**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Industry, Science and Technology

*Industry Research and Development Act 1986*

*Industry Research and Development (International Space Investment Initiative Program) Instrument 2020*

**Purpose and Operation**

Section 33 of the *Industry Research and Development Act 1986* (the IR&D Act) provides a mechanism for the Minister to prescribe programs, by disallowable legislative instrument, in relation to industry, innovation, science or research, including in relation to the expenditure of Commonwealth money under such programs.

The statutory framework provided by section 33 of the IR&D Act enables a level of flexibility to provide authority for Commonwealth spending activities in relation to industry, innovation, science and research programs. This allows the Government to respond quickly and appropriately to the need to implement innovative ideas and pilot programs on an ongoing basis and as opportunities arise. Prescribing programs in legislative instruments provides transparency and parliamentary oversight of Government programs and spending activities, whilst reducing administrative burden on the Commonwealth.

Once a program is prescribed by the Minister under section 33, subsection 34(1) allows the Commonwealth to make, vary or administer arrangements in relation to activities under the prescribed program. Arrangements may include contracts, funding agreements or other arrangements, and may provide for money to be payable by the Commonwealth to one or more third parties. The power conferred on the Commonwealth by subsection 34(1) may be exercised on behalf of the Commonwealth by a Minister or an accountable authority of a non-corporate entity, or by their delegate (under section 36).

The purpose of the Industry Research and Development (International Space Investment Initiative Program) Instrument 2020 (the Legislative Instrument) is to prescribe the International Space Investment Initiative Program (the Program). Initial funding of $15 million for the Program has been secured through the Department of Industry, Innovation and Science’s (the Department) 2018-19 Budget. The Program provides funding as part of the Australian Government’s commitment to provide Australian organisations and businesses opportunities to be involved with international space projects and collaborate with relevant overseas organisations (such as international space agencies). These projects will generate employment and business opportunities for Australians, with a minimum of 80 per cent of the investment to be made in Australia. Projects will encourage scientific and technical collaboration between Australians and relevant overseas organisations.

The objectives of the Program are to:

* unlock international space opportunities for the Australian space sector;
* expand the capability and capacity of the Australian space sector and support job creation;
* demonstrate the Australian space sector’s ability to successfully deliver space-related products and services internationally;
* support projects which contribute to building a vision and an Australian space sector that inspires businesses, the Australian community and the next generation of space workforce, researchers and entrepreneurs.

The intended outcomes of the Program are:

* an increase in Australia’s reputation and participation in the global space sector;
* an increase in the number and size of Australian businesses qualifying for access to opportunities with international space agencies;
* an increase in the number of Australian businesses winning contracts and successfully delivering products and services to international space agency programs directly, or indirectly through supply chains;
* an increase in investment and engagement from international space agencies, and their supply chains, in Australia;
* an increase in the number of jobs in the Australian space sector.

The Program is delivered through streams including the following:

* International Space Investment – Open Doors (the Open Doors stream), targeting international space agency projects which will unlock opportunities for the Australian space sector;
* International Space Investment – Expand Capability (the Expand Capability stream), providing grants to build the capacity and capability of the Australian space sector and support jobs creation, and demonstrate the sector’s ability to successfully deliver space-related products and services internationally.

Funding authorised by this Legislative Instrument comes from Program 2, Outcome 1, as set out in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.13A, Jobs and Innovation Portfolio (Industry, Innovation and Science) (*[*https://www.industry.gov.au/sites/default/files/2018-19-department-of-industry-innovation-and-science-pbs.pdf*](https://www.industry.gov.au/sites/default/files/2018-19-department-of-industry-innovation-and-science-pbs.pdf) *)* at page 33.

The Program will be delivered by the Department’s Business Grants Hub through AusIndustry, which is a specialised design, management and delivery body with extensive expertise and capability in delivering similar programs.

The Program is administered in accordance with the *Commonwealth Grant Rules and Guidelines 2017 (*[*http://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf*](http://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf)).

Spending decisions will be made by an IR&D Act delegate, who is the Head of the Australian Space Agency, or a Deputy Secretary of the Department.

Grants under the Expand Capability and the Open Doors streams will be a minimum of $100,000 up to a maximum of $4 million. The grant amount may be up to 100 per cent of eligible project costs. However, it is expected that for both streams grants will leverage significant additional investment, including direct contributions to eligible project costs.

Under the Program, grants opportunities may relate to specified countries or relevant overseas organisations (such as certain international space agencies).

Open Doors stream:

Under the Open Doors stream, funding is available to relevant overseas organisations (such as international space agencies and foreign governments) to undertake international space projects. These will be projects that provide ongoing opportunities for Australian organisations and businesses to participate in, or supply goods and services for, international space missions and activities.

The Open Doors stream will predominantly be delivered through one or more ad hoc grants. This approach will be used because funding will be a contribution to specific projects delivered by a specialist entity such as an international space agency.

For the Open Doors stream, spending decisions will be made taking into account recommendations of the Australian Space Agency, having regard to whether the project represents value for money and alignment with program objectives.

Expand Capability stream:

Under the Expand Capability stream, funding is available to Australian organisations and businesses to enable them to participate with, or deliver products and services for use by, relevant overseas organisations in international space projects. Funded projects will be consistent with the National Civil Space Priority Areas, as defined in the Advancing Space: Australian Civil Space Strategy 2019-2028, available on the Department’s website (*https://www.industry.gov.au/data-and-publications/australian-civil-space-strategy-2019-2028*). This is a policy document that is freely available on the Department’s website and explains the Australian Government’s plan for the space sector over the next ten years. Because of the nature of the document it would not be appropriate to include it directly in the Legislative Instrument. The funding will build Australian capability and capacity, and support jobs creation in the sector. Projects may include:

* research and development;
* product and service development;
* commercialising existing products and services;
* process design and engineering;
* buying, constructing, installing or commissioning of equipment or software;
* relevant training and skills development;
* collaboration and partnership development.

The Expand Capability stream is a competitive, merit-based grants program. Eligibility and assessment criteria are outlined in grant opportunity guidelines; available at business.gov.au.

For the Expand Capability stream, spending decisions will be made taking into account the recommendations of an independent assessment committee, having regard to value for money and how well applications meet the assessment criteria in comparison to other applications.

The Program involves the allocation of finite resources between applicants. In addition, there is a robust and extensive assessment process, an enquiry and feedback process, and an existing complaints mechanism for affected applicants. Therefore, external merits review does not apply to decisions about the provision of grants under the Program.

For the Expand Capability stream, applications will be assessed against the eligibility criteria and assessment criteria set out in the grant opportunity guidelines in two stages. At first instance, applications will be assessed by AusIndustry, against the eligibility criteria. An independent assessment committee will then consider eligible applications against the assessment criteria. This will include comparing the applications and scoring each application out of 100. The committee may comprise space sector and industry experts and representatives from the Australian Government. The independent assessment committee may also seek input from independent experts to inform their assessments.

Applications must address the eligibility and assessment criteria, and provide relevant supporting information. The amount of detail and supporting evidence should be relative to the project size, complexity and funding amount requested. Larger and more complex projects should include more detailed evidence. To be competitive, applications must score highly against each merit criterion.

After considering the applications, the independent assessment committee will make recommendations to the IR&D Act delegate regarding those applications suitable for funding. The IR&D Act delegate will make the final decision about which grants to approve, taking into consideration the independent assessment committee’s recommendations, and the availability of grant funds. The IR&D Act delegate will not approve funding if there are insufficient Program funds available across relevant financial years for the Program.

Both successful and unsuccessful applicants will be informed in writing. Unsuccessful applicants have an opportunity to discuss the outcome with AusIndustry, and can submit a new application for the same or a similar project in future funding rounds. Where this occurs, applicants should include new or more information to address the weaknesses identified in their previous application.

Persons who are otherwise affected by decisions or who have complaints about the Program will also have recourse to the Department. The Department investigates any complaints about the Program in accordance with its complaints policy and procedures. If a person is not satisfied with the way the Department handles the complaint, they may lodge a complaint with the Commonwealth Ombudsman.

**Trade and commerce power**

Paragraph 51(i) of the Constitution empowers the Parliament to make laws with respect to ‘trade and commerce with other countries, and among the states’.

In that regard, the Program prescribed by the Legislative Instrument will promote trade and commerce with other countries by providing funding so that Australian businesses and organisations can participate in international space projects with relevant overseas organisations. The Program will also allow Australian businesses and organisations to engage in global space industry supply chains by providing funding to allow them to supply goods and services to relevant overseas organisations.

**External affairs power**

Paragraph 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation with respect to places, persons, matters, or things outside the geographical limits of Australia. In that regard, funding provided under the Legislative Instrument will support international space projects, which will occur outside of Australia.

The external affairs power also supports legislation with respect to matters concerning Australia’s relations with other countries. In that regard, funding provided under the Legislative Instrument, will enhance Australia’s relations with other countries by allowing the Australian Space Agency to make contributions towards major projects propounded by its international counterparts.

**Executive power and express incidental power**

The express incidental power in paragraph 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested by the Constitution in the Parliament, the executive or the courts. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

In that regard, funding provided under the Legislative Instrument will be used to grow Australia’s space industry. This requires a level of coordination and strategy that is peculiarly adapted to the government of the nation and cannot otherwise be carried on for the benefit of the nation. Moreover, space activities have historically been carried out at a national level of responsibility and have the potential to involve or raise matters of international concern.

**Territories power**

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of the territory’.

In that regard, funding provided under the Legislative Instrument may include the provision of funding for an activity led by a Territory-based partner organisation or undertaken within a Territory.

**Authority**

Section 33 of the *Industry Research and Development Act 1986* provides authority for the Legislative Instrument.

**Consultation**

In accordance with section 17 of the *Legislation Act 2003*, the Attorney-General’s Department has been consulted on this Legislative Instrument.

**Regulatory Impact**

It is estimated that the regulatory burden is likely to be minor (OBPR reference number 22970).

**Details of the *Industry Research and Development (International Space Investment Initiative Program) Instrument 2020***

**Section 1 – Name of instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (International Space Investment Initiative Program) Instrument 2020.*

**Section 2 – Commencement**

This section provides that the Legislative Instrument commences on the day after registration on the Federal Register of Legislation.

**Section 3 – Authority**

This section specifies the provision of the *Industry Research and Development Act 1986* (the Act) under which the Legislative Instrument is made.

**Section 4 – Definitions**

This item provides for definitions of terms used in the Legislative Instrument.

**Section 5 – Prescribed program**

This section prescribes the International Space Investment Initiative Program (the Program) for the purposes of section 33 of the Act.

The Program provides grants for projects. Grants will be delivered to Australian businesses and organisations (under the Expand Capability stream), and to relevant overseas organisations such as international space agencies (under the Open Doors stream). Under all streams, project grants support Australian businesses and organisations to unlock opportunities to participate in, supply to, or otherwise become involved with international space projects and relevant overseas organisations as specified in the grant opportunity guidelines. The projects support Australian businesses and organisations to build capability and capacity, as well as to increase Australian participation and collaboration overseas.

**Section 6 – Specified legislative power**

This section specifies that the legislative powers in respect of which the Legislative Instrument is made are the powers of the Parliament to make laws with respect to:

1. trade and commerce with other countries, and among the States (paragraph 51(i) of the Constitution);
2. external affairs (paragraph 51(xxix) of the Constitution);
3. the government of a Territory (section 122 of the Constitution);
4. measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation (paragraph 51(xxxix) and section 61 of the Constitution).

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*Industry Research and Development (International Space Investment Initiative Program) Instrument 2020*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The International Space Investment Initiative Program provides Australian businesses with opportunities to become involved with relevant overseas organisations and international space projects. Projects will generate employment and business opportunities for Australians, with a minimum of 80 per cent of the investment to be made in Australia.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Karen Andrews MP**

**Minister for Industry, Science and Technology**