

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Employment, Skills, Small and Family Business

Industry Research and Development Act 1986

Industry Research and Development (National Communications Campaign to Support Small Business 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 (National Communications Campaign to Support Small Business Program) Instrument 2020* (the Legislative Instrument) is to prescribe the National Communications Campaign to Support Small Business (the Program). The funding for the Program will be provided through appropriation amounts relating to the small business function transferred from the former Department of Employment, Skills, Small and Family Business to the Department of Industry, Science, Energy and Resources under section 75 of the *Public Governance, Performance and Accountability Act 2013*. The Program provides \$5 million in 2019–2020 and 2020–2021 as part of the Australian Government’s commitment to supporting small business.

The program will fund an appropriate industry association to develop and implement a national communication campaign to support small businesses through the impacts of the COVID-19 crisis. The program will harness existing community support for small businesses and encourage Australians to buy and spend locally, supporting local businesses and jobs.

The intended outcomes of the Program are the continued viability of small businesses and economic activity in the local economy. The industry association will leverage its networks in local communities and with small business to maximise the Program's outcomes.

The Program's communication campaign will involve a two-pronged approach:

1. A national messaging campaign amplified through key spokespeople to reinforce the importance of supporting local small businesses.
2. A grassroots campaign to activate community support at the local level.

Funding is available to an appropriate industry association to undertake eligible activities to deliver the campaign. The campaign will likely involve use of a range of traditional and digital media platforms to implement the campaign including, but not limited to: paid advertising; organic marketing; and social media. The design and delivery of the campaign will likely involve the selected industry association engaging advertising professionals.

Funding authorised by this Legislative Instrument comes from Program 4.1 Small Business Support, Outcome 4. Details will be set out in the *Portfolio Budget Statements 2020-21, Industry, Science, Energy and Resources Portfolio*.

The Program is an ad hoc grant program. The Program will be administered by the Department in accordance with the *Commonwealth Grant Rules and Guidelines 2017* (<http://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf>).

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

The final spending decision will be made by the appropriate delegate within AusIndustry at the SES1 level or above.

The Program will involve the allocation of finite resources to an appropriate industry association nominated by the Minister for Employment, Skills, Small and Family Business, taking into account advice from the Department. A non-competitive process will be used to award the grant as the Program is specifically dependent on an appropriate industry association with the expertise to meet the policy objectives of the Program. In particular, it will have a strong knowledge and understanding of small businesses and will have credibility in providing messaging to the community on this issue.

Merits review will not apply to the Program as it is a single, ad hoc grant to a single industry association to allow the Program to meet required timeframes and achieve the Australian Government's objectives. The ad hoc grant approach was elected due to the urgent need for the Program to help mitigate the impact of COVID-19 on small business. When determining the association most suited to delivering this Program, the following criteria will be considered: capability, capacity, scale, brand, track record and expertise.

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.

The Legislative Instrument specifies that the Program is supported by the communications power (paragraph 51(v) of the Constitution) and the executive power and express incidental power (including the nationhood aspect).

Paragraph 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. In that regard, the Program prescribed by the Legislative Instrument is aimed at supporting small and local businesses impacted by COVID-19 by encouraging individuals to patronise small and local businesses and mitigate the economic impact of COVID-19 on the Australian economy. The Program will be disseminated through the internet, radio and television to provide information to the public and small businesses.

The express incidental power in section 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 mitigate the serious, nationwide economic consequences of COVID-19, a global pandemic, for small businesses across all states and territories. Specifically, the Program will encourage individuals to patronise small and local businesses, which feeds into a broader policy to support small and local businesses impacted by COVID-19. These enterprises and activities will be carried out throughout each state and 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 and the Explanatory Statement.

Regulatory Impact

It is estimated that the regulatory burden is likely to be nil (OBPR reference number 42491).

Details of the *Industry Research and Development (National Communications Campaign to Support Small Business Program) Instrument 2020*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (National Communications Campaign to Support Small Business 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 National Communications Campaign to Support Small Business Program (the Program) for the purposes of s 33 of the Act.

The program provides funding for a communications campaign to support small businesses affected by the economic impacts of the coronavirus known as COVID-19. The purpose of the program is to mitigate the negative economic impacts of COVID-19 on these businesses by encouraging consumers to patronise small businesses.

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 the communications power (paragraph 51(v) of the Constitution) and the implied nationhood power (section 61 and paragraph 51(xxxix) 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 (National Communications Campaign to Support Small Business 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 objective of the Legislative Instrument is to prescribe the National Communications Campaign to Support Small Business Program (the Program). The purpose of the Program is to fund an industry association to develop and implement a national communication campaign to support small businesses through the impacts of the COVID-19 crisis. The Program will harness existing community support for small businesses and encourage Australians to buy and spend locally, supporting local businesses and jobs.

The Program's communication campaign will involve a two-pronged approach with a national messaging campaign to reinforce the importance of supporting local small businesses and a grassroots campaign to activate community support at the local level.

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.

Senator the Hon Michaelia Cash

Minister for Employment, Skills, Small and Family Business