

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Agriculture, Drought and Emergency Management

*Industry Research and Development Act 1986*

*Industry Research and Development (National Agricultural Innovation Agenda Program)  
Instrument 2021*

### **Purpose and Operation**

Section 33 of the *Industry Research and Development Act 1986* (the 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 responsible for administering the *Primary Industries Research and Development Act 1989* under subsection 33(6) of the Act to prescribe the National Agricultural Innovation Agenda Program (the Program). This is currently the Minister for Agriculture, Drought and Emergency Management.

The statutory framework provided by section 33 of the 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 (National Agricultural Innovation Agenda Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Program. Funding for the Program has been secured through the Department of Agriculture, Water and the Environment 2020-21 Budget and additional funding for this Program may become

available in future. The Program initially provides \$1.3 million (GST exclusive) as part of the Australian Government's commitment to provide funding to Agricultural Innovation Australia Ltd (AIA) to assist it to undertake its activities in relation to developing research and development investment strategies and funding research and development projects identified by such strategies.

The purpose of the Program is to invest in research and development that addresses significant issues affecting a number of agricultural sectors, and that supports increased sustainability, productivity and profitability.

Funding is to be made available to AIA, subject to an assessment under the *Commonwealth Grant Rules and Guidelines 2017*, to support investment in research and development.

Funding authorised by this Legislative Instrument comes from Program 3.10: Agricultural Resources, Outcome 3, as set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.1, Agriculture, Water and the Environment Portfolio* (<https://www.awe.gov.au/sites/default/files/2020-10/pbs2020-21-awe.pdf>) at page 80.

The Program will be delivered by the Department of Agriculture, Water and the Environment (the Department).

The Program is an ad hoc grants program. The Program is administered by the Department and the Community Grants Hub 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 will be outlined in the Program guidelines and published on GrantConnect (grants.gov.au).

AIA was identified as an eligible applicant and an appropriate recipient of the initial \$1.3 million (GST exclusive) grant. AIA is a not-for-profit, public company established to facilitate joint investment and collaboration in cross-industry agricultural issues of national importance. AIA is able to support the outcomes and objectives of the Program. AIA will be required to develop research and development investment strategies and fund relevant projects in accordance with the grant activities and assessment requirements outlined in the Program guidelines.

Spending decisions will be made by the Minister for Agriculture, Drought and Emergency Management who is responsible for administering the Program, taking into account the recommendations of an assessment by Departmental officers against the Program guidelines.

As the Program involves targeted ad-hoc grants, the Program will not be subject to merits review. Merits review of the Program would not be appropriate because decisions will relate to the provision of ad-hoc grants to a certain service provider over other service providers. The Administrative Review Council has recognised that it is justifiable to exclude merits

review in relation to decisions of this nature (see items 4.16 to 4.19 of *What decisions should be subject to merits review?*).

Persons who are otherwise affected by decisions or who have concerns about the Program will be able to provide feedback 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.

### **Statement of the Relevance and Operation of Constitutional Heads of Power**

For the purposes of subsection 33(3) of the Act, the powers of the Parliament to make laws with respect to the following are specified for the Program prescribed by the Legislative Instrument:

- foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (paragraph 51(xx) of the Constitution) (corporations power); and
- enterprises and activities which are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation (section 61 and paragraph 51(xxxix) of the Constitution) (implied nationhood power).

Section 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 Act are substantially different to the provisions considered by the High Court in *Williams No 2*. Section 34 of the 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 Act. Subsection 35(2) of the 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.

The Program prescribed by the Legislative Instrument confers on AIA (a constitutional corporation) benefits which are directed to assisting it in the conduct of its ordinary activities and will impose terms and conditions on it in accordance with section 35 of the Act, in relation to receipt of that benefit. In particular, the Program will provide funding to AIA to assist it to undertake its activities in relation to the development of research and development investment strategies and investing in projects that are consistent with those strategies.

The Program prescribed by the Legislative Instrument also involves the funding of research and development into matters of national benefit and importance, specifically, research and development that supports increased sustainability, productivity and profitability in the agriculture sector.

### **Authority**

Section 33 of the 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 Industry, Science, Energy and Resources was also consulted.

The Department will consult with AIA on an ongoing basis to ensure that the grant will be administered and used effectively to achieve the aims of the Program. The Department is also working with many of the members of AIA to ensure its activities continue to align with the aims of the Program.

### **Regulatory Impact**

It is estimated that the regulatory burden is likely to be minor. The Office of Best Practice Regulation assessed the Program is unlikely to have a regulatory impact on business, individuals or community organisations (OBPR reference number 43437).

## **Details of the *Industry Research and Development (National Agricultural Innovation Agenda Program) Instrument 2021***

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

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (National Agricultural Innovation Agenda Program) Instrument 2021* (the Legislative Instrument).

### **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 section provides for definitions of terms used in the Legislative Instrument.

### **Section 5 – Prescribed Program**

This section prescribes the National Agricultural Innovation Agenda Program (the Program) for the purposes of subsection 33(1) of the Act.

The Program provides funding to Agricultural Innovation Australia Ltd to assist it to undertake its activities in relation to developing research and development investment strategies and funding research and development projects identified by such strategies. The purpose of the Program is to support investment in research and development addressing significant issues affecting a number of sectors, including the fishery and forestry sectors, of Australian agriculture; and is of national benefit and importance because it is conducive to the increased sustainability, productivity and profitability of Australian agriculture.

### **Section 6 – Specified Legislative Power**

This section specifies that for the purposes of subsection 33(3) of the Act, the legislative powers in respect of which the Legislative Instrument is made are the powers of the Parliament to make laws with respect to:

- foreign corporations and trading or financial corporations formed within the limits of the Commonwealth (paragraph 51(xx) of the Constitution); and

- enterprises and activities 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 (National Agricultural Innovation Agenda 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 (National Agricultural Innovation Agenda Program) Instrument 2021* (the Legislative Instrument) is to prescribe the National Agricultural Innovation Agenda Program (the Program). The Program initially provides \$1.3 million (GST exclusive) as part of the Australian Government's commitment to providing funding to Agricultural Innovation Australia Ltd to assist it to undertake its activities in relation to the development of research and development investment strategies, including research and development that supports increased sustainability, productivity and profitability in the agriculture sector.

### **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. David Littleproud MP**  
**Minister for Agriculture, Drought and Emergency Management**