

EXPLANATORY STATEMENT

Select Legislative Instrument No. 103, 2014

Issued by the Authority of the Minister for the Environment

Superannuation Guarantee (Administration) Act 1992
Taxation Administration Act 1953
Tax and Superannuation Laws Amendment (Green Army Programme) Regulation
2014

The Governor-General is authorised to make regulations under section 80 of the *Superannuation Guarantee (Administration) Act 1992*, and section 18 of the *Taxation Administration Act 1953*.

The *Tax and Superannuation Laws Amendment (Green Army Programme) Regulation 2014* (the Amendment Regulation) amends the *Superannuation Guarantee (Administration) Regulations 1993* and the *Taxation Administration Regulations 1976* to ensure that superannuation is not payable by Green Army service providers to Green Army Programme participants. The Amendment Regulation also prescribes that Green Army allowance payments are subject to withholding for tax purposes.

The Green Army Programme is a voluntary initiative which will recruit young people aged between 17 and 24 years who are interested in protecting their local environment while gaining hands-on, practical skills, training and experience in environmental and heritage conservation. It will commence in July 2014 and will become Australia's largest-ever environmental workforce, building to 15,000 participants by 2018, capable of delivering on-ground environmental projects.

The Programme will be delivered by external service providers who will be responsible for recruiting, establishing and managing Green Army teams across Australia to engage in approved projects, alongside communities. These service providers will be directly responsible for the disbursement of Green Army allowances and the provision of training for participants.

Paragraph 27(1)(e) of the *Superannuation Guarantee (Administration) Act 1992* describes the salary or wages that are not to be taken into account for the purpose of making a calculation under section 19 of the Act, including prescribed salary or wages. Amending subregulation 7AD(1) includes payment of a Green Army allowance in the list of prescribed payments of salary and wages that are excluded from the calculation of the superannuation guarantee charge under the Act.

Section 12-60 in Schedule 1 to the *Taxation Administration Act 1953* requires withholding of a payment under a labour hire arrangement or a payment specified by regulations. Amending subregulation 44(1) adds payments of the Green Army allowance to the list of specific payments that are subject to withholding.

Details of the Amendment Regulation are set out in the [Attachment](#).

Commencement of the Amendment Regulation is contingent upon the passage of the *Social Security Legislation Amendment (Green Army Programme) Bill 2014* which amends the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* to specify:

- that persons receiving a Green Army allowance under the Green Army Programme cannot also receive a social security benefit or social security pension and that a determination made in this regard may be backdated;
- that participants of the Green Army Programme will not be considered workers or employees for the purposes of various Commonwealth laws; and
- the income testing arrangements that will apply to a person receiving a social security pension if their partner is receiving a Green Army allowance.

These arrangements are similar to comparable schemes under the *Social Security Act 1991*.

The *Superannuation Guarantee (Administration) Act 1992* and the *Taxation Administration Act 1953* specify no conditions that need to be satisfied before the power to make the Amendment Regulation was exercised.

The Amendment Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Commencement of the Amendment Regulation is contingent upon the commencement of the *Social Security Legislation Amendment (Green Army Programme) Act 2014* (the Green Army Act). In the event that the Green Army Act commences prior to the making of the Amendment Regulation, the Amendment Regulation will commence the day after it is registered. Otherwise, the Amendment Regulation will commence the day the Green Army Act commences.

As the Amendment Regulation is minor in nature and does not substantially alter existing arrangements, consultation was not undertaken.

The *Social Security Legislation Amendment (Green Army Programme) Bill 2014* was assessed against the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The changes introduced by the Amendment Regulation are compatible with that assessment.

The Office of Best Practice Regulation advised that a formal Regulatory Impact Statement was not required.

ATTACHMENT

Details of the *Tax and Superannuation Laws Amendment (Green Army Programme) Regulation 2014*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Tax and Superannuation Laws Amendment (Green Army Programme) Regulation 2014*.

Section 2 – Commencement

This Regulation commences on the later of:

- (a) the day after it is registered; and
- (b) the day the *Social Security Legislation Amendment (Green Army Programme) Act 2014* commences.

However, the Regulation does not commence at all if the event mentioned in paragraph (b) does not occur.

Section 3 – Amendment of *Superannuation Guarantee (Administration) Regulations 1993* and *Taxation Administration Regulations 1976*

This regulation provides that the *Superannuation Guarantee (Administration) Regulations 1993* and *Taxation Administration Regulations 1976* are amended as set out in the Schedule.

Schedule – Amendments

Item [1] – *Superannuation Guarantee (Administration) Regulations 1993* subregulation 7AD(1)

Add (at end of the table):

- 4 Salary or wages consisting of a payment of green army allowance (within the meaning of the *Social Security Act 1991*)

This item, inserted into the table under subregulation 7AD(1), establishes legislative authority to ensure that superannuation is not payable by Green Army Service Providers to Green Army Participants by adding a new item to the table under subregulation 7AD(1).

Participants in the Green Army Programme will not be treated as employees of Green Army Service Providers for a number of purposes. To ensure that superannuation is not payable by Service Providers to Green Army Participants in respect of the allowance payments, these payments to green army allowance recipients are excluded from the *Superannuation Guarantee (Administration) Act 1992* (the Act).

An allowance payment is defined in the *Social Security Act 1991* subsection 23(1) as an ‘allowance paid under the Green Army Programme’.

The table under subregulation 7AD (1) lists a number of arrangements whereby prescribed payments of salary and wages are excluded from the calculation of superannuation guarantee charge under the Act. The new Item 4 is consistent with the existing legislative framework for superannuation and minimises the risk of unintended wider consequences for superannuation law.

**Item [2] – *Taxation Administration Regulations 1976*
subregulation 44(1)**

Add (at end of subregulation):

; (d) payments of green army allowance (within the meaning of the Social Security Act 1991).

Green army allowance payments by Service Providers will likely be subject to Pay As You Go Withholding arrangements under Section 12-35 (payments to employees) in Schedule 1 to the *Taxation Administration Act 1953* (the Act). To facilitate these tax provisions Subregulation 44(1) of the Act has been amended to add green army allowance payments to the list of specific payments that are subject to withholding under section 12-60 in Schedule 1 to the Act.

Section 12-60 requires withholding payments to entities carrying on a business, if specified in the regulations. To the extent that a green army allowance recipient is not an employee (according to ordinary concepts) and therefore subject to withholding under section 12-35, they will be carrying on a business for tax purposes. By ensuring that green army allowance payments are subject to withholding, regardless of how they are classified, the possibility of allowance recipients, who are in receipt of other income, getting a large tax bill at the end of the income year is avoided.

The Hon Greg Hunt MP

Minister for the Environment