

## **EXPLANATORY STATEMENT**

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

*Industry Research and Development Act 1986*

*Industry Research and Development (Temporary Refinery Production Payment Program)  
Instrument 2021*

### **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 (Temporary Refinery Production Payment Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Temporary Refinery Production Payment program (the Program). The funding for the Program has been secured through the Department of Industry, Science, Energy and Resources 2020-2021 Budget.

The Program provides \$83.5 million to major Australian refiners to maintain Australia's fuel security through continued operation of an on-shore refining capability.

Funding, to be calculated on a cent-per-litre basis, will be available to major Australian oil refineries that produce eligible transport fuels relevant to Australia's fuel security. Eligible refineries are entities with ownership of the Lytton refinery in Queensland and the Geelong refinery in Victoria.

Eligible refineries will be able to claim funding for fuels produced between 1 January 2021 and 30 June 2021, with payments made quarterly in arrears, based on the actual production of eligible fuels for the preceding quarter.

Funding authorised by this Legislative Instrument comes from the 2020-21 Mid-Year Economic and Fiscal Outlook as set out in the *Portfolio Budget Statements 2020-21, Industry, Science, Energy and Resources Portfolio*, ([https://budget.gov.au/2020-21/content/myefo/download/07\\_appendix\\_a.pdf](https://budget.gov.au/2020-21/content/myefo/download/07_appendix_a.pdf)) at page 142.

The Program will be delivered by AusIndustry, a specialised design, management, and delivery body with extensive expertise and capability in delivering similar programs in the Department of Industry, Science, Energy and Resources (the Department).

The Program is a demand-driven (closed) grants program. The Program is administered by the Department in accordance with the *Commonwealth Grant Rules and Guidelines 2017* (<https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf>).

Eligibility criteria is outlined in the Program guidelines, available at (<https://www.grants.gov.au/Go/Show?GoUuid=7eb20412-e56d-41b5-9c37-b24448895abe>). Note that first time users of GrantConnect will need to create login details to access the Program guidelines.

Spending decisions will be made by the Minister, taking into account the recommendations from Department officials on the merits of the applications relative to the Program guidelines.

Applications will be assessed by AusIndustry against the eligibility criteria set out in the Program guidelines. Applications must address the eligibility criteria, and provide supporting evidence as outlined in the Program guidelines. Both successful and unsuccessful applicants will be informed in writing.

The Program involves the allocation of limited funding between competing 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 spending decisions under the Program.

Persons who are otherwise affected by the 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.

### **Bounties power**

Paragraph 51(iii) of the Constitution empowers the Parliament to make laws with respect to ‘bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth’. A bounty is a payment made in respect of the production or export of goods, most commonly quantified by reference to the volume of goods produced or exported.

In that regard, the grants authorised by the Legislative Instrument will be calculated by reference to the actual production of transport fuels by eligible refineries on a cents-per-litre basis and will be payable at the same rate throughout Australia.

### **Background**

The Program will deliver on the Australian Government’s commitment to strengthening long term fuel security through the continued operation of an on-shore refining capability.

### **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 was consulted on this Legislative Instrument.

### **Regulatory Impact**

It is estimated that the regulatory burden is likely to be minor (OBPR reference number 43321).

## **Details of the *Industry Research and Development (Temporary Refinery Production Payment Program) Instrument 2021***

### **Section 1 – Name of Instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Temporary Refinery Production Payment Program) Instrument 2021*.

### **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 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 Temporary Refinery Production Payment Program (the Program) for the purposes of section 33 of the IR&D Act.

The Program provides for grants of production payments to major oil refineries operating in Australia (i.e. the Lytton refinery in Queensland and the Geelong refinery in Victoria) in respect of the production of eligible transport fuels (jet fuel, petrol, and diesel), calculated on a cents-per-litre basis.

The refineries can claim funding for fuels produced between 1 January 2021 and 30 June 2021 only.

### **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 bounties on the production or export of goods (within the meaning of paragraph 51(iii) 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 (Temporary Refinery Production Payment Program) Instrument 2021*

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 Australian Government recognises the significant and unique role of domestic oil refineries have in relation to fuel security. Domestic oil refineries contribute to the delivery of the Australian Government's commitment to domestic liquid fuel security and safeguard our national security.

The intent of the Temporary Refinery Production Payment Program serves to retain a sovereign on-shore refining capability in Australia and brings forward the production payment element of the Government's 2020-21 Budget announcement to secure Australia's long-term fuel supply.

Funding, to be calculated on a cent-per-litre basis, will be available to major Australian oil refineries, which produce eligible transport fuels relevant to Australia's fuel security.

#### **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 Angus Taylor MP**

**Minister for Energy and Emissions Reduction**