

## **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 an Australian Fashion Certification Trade Mark 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 (Support for an Australian Fashion Certification Trade Mark Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Support for an Australian Fashion Certification Trade Mark Program (the Program). Funding for the Program has been secured from existing departmental funding and from the Department of Industry, Science, Energy and Resources (the Department) 2021-22 Budget. The Program supports the Australian Government's commitment to increase workforce participation for women and small business.

The Program provides funding across the 2020-21 and 2021-22 financial years to the Australian Fashion Council Limited (the AFC) to undertake the design, development and delivery of an Australian fashion certification trade mark to support its objectives to promote and nurture the success of Australian fashion and textile companies and ensure competitiveness domestically and internationally. The Program also aligns with the existing work the AFC conducts in developing an industry-driven strategy for long-term growth.

The design and development of the trade mark will likely include, but will not be limited to the development of creative concepts, determination of the rules of use and registration. The delivery of the trade mark will likely include, but will not be limited to administering the trade mark, approving businesses for its use and implementing an awareness campaign.

The Program will support economic recovery in the Australian fashion and textile industry through increased identification of, and consumer demand for, high quality Australian fashion products. The Program will build on the recognition of the economic and cultural value of the innovation and design capabilities in Australian fashion, and promote the high quality of locally designed and produced products to key overseas markets.

Funding authorised by this Legislative Instrument comes from Program 1.2 Growing innovative and competitive businesses, Outcome 1, as set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.9 Industry, Science, Energy and Resources Portfolio* (<https://www.industry.gov.au/about-us/budget-statements>) at page 16.

The Program provides \$0.95 million through a one-off ad hoc, non-competitive grant to the AFC. The Program will be administered by the Department's Business Grants Hub, in accordance with the *Commonwealth Grant Rules and Guidelines 2017* (<http://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf>). The Business Grants Hub is a specialised design, management and delivery body with extensive expertise and capability in delivering programs. As this is an ad-hoc grant to an identified recipient, there are no selection criteria.

The final spending decision will be made by the appropriate delegate within the Department at the SES1 level or above, taking into account the recommendations of the Department.

As this is a one-off grant to an identified recipient, the Program will not be subject to merits review. The AFC has been identified as the appropriate recipient because it has the reputation, industry network, and ability to engage with local and global industry stakeholders required for the success of this Program. In particular, the AFC has strong knowledge and understanding of the Australian fashion industry and will have credibility in providing messaging to the community on this issue. The AFC will leverage its industry networks to maximise the Program's outcomes which are the continued viability of the Australian fashion industry and increased consumer awareness around the choice to support Australian designed and produced fashion.

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:

## **Corporations 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 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.

The Program prescribed by the Legislative Instrument confers on a trading corporation (AFC) benefits which are directed to the development of an Australian fashion certification trade mark. The Program will impose terms and conditions 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**

Section 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 is aimed at supporting the development of an Australian fashion certification trade mark. It is expected that the grant would encourage the trade of Australian fashion products throughout and beyond Australia, which would involve trading with interstate and overseas markets.

### **Authority**

Section 33 of the IR&D Act provides authority for the Legislative Instrument.

### **Consultation**

The Department engaged with key industry stakeholders through three Fashion Industry Roundtables. Topics of discussion included key issues facing the sector, impacts of COVID-19, opportunities for increasing demand for Australian-made fashion and diversifying manufacturing capability to upskill and create new jobs. The Department also consulted with the Department of the Prime Minister and Cabinet, the Attorney General's Department, the Department of Foreign Affairs and Trade, AusTrade, IP Australia and CSIRO during development of the Program.

In accordance with section 17 of the *Legislation Act 2003*, the Attorney-General's Department has been consulted on this Legislative Instrument.

### **Regulatory Impact**

It is estimated that the regulatory burden is likely to be no more than minor (OBPR reference number 43394).

## **Details of the *Industry Research and Development (Support for an Australian Fashion Certification Trade Mark 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 an Australian Fashion Certification Trade Mark 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 Support for an Australian Fashion Certification Trade Mark Program (the Program) for the purposes of section 33(1) of the IR&D Act. The Program provides funding to the AFC to design, develop, trademark, deliver and administer a national brand and logo for Australia's fashion industry. The design and development of the trade mark will likely include, but not be limited to, the development of creative concepts, determination of the rules of use, and registration. The delivery of the trade mark will likely include, but not be limited to: administering the trade mark, approving businesses for its use, and implementing an awareness campaign.

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

This section specifies that the legislative powers in respect of which the Legislative Instrument is made are the powers of the Parliament to make laws with respect to trade and commerce (s 51(i) of the Constitution) and the power to make laws with respect of foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (s 51(xx) 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 (Support for an Australian Fashion Certification Trade Mark 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**

This Instrument provides legislative authority to commit Commonwealth funds for the Support for an Australian Fashion Certification Trade Mark Program (the Program). The purpose of the Program is to support economic recovery in the Australian fashion industry through increased identification of, and consumer demand for, high quality Australian fashion products. The Program will build on the recognition of the economic and cultural value of the innovation and design capabilities in Australian fashion, and promote the high quality of locally designed and produced products domestically and to key overseas markets.

The Program will involve the design, development and delivery of an Australian fashion certification trade mark and the implementation of an awareness campaign to provide industry, consumers and overseas markets with tools and information to make an educated choice to support Australian design and produced fashion.

### **Human rights implications**

The Program upholds Articles 2, 3 and 11(1) of the Convention on the Elimination of All Forms of Discrimination Against Women as it will assist the development and advancement of women, and support women's access to employment and economic security. The Program will thereby assist women to overcome discrimination.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it positively impacts human rights issues.

**The Hon Christian Porter MP**  
**Minister for Industry, Science and Technology**