

EXPLANATORY STATEMENT

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

Industry Research and Development Act 1986

*Industry Research and Development (Modern Manufacturing Initiative 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 (Modern Manufacturing Initiative Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Modern Manufacturing Initiative Program (the Program). The funding for the Program has been secured through the Department of Industry, Science, Energy and Resources 2020-21 Budget. The Program provides \$1.3 billion over four financial years from 2020-21 to 2023-24 as part of the Australian Government's commitment to upscale Australia's manufacturing capability and to strengthen our future resilience.

The purpose of the Program is to stimulate business investment in the manufacturing sector by addressing barriers to scale and competitiveness for Australian businesses. It aims to build manufacturing capabilities and networks, lift productivity, create jobs, build global competitiveness and boost the export potential of Australian businesses. Funding will be provided through grants on a co-investment basis.

Funding is available through three streams:

- The Manufacturing Collaboration Stream will support manufacturing collaboration at scale. This stream seeks to bring together businesses, researchers and investors, to build business confidence during the current crisis, aid our job recovery, and stimulate much needed investment.
- The Manufacturing Translation Stream will support projects that aid the translation of high quality research and ideas into commercial outcomes and support businesses to scale-up and become more competitive and resilient. It will support businesses to adopt new technologies and improve their manufacturing processes to boost productivity and competitiveness.
- The Manufacturing Integration Stream will target the integration of local businesses with domestic and international firms to facilitate the delivery of products and services into domestic and global value chains. By enhancing integration into domestic and global value chains, businesses can experience increased productivity, innovation, and collaboration, as well as exposure to new technologies, processes and skills.

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 will be delivered by the Department's Business Grants Hub, which is a specialised design, management and delivery body with extensive expertise and capability in delivering similar programs.

Grants will be awarded through a combination of open/competitive and ad-hoc processes. 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 and merit criteria will be outlined in the program guidelines, and published on business.gov.au and GrantConnect.

Spending decisions will be made by the Minister for Industry, Science and Technology or the Prime Minister taking into account the recommendations of an independent assessment committee.

A total of \$1.3 billion of Commonwealth funding will be available. All streams will operate on a co-investment basis. The program guidelines will provide more information about available funding for each funding round.

Commonwealth funding for Manufacturing Collaboration Stream projects will be up to one third of eligible project costs.

Commonwealth funding for Manufacturing Translation Stream and Manufacturing Integration Stream projects will be up to 50 per cent of eligible project costs in 2020-21 and 2021-22 before reverting to one third of eligible project costs in 2022-23.

For competitive selection processes, applications will be assessed against the eligibility criteria and assessment criteria set out in the grant opportunity guidelines, which will be available on business.gov.au. In the first instance, the Department will review applications against the eligibility criteria. Only eligible applications will proceed to the assessment stage. Eligible applications will then be assessed by an independent committee of experts. The committee will comprise of external experts including representatives from industry with technical and/or sectoral knowledge that will be required to assess the merit of applications against the merit criteria. The committee may also seek additional advice from independent technical experts. Appropriate probity and conflict of interest measures will be established.

Applications must address the eligibility and assessment criteria, and provide relevant supporting information. The amount of detail and supporting evidence should be relative to the project size, complexity and funding amount requested. Larger and more complex projects should include more detailed evidence. To be competitive, applications must score highly against each assessment criterion.

After considering the applications, the independent assessment committee will make recommendations to the Minister for Industry, Science and Technology. The Minister for Industry, Science and Technology or the Prime Minister will make the final decision about which grants to approve, taking into consideration the independent assessment committee's recommendations, and the availability of grant funds. The decision maker will not approve funding if there are insufficient Program funds available across relevant financial years for the Program.

The Minister for Industry, Science and Technology may consider ad hoc grants. For ad hoc grant processes, applications will be assessed against the ad-hoc guidelines. The proposal is then assessed by the Department and a recommendation is provided to the decision maker. The Minister for Industry, Science and Technology will make decisions on ad hoc grants. Any ad hoc grant processes will operate outside the three streams and under a separate set of grant guidelines.

Both successful and unsuccessful applicants will be informed in writing. Unsuccessful applicants will have an opportunity to discuss the outcome with the Department.

The Program involves the allocation of finite resources between competing applicants, or ad hoc grants to grantees specifically selected for their unique ability to deliver program objectives. In addition, there will be 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 decisions about the provision of grants under the Program.

Persons who are otherwise 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.

Corporations power

Paragraph 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.

Constitutional corporations will be eligible to receive benefits under the Program prescribed by the Legislative Instrument. The benefits conferred by the Program will be directed to assisting those corporations in the conduct of their ordinary activities, by supporting the following:

- (a) large projects that bring together businesses, researchers and investors to build economies of scale and allow businesses to better compete in international markets.
- (b) projects aimed at translating good ideas into new and enhanced commercial outcomes.

- (c) projects that target the integration of Australian businesses into domestic and global value chains.

The Program will impose terms and conditions on those corporations under a grant agreement in accordance with section 35 of the IR&D Act, in relation to receipt of benefits under the Program. The terms and conditions will set out what the funding may be used for, and the circumstances in which it must be repaid.

Trade and commerce power

The trade and commerce power in section 51(i) of the Constitution enables the Parliament to make laws with respect to trade and commerce with other countries, and among the States.

In that regard, eligibility for funding under the Program prescribed by the Legislative Instrument will be limited to projects that show potential to expand or promote interstate or international trade.

Background

There are many barriers to scaling-up in Australia for businesses involved in manufacturing including poor access to appropriate finance; low risk appetite; weak collaboration culture; failure to translate ideas into commercial solutions; lack of economies of scale and access to international markets; underinvestment in non-R&D innovation; and underdeveloped business acumen and management skills.

The purpose of the program is to stimulate business investment in the manufacturing sector by addressing barriers to scale and competitiveness for Australian businesses. It aims to build manufacturing capabilities and networks, lift productivity, create jobs, build global competitiveness and boost the export potential of Australian manufacturers.

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. The Department of Finance and other Commonwealth central agencies have been consulted on the program guidelines.

The development of manufacturing road maps involved wide ranging public consultation and is industry led through the road map taskforces. These road maps underpin the strategy for the Program and inform the program guidelines. The policy design also included consultations with Industry Innovation and Science Australia and Commonwealth Scientific and Industrial Research Organisation to capture their technical expertise.

Regulatory Impact

It is estimated that the regulatory burden is likely to be minor (OBPR reference number 2749).

Details of the *Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Modern Manufacturing Initiative 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 section provides for definitions of terms used in the Legislative Instrument.

Section 5 – Prescribed Program

This section prescribes the Modern Manufacturing Initiative Program (the Program) for the purposes of section 33 of the IR&D Act.

The Program provides grants that will assist businesses, researchers and investors to undertake collaboration to build economies of scale, support industry-led projects aimed at translating research into commercial solutions and support the integration of Australian businesses into domestic and global value chains. It will encourage the adoption of new technologies to create innovative products and processes.

Section 6 – Specified Legislative Power

This section specifies that the legislative powers in respect of which the Legislative Instrument is made are the power of the Parliament to make laws with respect to corporations (paragraph 51(xx) of the Constitution) and the power of the Parliament to make laws with respect to interstate and international trade and commerce (paragraph 51(i) 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 (Modern Manufacturing Initiative 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 purpose of the *Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Modern Manufacturing Initiative Program (the Program).

The purpose of the Program is to stimulate business investment in the manufacturing sector by addressing barriers to scale and competitiveness for Australian manufacturers. It aims to build manufacturing capabilities and networks, lift productivity, create jobs, build global competitiveness and boost the export potential of Australian manufacturers.

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 Christian Porter MP

Minister for Industry, Science and Technology