

EXPLANATORY STATEMENT

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

Industry Research and Development Act 1986

Industry Research and Development (Strengthening Business—Business Advice for Recovery and Resilience 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 (Strengthening Business—Business Advice for Recovery and Resilience Program) Instrument 2020* (the Legislative Instrument) is to prescribe the Strengthening Business—Business Advice for Recovery and Resilience Program (the Program). The funding for the Program has been secured through the National Bushfire Recovery Agency. The Program provides \$12.8 million as part of the Australian Government's commitment to support small businesses adversely affected by the 2019-2020 bushfire emergency (the bushfire emergency), including by assisting such businesses to recover, to continue or strengthen their operations and to build long-term resilience, or discontinue their operations if recovery is not possible. The Program provides funding for business advisers to work with community recovery hubs and mobile services, to provide business advice to businesses affected by the bushfire emergency.

Funding is provided to the Department of Industry, Science, Energy and Resources (the Department) to engage 21 new business advisers until 30 June 2022, through the established

frameworks of the Department's Entrepreneurs' Programme (the EP), to support small businesses in specified Local Government Areas adversely affected by the bushfire emergency. Local Government Areas are determined by the National Bushfire Recovery Agency in collaboration with the states.

Funding authorised by this Legislative Instrument comes from Program 2: Growing Business Investment and Improving Business Capability, Outcome 1: Enabling growth and productivity for globally competitive industries through supporting science and commercialisation, growing business investment and improving business capability and streamlining regulation, as set out in the *Portfolio Budget Statements 2019-20, Budget Related Paper No. 1.11, Industry, Innovation and Science Portfolio* (<https://www.industry.gov.au/about-us/finance-reporting/budget-statements>) at page 28.

The Program will be delivered through the EP, which comprises 150 business advisers across Australia who support businesses to grow, innovate and commercialise through a suite of funding, incentives, tailored services and advice. The EP is a specialised and well-established program for business growth, supported by government and business networks in each of the affected states, and delivered by well-respected experts in business.

The Program is a provision of tailored business advice to small businesses adversely affected by the bushfire emergency, to support them to stay viable and strengthen their processes and strategies for the future, or exit the industry if that is determined to be the most appropriate action. The Program is administered by the Department in accordance with the principles and eligibility criteria available at <https://www.business.gov.au/Grants-and-Programs/Strengthening-Business>.

Spending decisions will be made by the Program Delegate, who is the AusIndustry General Manager responsible for administering the Program. Spending will occur through a variation of existing contracts that the Department has with a number of Delivery Partners that provide the EP's expert business advisory and facilitation services to businesses. In making the decision, the Program Delegate will consider the proposals and recommendations of the Delivery Partners, and the recovery needs of communities impacted by the bushfire emergency.

The decision to allocate funding to this Program was taken by the Australian Government as part of its broader national response to the bushfire emergency, and the Program involves the allocation of finite resources between regions affected by the bushfire emergency. Areas are specified by the National Bushfire Recovery Agency and the state governments of regions impacted by the bushfire emergency. Therefore, an external merits review will not apply to the decisions of the Program Delegate under the Program.

Applications for the Program will be assessed by AusIndustry against the eligibility criteria set out at <https://www.business.gov.au/Grants-and-Programs/Strengthening-Business>.

The Program Delegate will not allow applications if there are insufficient Program funds or Program business advisers available across relevant financial years for the Program.

Both successful and unsuccessful applicants will be informed in writing. Unsuccessful applicants will also receive guidance on other measures that might be available to them to support them through the bushfire emergency recovery process.

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.

Implied nationhood power (i.e. the express incidental power and executive power)

The Legislative Instrument specifies that the legislative power in respect of which it is made is the implied nationhood 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 in the Parliament, the executive or the courts by the Constitution. 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 support the provision of business advice to businesses affected by the bushfire emergency, an unforeseen natural disaster of immediate national significance.

Background

The bushfire emergency has borne a number of policies focused on supporting small business in bushfire-affected communities. This Program is one of those. This Program had a number of iterations before it became part of the Small Business Rebuild Package announced by the Government on 11 March 2020.

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 and Explanatory Statement. The National Bushfire Recovery Agency has also been consulted during the development of this Legislative Instrument and Explanatory Statement.

Regulatory Impact

A Regulation Impact Statement (RIS) has been completed. It is estimated that the regulatory burden is likely to be minor (OBPR reference number 26029).

Details of the *Industry Research and Development (Strengthening Business—Business Advice for Recovery and Resilience Program) Instrument 2020*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Strengthening Business—Business Advice for Recovery and Resilience 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 section provides for definitions of terms used in the Legislative Instrument.

Section 5 – Prescribed Program

This section prescribes the Strengthening Business—Business Advice for Recovery and Resilience Program (the Program) for the purposes of section 33 of the Act.

The Program provides funding for business advisers to work with community recovery hubs and mobile services to provide business advice to businesses affected by the 2019-20 bushfire emergency.

The purpose of the Program is to provide support to businesses affected by the 2019-2020 bushfire emergency, including by assisting such businesses to recover, to continue or strengthen their operations and to build long-term resilience, or discontinue their operations if recovery is not possible.

Section 6 – Specified Legislative Power

For the purposes of subsection 33(3) of the Act, the power of the Parliament to make laws with respect to enterprises and activities that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation is specified.

Statement of Compatibility with Human Rights

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

Industry Research and Development (Strengthening Business—Business Advice for Recovery and Resilience 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 purpose of the Legislative Instrument is to prescribe the Strengthening Business—Business Advice for Recovery and Resilience Program (the Program). The Program provides funding for business advisers to work with community recovery hubs and mobile services to provide expert business advice to businesses affected by the 2019-20 bushfire emergency.

The purpose of the Program is to provide support to businesses affected by the 2019-2020 bushfire emergency, including by assisting such businesses to recover, to continue or strengthen their operations and to build long-term resilience, or discontinue their operations if recovery is not possible.

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