

EXPLANATORY STATEMENT

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

Industry Research and Development Act 1986

*Industry Research and Development (Support for Industry Service Organisations 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 Commonwealth entity, or by their delegate (under section 36).

The purpose of the *Industry Research and Development (Support for Industry Service Organisations Program) Instrument 2021* (the Legislative Instrument) is to prescribe the expanded Support for Industry Service Organisations Program (the Program). Funding for the Program has been secured through the Department of Industry, Science, Energy and Resources 2020-2021 Budget. The Program provides funding of \$2.1 million that forms part of the Australian Government's \$5.9 million commitment to boost Australia's leadership, influence and uptake of international standards.

The Program improves the competitiveness of Australian industry by ensuring Australian membership of, and participation in, meetings of key international organisations in the areas of standards development, conformance and laboratory accreditation.

The objective of the Program is to help to ensure Australian standards and conformity assessment procedures are aligned with Australia's commitments in Free Trade Agreements

and international practices and do not present technical barriers to trade. The Program is also intended to enable Australia to play a role in influencing international practices with regards to standards and technical barriers to trade through cooperation in international fora.

The Program provides financial support to Australia's three peak non-government technical infrastructure organisations; Standards Australia, the National Association of Testing Authorities (NATA), and the Joint Accreditation System of Australia and New Zealand (JAS-ANZ). The Program funding provided to these three organisations will enable them to assist Australia, and Australian businesses, to influence, apply and conform to international standards. Initially, the financial support provided will be for the specific purpose of supporting the influence or uptake of digital, critical technology or critical minerals standards work both domestically and internationally. The aim is to:

- boost Australia's leadership to influence the development, and promote the uptake, of international standards;
- increase participation and engagement by Australian experts in relevant international standards and conformance committees;
- assist Australia, and Australian businesses, to apply and conform to international standards.

Funding authorised by this Legislative Instrument comes from Program 1.2, Growing innovative and competitive businesses, industries and regions, Outcome 1, as set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.9, Industry, Science, Energy and Resources Portfolio* (<https://www.industry.gov.au/about-us/finance-reporting/budget-statements>) at page 31.

The Program is an ad hoc grants program which will be administered by the department in accordance with the grant opportunity guidelines, grant agreements, and the *Commonwealth Grant Rules and Guidelines 2017* (<https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf>).

Standards Australia, NATA, and JAS-ANZ are required to submit proposals for funding against grant opportunity guidelines. The department will conduct an assessment process to ensure proposals meet policy objectives, are feasible and represent value for money. Spending decisions will be made by the Program Delegate who is the departmental officer responsible for administering the Program. There is also an enquiry and feedback process.

Program eligibility is necessarily limited to Standards Australia, NATA, and JAS-ANZ. Standards Australia and NATA are recognised as Australia's peak standards and conformance bodies through Memorandums of Understanding (MoU) with the Australian Government. These MoUs acknowledge the significant roles these two organisations play in developing Australian Standards, accrediting laboratories and representing Australia interests in key international organisations, such as the International Organization for Standardization (ISO) and the International Laboratory Accreditation Cooperation (ILAC). JAS-ANZ is the overarching authority for the accreditation of conformity assessment bodies in Australia and

New Zealand, established in 1991 under a Treaty between the Australian and New Zealand Governments. JAS-ANZ also represents Australia's interests at the International Accreditation Forum (IAF).

In addition to being longstanding, recognised peak bodies in their fields, these three organisations are the only entities with the experience and expertise to fulfil the requirements of the Program. As a result, external merits review does not apply to decisions about the provision of grants under the Program.

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 legislative powers in respect of which the Instrument is made are the following:

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports legislation implementing Australia's international obligations under treaties to which it is a party. Australia has obligations under the World Trade Organisation (WTO) Agreement on Technical Barriers to Trade (TBT Agreement), particularly Articles 2.4, 2.6 and 4.1.

Article 2.4 of the TBT Agreement provides that Member States of the WTO are to use international technical standards, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means of fulfilling the legitimate objectives being pursued.

Article 2.6 of the TBT Agreement requires Members to participate in the preparation by international standardising bodies of international standards for products for which they have adopted technical regulations, with a view to harmonising technical regulations on as wide a basis as possible.

In addition, Article 4.1 of the TBT Agreement provides that Member States of the WTO are to ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to the TBT Agreement, which sets out principles that Member states are to adopt in order to reduce technical barriers to trade.

Funding provided under the Legislative Instrument will support activities that promote the uptake of international standards in Australia and that integrate international standards into priority sectors within Australia, and will ensure that Australian standards and conformity assessment procedures do not present technical barriers to trade. Funding provided under the

Legislative Instrument will also support Australia's participation in international standards and conformance bodies.

Background

Legislative authority for the Program was originally provided by Item 418.012 in Schedule 1AA of the *Financial Framework (Supplementary Powers) Regulations 1997*. The scope of the Program was originally confined to providing a baseline of funding support to Standards Australia and NATA to represent Australia in international and regional standards and conformance bodies. This Legislative Instrument is made in order to provide new legislative authority for Program, taking into account its expanded scope.

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.

Consultation has also occurred with the Department of Infrastructure, Transport, Regional Development and Communications; Standards Australia; NATA; JAS-ANZ; and the National Measurement Institute.

Regulatory Impact

It is estimated that the regulatory burden is likely to be minor (OBPR reference number 42713).

Details of the *Industry Research and Development (Support for Industry Service Organisations Program) Instrument 2021*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Support for Industry Service Organisations 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 – Support for Industry Service Organisations Program

This section prescribes the Support for Industry Service Organisations Program (the Program) for the purposes of section 33 of the IR&D Act.

The Program provides financial support to Australia's three peak non-government technical infrastructure organisations. These organisations are Standards Australia, the National Association of Testing Authorities (NATA), and the Joint Accreditation System of Australia and New Zealand (JAS-ANZ). The Program will enable these organisations to maintain Australian membership of, and participation in, meetings of key international organisations in the areas of standards development, conformance and laboratory accreditation. It also allows the organisations to undertake national interest activities in international standards and conformance fora.

The Program will boost Australia's uptake of international standards and its ability to apply and conform to international standards within the domestic setting, including by helping Australian businesses to use them.

The Program will help to ensure Australian standards and conformity assessment procedures are aligned with Australia's commitments in Free Trade Agreements and international practices and do not present technical barriers to trade.

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 external affairs (paragraph 51(xxix) of the Constitution).

Statement of Compatibility with Human Rights

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

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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

This Legislative Instrument provides legislative authority to commit Commonwealth funds to the expansion of the Support for Industry Service Organisations Program (SISO) Program (the Program).

This Program will boost Australia's leadership, influence and uptake of international standards. It will do this by enabling Australia's peak standards and conformance bodies to maintain membership and participate in meetings of key international organisations, such as the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), and the International Laboratory Accreditation Cooperation (ILAC).

The Program provides new, targeted funding dedicated to supporting digital, critical technology and critical minerals standards work both domestically and internationally. It will also enable the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) to participate in the Program to leverage its expertise in the accreditation of conformity assessment schemes that enable the adoption of international standards.

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