeker for 12 months or more.\(^10\)

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7. See for example Liberal Party of Australia and the Nationals, *The Coalition’s policy for a Green Army*, op. cit. Unemployed young people are able to participate in the Green Army programme as an alternative to work for the dole programmes and receive a green army allowance. Alternatively, they may participate in the programme part time as a means of meeting their mutual obligations requirements while continuing to receive income support payments. As such, it is not clear whether or not the existing Green Corps programme is to be retained, perhaps for older unemployed people who do not qualify for Green Army programme participation.


10. If an employment services provider feels that a job seeker could benefit from participation in Work Experience Activities before they are required to do so (that is, after having been unemployed for 12 months), then they are able to refer them to such activities. All Green Corps programme participants receive a $20.80 supplement payment per fortnight, to assist with their transport expenses.
The programme has diminished in size over recent years. On 31 March 2013 there were 166 job seekers undertaking Green Corps activities in 18 projects throughout New South Wales, Queensland, South Australia and Victoria. Between 1 July 2009 and 31 March 2013, there were 2,071 Green Corps participants. The programe has diminished in size over recent years. On 31 March 2013 there were 166 job seekers undertaking Green Corps activities in 18 projects throughout New South Wales, Queensland, South Australia and Victoria. Between 1 July 2009 and 31 March 2013, there were 2,071 Green Corps participants. More recently, the Rudd-Gillard Government introduced a temporary program—the National Green Jobs Corps program—that displayed one of the characteristics of the original Green Corps programme, namely a focus on youth.

**National Green Jobs Corps program**

The National Green Jobs Corps program commenced on 1 January 2010, was closed to new participants on 31 December 2011, and expired on 30 June 2012. The National Green Jobs Corps program was introduced by the Rudd-Gillard Government in response to the global financial crisis, largely as a means to help combat youth unemployment in a time of economic downturn. It was also intended to assist in tackling environmental problems and the impacts of climate change.

The program was a 26 week environmental work experience and training program that was targeted at low-skilled 17 to 24 year olds. Participants undertook work experience and skills development on environmental and heritage projects, with 130 hours of this training leading to a nationally-recognised qualification (such as a Certificate I or a Certificate II qualification in horticulture or conservation and land management). National Green Jobs Corps projects were delivered by providers who were successful in tendering for National Green Jobs Corps services.

Participation in the program enabled young unemployed people to meet their participation obligations for the receipt of income support. In addition, a supplement of $41.60 per fortnight was provided to those young people who participated in the program.

The National Green Jobs Corps program was thus similar to the original Green Corps programme with respect to its focus on youth, one difference being that the upper limit for participation was 24 rather than 20 years. The main difference between the two was, of course, that National Green Jobs Corps program participants received income support rather than a training allowance.

**Committee consideration**

The Bill has been referred to the Senate Community Affairs Legislation Committee for inquiry and report by 25 March 2014.

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee has considered the Bill and has not made any comments.

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights (the Committee) has expressed two main concerns in relation to the Bill. The Committee is of the view that the Bill engages the right to social security and the right to work, neither of which has been addressed in the Bill’s statement of compatibility.

The right to social security

The UN Committee on Economic, Social and Cultural Rights (CESCR) has stated that social security should be available, adequate and accessible. The Committee contends that in excluding Green Army programme participants from receiving other social security benefits or pensions, the Bill may limit the right to social security. The Committee goes on to observe, after CESCR, that the right to social security ‘may be subject to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and

12. While it may be argued that the National Green Jobs Corps program is essentially a rebadged Coalition Government initiative, it has equally been argued that the Coalition Government’s Green Corps Programme was itself, to all intents and purposes, a rebadged Labor initiative. See Appendix A for further details.
solely for the purpose of promoting the general welfare in a democratic society’. As the Committee sees it, ‘it is necessary for the government to demonstrate that the measure pursues a legitimate objective and has a reasonable relationship of proportionality between the means employed and the objective sought to be realised’.

The Committee also notes that it is unclear whether or not participants’ may actually be worse off by virtue of their receiving the green army allowance rather than income support and whether the allowance ‘will be sufficient to meet minimum essential levels of social security’.

The right to work
The Bill seeks to amend the Social Security Act 1991 to specify that Green Army programme participants who are not Green Army Team Supervisors are not to be treated as workers or employees under certain Commonwealth laws, including the Work Health and Safety Act 2011, the Safety Rehabilitation and Compensation Act 1988 and the Fair Work Act 2009.

As the Committee sees it, ‘the exclusion of [Green Army programme] participants from such laws may constitute a limitation on the right to just and favourable conditions of employment’ as specified in Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). While the Committee notes that participation in the programme is voluntary, it suggests that because the participation may be on a full-time basis and constitute a participant’s sole means of earning a living it should be treated as work and participants as workers or employees under the abovementioned Commonwealth laws.

The Committee is seeking further information from the Minister on the above matters.

Policy position of non-government parties/independents

**Opposition**
Labor’s Environment spokesman, Mark Butler is reported to have expressed some concerns about the programme, and called for more details on how it is to work: ‘with only four months until this program is due to start, no one is clear on the specific detail about how the Green Army will work. Of considerable concern are the exemptions from work health and safety, compensation and industrial relations laws’.

**The Greens**
Greens MP, Adam Bandt is reported to have had similar concerns about the programme, stating ‘only Tony Abbott could create a ‘workforce’ where the workers aren’t legally workers and have no workplace rights. If a green army supervisor and a worker under their command get injured while wielding a pick or building a lookout, the supervisor will have the same safety and compensation protections as ordinary employees but the worker won’t.’

The issue of workplace protections for programme participants is considered in the key issues and provisions section, below.

Position of major interest groups

**Australian Council of Trade Unions (ACTU)**
ACTU president, Ged Kearney is reported to have been highly critical of the Green Army Programme, stating ‘this is about taking away well-paid, well-protected jobs from people and replacing them with low-paid, unsafe jobs. This is not about getting people on the margins of the workforce into work; this is about providing a low-paid workforce’.

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15. Ibid.
16. Ibid.
17. Ibid., p. 13.
19. Ibid.
Financial implications

While the Green Army programme itself has financial implications, as the Explanatory Memorandum notes, the Bill itself does not.

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act.21 The Government considers that the Bill is compatible.

Key issues and provisions

Remuneration for programme participants

Proposed section 38H, to be inserted into the Social Security Act,22 specifies that a social security benefit or pension will not be payable to a person who is in receipt of green army allowance.23 This is to ensure that there is no double-dipping, with Green Army programme participants simultaneously claiming green army allowance and income support payments.24

It should be noted that because Green Army programme participants will not receive income support payments, they will also not qualify for various associated concession cards, supplements and allowances (such as rent assistance, health care card and pharmaceutical allowance). When this is taken into account, and because the green army supplement is paid at the rate of the minimum wage for 30 hours a week, a number of programme participants are likely to receive not much more than they would were they in receipt of income support payments. The Parliamentary Joint Committee on Human Rights has flagged this issue in its report on the Bill.

Workplace protections for programme participants

Most concerns about the Bill have been expressed in relation to the removal of Commonwealth protections for programme participants (other than Green Army Team Supervisors).

Proposed section 38J, to be inserted into the Social Security Act,25 provides that a participant in the Green Army programme is not a worker for the Commonwealth, is not an employee of the Commonwealth for the purposes of the Work Health and Safety Act 2011, nor an employee within the meaning of section 5 of the Safety, Rehabilitation and Compensation Act 1988, and is not an employee for the purposes of the Fair Work Act 2009.

Several commentators have expressed concern at the perceived lack of protection for programme participants that this provision would entail.26 In his second reading speech, Environment Minister Greg Hunt noted that the arrangements would be similar to those of previous programs like Work for the Dole and Green Corps.27 Accordingly, the provision raises two sets of issues.

The first is whether protection under previous schemes has been adequate. In some states and territories, workers in such schemes have been covered by health and safety legislation. In most, they have not been covered by workers’ compensation. Concerns were raised early in the Work for the Dole scheme and the Green

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21. The Statement of Compatibility with Human Rights can be found at page 6 of the Explanatory Memorandum to the Bill.
22. Item 2, Schedule 1 of the Bill.
23. The Bill does not impact on Green Army programme participants’ entitlement to family assistance and child care payments, where they are eligible, as these are paid under family assistance law and are not treated as pensions or benefits.
24. See Explanatory Memorandum, Social Security Legislation Amendment (Green Army Programme) Bill 2014, pp. 3–4, accessed 17 March 2014. In its review of the original Green Corps Programme, the ANAO drew to DETYA’s attention the fact that insufficient attention had been paid to managing the risk of duplicate payments being made to Green Corps Programme participants. DETYA followed this up with Centrelink and the ATCV and found that all Green Corps Programme participants were covered by data matching arrangements between Centrelink and the Australian Taxation Office, which would identify any duplication of Commonwealth payments to participants. It would appear that both DETYA and the ANAO were satisfied that this arrangement provided sufficient safeguards against double-dipping.
25. Item 2, Schedule 1 of the Bill.
Corps programme that protection under these schemes was inadequate. Nothing in the bill addresses the issue of the extent to which Green Army service providers will be required to provide suitable insurance. However, even where suitable insurance is in place, it differs from workers compensation cover in that an injured participant is likely to have to demonstrate negligence. There have been successful claims of this sort, but they can take many years to settle, and young volunteers may not have the resources to pursue such claims. As such it is a lower standard of protection being offered to workers, particularly given the physical and outdoors nature of the tasks they will be doing.

The workplace relations environment has also changed. 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. Under previous schemes participants would have been covered by state and territory employment laws, but this will no longer be the case.

**Green Army and the environment**

There is little evidence of the effectiveness of the Green Army programme’s precursor—the Green Corps programme—in improving the natural environment. Under the Green Corps programme 14 million trees were propagated and planted, more than 8,000 kilometres (km) of fencing was erected, over 50,000 hectares of weeds were removed and more than 5,000 km of boardwalks were constructed or maintained. However, this activity is not of itself equivalent to achieving identified improvements in environmental outcomes.

As a result, some concerns have been expressed about whether the Green Army programme will result in significant and lasting environmental outcomes. 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.

Greening Australia, while in favour of the Green Army policy, would prefer to see longer term projects that are focused on ‘strategic landscapes in strategic areas to achieve greater outcomes’.

The first of four strategic objectives of the program is ‘to support the delivery of environmental and heritage outcomes at the local, regional and national level’. It is unclear how the regional and national outcomes will be delivered through a large number of projects which last a maximum of 26 weeks each. These local projects will involve activities such as:

- propagation and planting of native seedlings
- weed control
- re-vegetation and regeneration of local parks and reserves

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29. The Green Army Programme Draft Statement of Requirements Consultation Process document states that ‘Service Providers will be required to obtain and maintain the following insurances: public liability insurance not less than $10 million per occurrence; workers’ compensation; motor vehicle insurance; compulsory third party motor vehicle insurance; personal accident insurance; and products liability insurance for its own employees.’ It also indicates that ‘the Government will purchase personal accident and products and public liability insurance to cover participants in the Programme.’


33. Ibid.

• habitat protection and restoration, including cleaning up waterways, re-vegetation of sand dunes and mangroves, and creek bank regeneration
• foreshore and beach restoration
• construction of boardwalks and walking tracks to protect local plants and wildlife
• cultural heritage restoration, including Indigenous heritage
• signage to improve interpretation of heritage sites
• conservation maintenance of heritage sites and
• restoration of heritage gardens or landscapes.35

The other objectives relate to ‘community engagement’, ‘Green Army participants’ and ‘experience, skills and training’. While the objectives prioritise environmental outcomes, the structure of the program delivery appears to emphasise training and employment objectives. To the extent that the programme’s focus is primarily on training it appears unlikely that the environmental and heritage objectives will be met in full.

**Programme focus and objectives**

As noted above some commentators have criticised the Green Army programme as being about providing a low-paid workforce. In response the Government might argue that the programme is not an employment program but an ‘environment and training programme’, intended to help participants to ‘increase their skills base, gain practical experience and enhance their job readiness’.36 Indeed, the fact that the Bill seeks to ensure that Green Army Programme participants (other than supervisors) are not workers or employees under Commonwealth laws suggests that this is the Government’s intention.

However, if this is what the Government has in mind, then it is not clear why it has chosen to have participants paid at the national minimum wage rather than being paid the national training wage (as was the case under the original Green Corps programme). It is also by no means clear that training for participants is to be guaranteed (which it would be were they trainees being paid under the national training wage award), or that any training that is provided is to be accredited training.

For example, the Explanatory Memorandum merely states that green army participants will have the ‘opportunity’ to undertake training. The Department of the Environment website is a little more confident, stating that participants will ‘generally be engaged full time (30 hours per week) on a project and undertake formal training in areas such as work-readiness, conservation and land management, heritage conservation, leadership, project and human resource management and trades (For example, heritage trade skills)’. Nevertheless, participants will only be supported to obtain Certificate I or Certificate II qualifications and units towards more advanced levels ‘where possible’.37

**Concluding comments**

The main concern with the Bill is that it removes Commonwealth protections for Green Army programme participants. Based on past experience of similar arrangements under the Green Corps and Work for the Dole programs, such a concern is not entirely unfounded. Given that many programme participants are likely to be highly vulnerable, with some having just left school, arguably they should be afforded the strongest possible workplace protections.

While the Green Army programme will undoubtedly be of some benefit to the environment and many participants, arguably these benefits would be enhanced were the programme more clearly focused. If there were a reduced number of strategically targeted, long term projects, then this could improve the programme’s environmental outcomes. Similarly, if the programme were to guarantee vocationally oriented and accredited training for all participants, then this would likely improve their employment prospects and outcomes.

That said, if the anticipated number of Green Army programme participants were to be reached, then those young people who had taken part could struggle to find employment, post-participation. Based on the concerns

35. Ibid., p. 17.
identified above, though—especially with regard to the lack of workplace protections and the low rate of the allowance—the programme might struggle to attract volunteers.
Appendix: The LEAP programme

In 1992 the Keating Government established the Landcare and Environment Action Programme, known as LEAP. This program, which was administered by the then Department of Employment, Education and Training (DEET) sought primarily to improve the long-term employment prospects of young people aged between 15 and 20 years through formal training and practical experience. The program also aimed to broaden participants’ practical know-how and to equip them with new skills specifically for projects promoting landcare, environment, cultural heritage and conservation activities.

The course consisted of 26 weeks of formal and on-the-job training, which was delivered by service providers contracted by DEET through a public tendering process. Service providers made available practical experience placements within projects that were focused on landcare, cultural heritage or conservation. Participants were paid a taxable training allowance that varied according to their age. The LEAP program was open to all young people aged 15 to 20 years who were registered with the Commonwealth Employment Service (CES), but special priority was given to long term unemployed and disadvantaged job seekers.

The LEAP program ended when the Keating Government lost office in 1996 and, as noted above, the new Howard Government introduced the Green Corps program soon after.

When asked in an interview on 23 August 1996 what he thought of the new Green Corps program, the then leader of the Opposition, Kim Beazley, reportedly described it as the rebadged LEAP program. Beazley went on to accuse the Howard Government of rebadging the program at about a tenth of the expenditure that was invested by the former Labor Government.

In response to claims that the Green Corps program was basically LEAP rebadged, on 12 May 1998, Tony Abbott, the then Parliamentary Secretary to the Minister for Employment, Education, Training and Youth Affairs, insisted that:

Green Corps is different from previous environmental jobs programmes (such as LEAP) because it comprises volunteers only and is managed, on the Government’s behalf, by a respected, community-based environmental organisation, the Australian Trust for Conservation Volunteers. Green Corps is not confined to unemployed young people and involves a full-time commitment to the environment with payment at the rate of the national training wage.

While there were certainly differences between the two programs, arguably, the point that the Green Corps program was comprised of volunteers only and not confined to unemployed young people was not a significant distinction. In reality, most Green Corps participants would have been unemployed prior to commencing the program. These participants are likely to have been attracted to the program, in part, because they would not have had to satisfy mutual obligations requirements while receiving a training allowance.

39. Ibid.
42. According to an evaluation of the Green Corps program released in 1999, of those participants from Rounds 1 to 5, 61 per cent were registered as unemployed prior to program commencement. See Department of Education, Training and Youth Affairs, ‘It’s why you’re swinging the mattock’: an evaluation of the Green Corps Programme: final report, op. cit.
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