

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Energy and Emissions Reduction

Industry Research and Development Act 1986

Industry Research and Development (Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville 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 for Industry, Science, Energy and Resources 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 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 (Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville Program) Instrument 2020* (the Legislative Instrument) is to prescribe the Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville Program (the Program). The Program will provide funding of up to \$4 million to Shine Energy Pty Ltd (ABN 90 614 944 955), a Queensland energy company, to undertake a bankable feasibility study into the viability of a new high-efficiency low-emissions coal-fired power plant in Collinsville, Queensland. The funding will be provided by way of an ad-hoc grant.

Funding for the Program has been secured through Program 3.1, *Supporting Reliable Energy Infrastructure*, Outcome 3: *Support the affordable, reliable, secure and competitive operation of energy markets for the long term benefit of the Australian community through improving Australia's energy supply, efficiency, quality, performance and productivity*, as set out in the

Department's Portfolio Additional Estimates Statement/Budget 2019-20, (<https://www.industry.gov.au/sites/default/files/2020-02/2019-20-department-of-industry-science-energy-and-resources-paes.pdf>) at page 50.

The Program will be delivered by the Department of Industry, Science, Energy and Resources.

The Program will be administered in accordance with the *Commonwealth Grant Rules and Guidelines 2017* (<https://www.legislation.gov.au/Details/F2017L01097>). As this is a ad-hoc grant to an identified recipient, there are no selection criteria.

Persons who are affected by decisions or who have complaints about the Program will 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.

Spending decisions will be made by the Minister for Energy and Emissions Reduction, taking into account the recommendations of the Department of Industry, Science, Energy and Resources.

Corporations power

Section 51(xx) of the Constitution empowers the Parliament to make laws with respect to 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth' (together, constitutional corporations).

In *Williams v Commonwealth* (2014) 252 CLR 416 (*Williams No 2*), the High Court, considering section 32B of the *Financial Management and Accountability Act 1997* (the FMA Act), held (at [50]) that:

A law which gives the Commonwealth the authority to make an agreement or payment of that kind is not a law with respect to trading or financial corporations. The law makes no provision regulating or permitting any act by or on behalf of any corporation.

However, the relevant provisions of the IR&D Act are substantially different to the provisions considered by the High Court in *Williams No 2*. Section 34 of the IR&D Act corresponds to section 32B of the FMA Act considered by the High Court in *Williams No 2*. However, the FMA Act contained no provision in terms equivalent to those of section 35 of the IR&D Act.

Subsection 35(2) of the IR&D Act limits the arrangements made under section 34 so that, where a party to an arrangement made under section 34 is a constitutional corporation, the arrangement must be subject to a written agreement containing terms and conditions under which money is payable by the Commonwealth. The corporation must comply with the terms

and conditions. The activities of the corporation are therefore regulated through the terms and conditions made under each agreement pursuant to subsection 35(2).

Further, subsection 35(3) provides that the agreement must provide for circumstances in which the corporation must repay amounts to the Commonwealth.

The Program prescribed by the Legislative Instrument confers on a trading corporation (Shine Energy Pty Ltd) benefits which are directed to assisting that corporation in the conduct of its ordinary activities (namely to undertake a bankable feasibility study into the viability of a high-efficiency low-emissions coal-fired power plant in Collinsville). The Program imposes terms and conditions on Shine Energy Pty Ltd under a grant agreement in accordance with section 35 of the IR&D Act, in relation to the receipt of benefits under the Program.

Authority

Section 33 of the IR&D Act 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 25900).

Details of the *Industry Research and Development (Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville Program) Instrument 2020*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville 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 IR&D 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 Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville Program (the Program) for the purposes of section 33 of the IR&D Act.

The Program provides funding to Shine Energy Pty Ltd to undertake a bankable feasibility study into the viability of a new high-efficiency low-emissions coal-fired power plant in Collinsville, Queensland.

Section 6 – Specified Legislative Power

This section specifies that the legislative power in respect of which the Legislative Instrument is made is the power of the Parliament to make laws with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) 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 (Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville 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 Legislative Instrument prescribes the Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville Program (the Program) for the purposes of subsection 33(1) of the *Industry Research and Development Act 1986*. The purpose of the Program is to provide a grant to Shine Energy Pty Ltd (ABN 90 614 944 955) to undertake a bankable feasibility study into the viability of a new high-efficiency low-emissions coal-fired power plant in Collinsville, Queensland. Shine Energy Pty Ltd identifies as a ‘First Nation Traditional Owner company’.

Human rights implications

This Legislative Instrument may engage the right to self-determination. The right to self-determination is contained in Article 1 of the International Covenant on Civil and Political Rights and Article 1 of the International Covenant on Economic, Social and Cultural Rights. It is also contained in Article 3 of the Declaration on the Rights of Indigenous Peoples which informs the way governments engage with and protect the rights of Indigenous people. Under these Articles the right to self-determination promotes the rights of all peoples to freely pursue their economic, social and cultural development without outside interference. Self-determination is a right that pertains to groups of people, not individuals. In Australia, it is particularly relevant to Aboriginal and Torres Strait Islander Peoples.

To the extent the Legislative Instrument engages the right to self-determination, it promotes that right by facilitating a grant to an Indigenous-led corporation to undertake a feasibility study into the viability of a new business opportunity for the corporation.

Conclusion

This Legislative Instrument is compatible with human rights because it promotes the protection of human rights.

The Hon Angus Taylor MP

Minister for Energy and Emissions Reduction