

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Trade, Tourism and Investment

Industry Research and Development Act 1986

*Industry Research and Development (COVID-19 Consumer Travel Support Program)
Amendment 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 Minister for Industry, Science and Technology has delegated the Minister's power under subsection 33(1) to the Minister for Trade, Tourism and Investment, under subsection 33(6) of the IR&D Act to prescribe the COVID-19 Consumer Travel Support Program (the Program).

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 (COVID-19 Consumer Travel Support Program) Instrument 2020 (the Legislative Instrument) was to prescribe the Program. The funding for the Program has been secured through the Australian Trade and Investment Commission 2020-2021 Budget. The Program initially provided \$128million and was extended to provide an additional \$130 million. In total the Program will provide \$258 million as part of the Australian Government's response to the significant challenges posed by COVID-19. The Program provides immediate, short-term financial support to travel agents and tour arrangement service providers that have qualified for a JobKeeper Payment under the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*, to help

alleviate the negative economic impact on the travel industry due to the COVID-19 pandemic.

The *Industry Research and Development (COVID-19 Consumer Travel Support Program) Amendment Instrument 2021* (the Amendment Instrument) amends the description of the Program in section 5 of the Legislative Instrument. The amended description will ensure that the Legislative Instrument provides sufficient legislative authority for the second round of payments which will occur after the cessation of the JobKeeper scheme. Ongoing qualification under the JobKeeper scheme cannot be an eligibility requirement following cessation of the JobKeeper scheme. The Amendment Instrument clarifies that travel agents and tour arrangement service providers must have at any time qualified for the JobKeeper scheme to be eligible for a payment.

Travel agents and tour arrangement service providers have been affected by COVID-19 more than other areas of the visitor economy because they rely almost entirely on international travel for their commission-based income. Travel agents and tour arrangement service providers are continuing to work in order to meet their existing legal obligations to process consumer refunds, but are not earning any income.

The Program was designed to support up to 5,000 travel agents and tour arrangement service providers, employing up to 40,000 people. In its first round, the Program provided eligible travel agents and tour arrangement service providers with one payment of between \$1,500 and \$100,000, scaled according to turnover. The second round of the Program will provide eligible travel agents and tour arrangement service providers with a second payment of between \$7,500 and \$100,000, scaled according to turnover. Most of the over 3,500 travel agents and tour arrangement service providers that received payments under the first round of the Program will be eligible under the second round of the Program.

Funding authorised by this Legislative Instrument comes from Program 1.2: Programs to Australia's exports and other international economic interests, Outcome 1. Details are set out in the Portfolio Additional Estimates Statements 2020-21, Foreign Affairs and Trade Portfolio (<https://www.dfat.gov.au/sites/default/files/foreign-affairs-and-trade-portfolio-additional-estimates-statements-2020-21.pdf>).

The Program will be delivered jointly by the Australian Trade and Investment Commission (Austrade), as the lead policy agency for the Program, and Services Australia. After the applicant commenced their first round application, the Australian Taxation Office (ATO) provided to travel agent tax payers a certificate, containing information needed to assess whether an applicant meets the eligibility criteria for the Program. The certificate verified information already provided by applicants in an application form. After the certificate was issued by the ATO to the applicant, the applicant submitted the certificate issued by the ATO to Services Australia as part of the application process. For the second round of payments, applicants will be required to sign an e-declaration confirming their eligibility under the first round, their turnover calculation methods and their ongoing solvency.

Services Australia will undertake assessment of applications, and make payments under the Program, with applicant's claiming through its business hub.

The Program Delegate will not consider applications if there are insufficient Program funds.

The Program is a demand-driven grants program. The Program is administered in accordance with the *Commonwealth Grant Rules and Guidelines 2017*

(<https://www.finance.gov.au/government/commonwealth-grants/commonwealth-grants-rules-and-guidelines>). Eligibility criteria are outlined in the grant opportunity guidelines for the Program, available at <https://www.grants.gov.au>.

Spending decisions will be made by Services Australia officials, taking into account the operating instructions provided by Austrade.

Grants will be available in two payments, to each eligible ABN holder applicant, until funds for the Program are exhausted or the grant opportunity closes, whichever occurs earlier.

Given the nature of the Program, in particular that it is short-term and its funding pool is finite, external merits review is not appropriate and is therefore not provided for in relation to grant decisions under the Program.

Persons who are otherwise affected by decisions or who have complaints about the Program will have recourse to Services Australia internal review. Services Australia investigates any complaints about the Program in accordance with its complaints policy and procedures. If a person is not satisfied with the way Services Australia 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:

Trade and commerce power

Paragraph 51(i) of the Constitution empowers the Parliament to make laws with respect to 'trade and commerce with other countries, and among the States'.

The Program prescribed by the Legislative Instrument, and as amended by the Amendment Instrument, will provide time-limited financial support for travel agents and tour arrangement service providers so they can continue to engage in interstate and overseas trade and commerce.

Bankruptcy and insolvency power

Paragraph 51(xvii) of the Constitution empowers the Parliament to make laws with respect to 'bankruptcy and insolvency'.

The Program prescribed by the Legislative Instrument, and as amended by the Amendment Instrument, will provide time-limited financial support to assist travel agents and tour arrangement service providers that are, or are at risk of becoming, bankrupt or insolvent.

Executive power and express incidental power, including the nationhood aspect

The express incidental power in paragraph 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.

Funding provided under the Legislative Instrument, and as amended by the Amendment Instrument, will provide time-limited financial support to alleviate the negative economic impacts of the coronavirus known as COVID-19, an unforeseen crisis of immediate national significance, on travel agents and tour arrangement service providers.

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. Services Australia, the ATO and the Department of Industry, Science, Energy and Resources were also consulted.

Austrade consulted with the following industry bodies during the design of this Program:

- The Australian Federation of Travel Agents (AFTA)
- The Council of Australian Tour Operators (CATO)
- The Australian Tourism Industry Council (ATIC)
- Australian Tourism Export Council (ATEC)

Regulatory Impact

It is estimated that the regulatory burden is likely to be minor (OBPR reference number 43356).

Details of the *Industry Research and Development (COVID-19 Consumer Travel Support Program) Amendment Instrument 2021*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (COVID-19 Consumer Travel Support Program) Amendment Instrument 2021*.

Section 2 – Commencement

This section provides that the Legislative Instrument commences the day after the instrument is registered.

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 – Schedules

This section is a machinery clause that allows the Schedule to the Amendment Instrument to operate according to its terms.

Schedule 1 – Amendments

This Schedule amends subsection 5(2) of the Legislative Instrument to omit the “qualify for the JobKeeper scheme” and substitute it with “have, at any time, qualified for the JobKeeper scheme”. This change clarifies that ongoing JobKeeper scheme qualification is not an eligibility requirement for the Program.

Statement of Compatibility with Human Rights

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

Industry Research and Development (COVID-19 Consumer Travel Support Program) Amendment 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 purpose of the Industry Research and Development (COVID-19 Consumer Travel Support Program) Amendment Instrument 2021 (the Amendment Instrument) is to amend the *Industry Research and Development (COVID-19 Consumer Travel Support Program) Instrument 2020* (the Legislative Instrument). The Legislative Instrument prescribed the COVID-19 Consumer Travel Support Program (the Program). The Program initially provided \$128 million and was extended to provide an additional \$130 million. In total the Program will provide \$258 million as part of the Australian Government's response to the significant challenges posed by COVID-19. The Amendment Instrument amends subsection 5(2) of the Legislative Instrument to omit the "qualify for the JobKeeper scheme" and substitute it with "have, at any time, qualified for the JobKeeper scheme". This change clarifies that ongoing JobKeeper scheme qualification is not an eligibility requirement for the second round of the Program, given that the JobKeeper scheme ceased on 28 March 2021.

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 Dan Tehan MP

Minister for Trade, Tourism and Investment