

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources, Water and Northern Australia

Industry Research and Development Act 1986

Industry Research and Development (Advancing Research and Development for Critical Minerals 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 (Advancing Research and Development for Critical Minerals Program) Instrument 2020* (the Legislative Instrument) is to prescribe the Advancing Research and Development for Critical Minerals Program (the Program). The funding for the Program has been secured through the Department of Industry, Science, Energy and Resources 2019-20 Mid-Year Economic and Fiscal Outlook Budget. The Program will provide funding of \$4.5 million to support the Australian Government's commitment to grow the critical minerals sector. The aim of the program is to facilitate research and development that will help to improve access to Australia's vast critical mineral reserves and increase opportunities for downstream processing in Australia.

Funding will be available to Geoscience Australia (GA), the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and Australia's Nuclear Science and Technology Organisation (ANSTO) to undertake eligible scientific research and development projects to help grow Australia's critical minerals sector including by:

- improving knowledge and identification of Australia’s critical minerals reserves;
- increasing opportunities for critical minerals exploration and mining activities in Australia;
- increasing opportunities to expand Australia’s critical minerals resource base through tailings and other mine waste reclamation, recycling and waste treatment initiatives;
- improving the efficiency, sustainability and economic viability of new and existing critical minerals activities;
- improving the operation of global markets and transparency of supply chains; and
- increasing opportunities for downstream processing and other value-added industries for critical minerals in Australia.

Funding authorised by this Legislative Instrument comes from the Critical Minerals Capabilities that was announced in the 2019-20 Mid-Year Economic and Fiscal Outlook as set out in the *Portfolio Additional Estimates Statements 2019-20, Industry, Science, Energy and Resources Portfolio*, (<https://www.industry.gov.au/sites/default/files/2020-02/2019-20-department-of-industry-science-energy-and-resources-paes.pdf>) at page 16

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

The Program funding will be allocated through direct funding allocations to GA, CSIRO and ANSTO. CSIRO and ANSTO are authorised to be allocated the Program funds under the *Science and Industry Research Act 1949*, and the *Australian Nuclear Science and Technology Organisation Act 1987* respectively. The Program is 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>).

Spending decisions will be made by the delegate of the Accountable Authority, who will be the Chief Financial Officer with responsibility for the Program.

Funding allocations will be a minimum of \$10,000 up to a maximum of \$4 million. The amount provided may be up to the full amount of eligible project costs.

The Program will not be subject to external merits review as it involves the allocation of finite resources. In addition, there is a robust assessment process to ensure projects meet government objectives, an enquiry and feedback process, and an existing complaints mechanism for affected applicants.

Proposals will be required to provide sufficient information to allow evaluation against assessment criteria. The amount of detail provided should be relative to the project size, complexity and funding amount requested.

Proposals will be assessed by the Department, and recommendations made to the Program Delegate regarding proposals suitable for funding. The Program Delegate will make the final

decision to approve project funding, taking into account how the activity will advance the Government policy priorities and the availability of grant funds.

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.

External affairs power

The Legislative Instrument specifies that one of the legislative powers in respect of which it is made is the external affairs power (para 51(xxix) of the Constitution). The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia. In that regard, funding provided under the Legislative Instrument will enable collaboration with the United States Geological Survey, and promote engagement with other international critical minerals research programs.

Implied nationhood power

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. The Commonwealth is uniquely placed to deliver the Program as it can develop scientific research for the benefit of the nation, in particular with regard to the development of the nation's natural resources. Funding provided under the Legislative Instrument will contribute to the national interest by increasing research skills in the critical minerals sector, increasing industry capacity in research and yielding research and information on issues of broad national significance.

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 Program will have no impact on regulatory burden (OBPR reference number 25724).

Details of the *Industry Research and Development (Advancing Research and Development for Critical Minerals Program) Instrument 2020*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Advancing Research and Development for Critical Minerals 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 Advancing Research and Development for Critical Minerals Program (the Program) for the purposes of subsection 33(1) of the Act.

The Program provides funding to undertake research and development projects that will contribute to the Government's policy priorities to grow Australia's critical minerals sector, including opportunities for downstream processing and recycling and reuse of critical minerals.

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 external affairs (paragraph 51(xxix) of the Constitution) and 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 (Advancing Research and Development for Critical Minerals 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 Program aims to help grow Australia's critical minerals sector including by:

- improving knowledge and identification of Australia's critical minerals reserves;
- increasing opportunities for critical minerals exploration and mining activities in Australia;
- increasing opportunities to expand Australia's critical minerals resource base through tailings and other mine waste reclamation, recycling and waste treatment initiatives;
- improving the efficiency, sustainability and economic viability of new and existing critical minerals activities;
- improving the operation of global markets and transparency of supply chains; and
- increasing opportunities for downstream processing and other value-added industries for critical minerals 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 Keith Pitt MP

Minister for Resources, Water and Northern Australia