

17 April 2014



Ms Julie Agostino  
Committee Secretary  
Senate Standing Committees on Education and Employment  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
By email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

Dear Ms Agostino

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

The Law Council of Australia welcomes the opportunity to respond to the Committee's inquiry into the Social Security Legislation Amendment (Green Army Programme) Bill 2014.

The Law Council would welcome the opportunity to discuss the submission further. In the first instance, please contact the Chair of the Industrial Law Committee, Ingmar Taylor SC on (02) 9223 1522 or [Ingmar.Taylor@statechambers.net](mailto:Ingmar.Taylor@statechambers.net). Alternatively, the Law Council Secretariat on (02) 6246 3722 or [lps@lawcouncil.asn.au](mailto:lps@lawcouncil.asn.au)

Yours sincerely

A handwritten signature in black ink, appearing to read "Martyn Hagan".

MARTYN HAGAN  
SECRETARY GENERAL

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# Social Security Legislation Amendment (Green Army Programme) Bill 2014 (Cth)

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## Senate Education and Employment Legislation Committee

16 April 2014

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## Table of Contents

<b>Executive Summary</b> .....	<b>3</b>
<b>Introduction</b> .....	<b>4</b>
Employee protections.....	5
<b>Attachment A: Profile of the Law Council of Australia</b> .....	<b>8</b>

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## Executive Summary

The Law Council of Australia generally supports the Social Security Legislation Amendment (Green Army Programme) Bill 2014 (Cth) from an environmental perspective. The Bill creates a scheme for recruiting 'volunteers' to opt into working on environmental projects, who will be paid a 'Green Army Allowance' in lieu of social security benefits.

The Law Council is concerned however, that participants in the Green Army Programme will not have access to basic employment protections that other trainees enjoy.

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## Introduction

1. The Law Council of Australia welcomes the opportunity to make a submission to the inquiry by Senate Community Affairs Legislation Committee on the [Social Security Legislation Amendment \(Green Army Programme\) Bill 2014 \(Cth\)](#) (the Bill).
2. The Law Council supports the intended outcome of the legislation, which is to create a volunteer environmental ‘workforce’ of about 15,000 young people over the duration of the program, to deliver 1,500 on-ground environmental projects around Australia.
3. The aim of the Green Army Programme is to provide work-oriented training for people aged 17 to 24, as well as to achieve on-ground environmental outcomes. From July 2014, about 250 projects will be supported during Round 1 of the Programme, with about 2,500 young people participating during 2014–15. About 5,000 young people are expected to participate in the Programme during 2015–16.<sup>1</sup>
4. One or more service providers will be selected by the Commonwealth to recruit, establish and manage Green Army teams across Australia to engage in approved environmental projects and participate in training, over a period of between 20 and 26 weeks, in partnership with local communities.
5. The Bill amends the *Social Security Act 1991* (Cth) and the *Social Security (Administration) Act 1999* (Cth) with the effect that from July 2014, recipients of the Green Army Allowance will not also receive a social security benefit or pension. The Allowance will be paid to Programme participants by the approved service provider. The bill addresses the impact of the Allowance on the social security payments of the Green Army volunteer and social security payments the recipient’s partner may receive.
6. Similar programmes have been run in the past, such as the Green Corps Programme (1997–2009), the Green Jobs Corps programme (1997–2009) and the Queensland Government’s Skilling Queenslanders for Work Programme (previously the Breaking the Unemployment Cycle Programme). An evaluation of the latter programme found that it provided direct employment outcomes for particularly disadvantaged participants including Aboriginal and Torres Strait Islander people and people from non English speaking backgrounds.<sup>2</sup>
7. An evaluation of the Green Corps Programme done by Job Futures and Greening Australia concluded in 2012 that it had been effective in engaging some groups who were very vulnerable to long term unemployment, such as early school leavers and Aboriginal youth. One evaluation found that following a survey of 625 participants, three months after they had left the programme, that 52% were employed, 30% (of the total) were employed full time, and 66% were either working or studying. In contrast, over the same period, only 31% of Work for the Dole participants were in work three months after leaving, and only 14% were in full time work. A separate survey of 681

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<sup>1</sup> The Hon Greg Hunt, Minister for the Environment, Second Reading Speech: Commonwealth of Australia, Parliamentary Debates, *House of Representatives Official Hansard No 2, 2014 Wednesday, 26 February 2014*.

<sup>2</sup> Deloitte Access Economics, *Evaluation of Skilling Queenslanders for Work*, Department of Education, Training and Employment (2012).

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participants, 4–6 weeks after the Programme had been completed, found that 65% were in employment, education or training.<sup>3</sup>

## Employee protections

8. Currently 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. The Bill provides that participants in the Green Army Programme are not taken to be:

- (c) a worker carrying out work in any capacity for the Commonwealth, or an employee of the Commonwealth, for the purposes of the *Work Health and Safety Act 2011*; or
- (d) an employee within the meaning of section 5 of the *Safety, Rehabilitation and Compensation Act 1988*; or
- (e) an employee for the purposes of the *Fair Work Act 2009*;

merely because of their participation in the Programme.<sup>4</sup>

9. The Law Council is aware that United Nations agencies in recent years have advocated that volunteers' work be appropriately valued, and that it be measured in countries' national accounts. The International Labor Organisation recognises voluntary work as a 'crucial renewable resource for social and environmental problem-solving the world over' and is assisting national governments to recognise its value. 2005 was the United Nations Year of Volunteers. The ILO has offered a definition a volunteer work as:

*Unpaid non-compulsory work; that is, time individuals give without pay to activities performed either through an organization or directly for others outside their own household.*<sup>5</sup>

10. This value attached to volunteerism is quite different from the Green Army work envisaged in the Bill, which is in essence a social enterprise job scheme that is designed to provide a pathway to employment for disadvantaged young people who receive national government income support for the duration of the programme.

11. 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. The Green Army Programme Guidelines<sup>6</sup> provide that the Programme will cover costs directly associated with each Green Army Team, including:

- participants' allowances;
- uniforms;

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<sup>3</sup> Lisa Fowkes, Dr Heather Middleton and Jobs Australia, *The Contribution and Potential of Work-focussed Social Enterprises in Australia* (2012), 42–43. See also positive comments about the Green Corps Programme in OECD, *Activating Jobseekers How Australia Does It*. (Google eBook) (2012), 67, 105, 193, 207, 230, 241.

<sup>4</sup> Schedule 1, Item 2, clause 38J.

<sup>5</sup> United Nations, International Labor Office, [Manual on the Measurement of Volunteer Work](#) (2011), 13.

<sup>6</sup> AusTender, ATM ID: 1314-2000 GA RFT Title: Provision of Green Army Programme 2014–2017

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- safety equipment;
  - basic materials (e.g. hand tools , first aid kits);
  - training costs;
  - transport costs; and
  - insurance to cover participants and team supervisors.
12. The Law Council recommends that Green Army participants be regarded as trainee employees, who are paid in accordance with the trainee provisions of an appropriate trainee Award for the 20–26 weeks of the Programme, such as the [Horticulture Industry \(Nursery and Landscape\) Award](#), and that Programme participants are accorded fair work job protections, including workplace health and safety protections and access to workers compensation if they are injured at work.
  13. The vulnerability of young workers to injury and death was demonstrated during the Commonwealth’s Energy Efficient Homes Package ‘the Pink Batts Scheme’ and is the subject of inquiry by the current [Royal Commission into the Home Insulation Program](#). Affording young people appropriate statutory protections may avoid a repeat of the shortcomings previously experienced with an under-regulated programme.
  14. Other social enterprises pay award rates under employment conditions. For example, the [Boystown Employment Service and Enterprises](#) provide real work opportunities, on-the-job training and employment for disadvantaged young people who have been unemployed long-term, and operate under mainstream work awards.
  15. 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. Those plans are required to identify and assess safety risks, mitigation strategies, training requirements and emergency plans. Programme Service Providers, through Team Supervisors, will be responsible for managing participants’ work health and safety while they are undertaking a Green Army Project.
  16. 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. 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 scheme are properly protected from injury at work.
  17. Further 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.
  18. This submission is consistent with former advocacy by the Law Council. In April 2012 for example, the Law Council recommended in response to the Commonwealth Attorney-General Department’s *Discussion Paper: Consolidation of Commonwealth*

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*Anti-Discrimination Laws* that voluntary workers should be protected by anti-discrimination legislation. The submission recommended:

*that, at a minimum, voluntary workers should be protected against all forms of harassment under the consolidated Act. The Law Council also supports consideration being given to extending the coverage of all protections under the consolidated Act, including protections against discrimination, to voluntary workers, but cautions against the possible unintended negative consequences of extending all protections to volunteers.*<sup>7</sup>

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<sup>7</sup> Law Council of Australia, [Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper – Supplementary Submission](#) (2012), para 112.



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## **Attachment A: Profile of the Law Council of Australia**

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The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 60,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the Constituent Bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12-month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2013 Executive are:

- Mr Michael Colbran QC, President
- Mr Duncan McConnel President-Elect
- Ms Leanne Topfer, Treasurer
- Ms Fiona McLeod SC, Executive Member
- Mr Justin Dowd, Executive Member
- Dr Christopher Kendall, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.