

EXPLANATORY STATEMENT

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

Industry Research and Development Act 1986

Industry Research and Development (Natural Hazards and Disaster Resilience Research Centre 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 (Natural Hazards and Disaster Resilience Research Centre Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Natural Hazards and Disaster Resilience Research Centre Program (the Program). The funding for the Program has been secured through the Department of Industry, Science, Energy and Resources (the Department) 2020-2021 Budget. The Program provides \$85 million as part of the Australian Government's commitment to deliver and scale up applied research to inform Australia's disaster recovery and resilience effort. The Program will provide grant funding to support the establishment of a new research centre that will focus on natural hazards resilience and disaster risk reduction to support the needs of emergency service agencies and communities in preparing for, responding to and recovering from future natural disasters.

The objectives the Program is seeking to achieve through the establishment of the centre are:

- towards zero preventable deaths: protect human life and minimise harm and suffering.
- well-prepared and resilient communities: enable communities to be better informed of the risks associated with an event and make informed decisions if faced with potential disasters; provide research that maintains community trust and confidence; and deliver an understanding of the cost effectiveness of mitigation strategies.
- research that translates into action: provide technology demonstrator opportunities, data management and research outcomes that translates to utilisation.

The aims of the Program are to support the establishment of a research centre that will:

- be a national collaborative research project aimed at improving our understanding of the impacts and our response to natural disasters.
- be responsive to the needs of natural hazards and disaster resilience stakeholders, including local, state and territory governments, industry and the community.
- include an education and training program that supports postgraduate and associate scholarships and vocational education and training in areas relevant to natural disaster response.

Funding is available to the Bushfire and Natural Hazards CRC Limited, or its successor with the written approval of the Commonwealth, to undertake eligible projects to:

- deliver a comprehensive, multi-disciplinary research program centred around three research themes: understanding hazards, vulnerability and risk in a changing climate; supporting a well-prepared Australian community; and using technology to improve response and resilience.
- produce research outcomes that ensure communities have improved capability to prepare for, respond to, and recover from future natural disasters.
- facilitate greater collaboration between researchers, government and the emergency management sector to support the needs of communities across Australia
- undertake research with results relevant to government priorities.

Funding authorised by this Legislative Instrument comes from Program 1.1 Investing in science, technology and commercialisation, 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/sites/default/files/2020-10/2020-21-department-of-industry-science-energy-and-resources-pbs.pdf>) at page 34.

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.

The Program is an ad-hoc grant program. 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 assessment criteria are outlined in the Program guidelines, available at <https://www.grants.gov.au/Go/Show?GoUuid=84ca1d2b-7739-47f6-a6c1-dccb3b6ca633>.

Spending decisions will be made by the Program Delegate who is the General Manager responsible for administering the Program, taking into account the recommendations of an assessment panel.

The grant will be up to a maximum of \$85 million. The grant amount may be up to 100 per cent of eligible project expenditure.

As this is a targeted one-off grant, the Program will not be subject to merits review on the basis that funding decisions:

- involve the allocation of finite resources;
- support the implementation of policy decisions made by government about the delivery of the Program;
- involve funds being provided on an ad hoc basis designed to ensure quick implementation and avoid break in service delivery. The nature of the grant is to build on the Bushfire and Natural Hazards CRC Limited's established research and networks in natural hazards and disaster management.

The application will be assessed by the Department against the requirements set out in the Program guidelines. The first research implementation plan and an establishment plan will form part of the application. An assessment panel formed by the Department will assess the first research implementation plan to consider its merits. The panel may comprise representatives from the Australian Government. The assessment panel may seek input from independent experts to inform their assessments.

The applicant must address the requirements under the Program guidelines and provide relevant supporting information. The amount of detail and supporting evidence should be relative to the project size, complexity and funding amount.

After considering the first research implementation plan, the assessment panel will make recommendations to the Program Delegate regarding whether the proposal is suitable for funding. The Program Delegate will make the final decision to approve the grant, taking into consideration the suitability of the application and the assessment panel's recommendations. The Program Delegate is responsible for decisions in relation to the grant following approval of the application.

If successful, the applicant will receive a written offer, including any specific conditions attached to the grant. If unsuccessful, the applicant will have the opportunity to discuss the outcome with the Department, and can submit a new application. Where this occurs, the applicant will be required to include new or more information to address the weaknesses or concerns identified in the previous application.

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:

Social welfare power

The Legislative Instrument specifies that it is made partly in respect of the student benefits aspect of the social welfare power (para 51(xxiiiA) of the Constitution). The social welfare power in section 51(xxiiiA) of the Constitution empowers the parliament to make laws with respect to the provision of certain welfare benefits including benefits to students. The student benefits aspect of the social welfare power supports Commonwealth legislation which authorises funding for measures that would deliver material aid to identified or identifiable students. In that regard, funding provided under the Legislative Instrument may include scholarships or other financial benefits to students in a field relating to natural hazards and disaster resilience and management.

External affairs power

The Legislative Instrument specifies that one of the legislative powers in respect of which it is made is the external affairs power (para 51(xxix) of the Constitution). The external affairs power relevantly supports legislation implementing Australia's international obligations under treaties to which it is a party. Australia has obligations relevant to this legislative instrument under the following treaties.

- (i) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 (International Covenant on Economic, Social and Cultural Rights);
- (ii) the International Labour Organization's Convention concerning Employment Policy done at Geneva on 9 July 1964 (International Labour Organization's Convention concerning Employment Policy);
- (iii) the International Labour Organization's Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources done at Geneva on 23 June 1975 (International Labour Organization's Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources);

- (iv) the Kyoto Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997 (Kyoto Protocol);
- (v) the Paris Agreement done at Paris on 12 December 2015 (Paris Agreement); and
- (vi) the United Nations Framework Convention on Climate Change done at New York on 9 May 1992 (United Nations Framework Convention on Climate Change).

Articles 2 and 6 of the International Covenant on Economic, Social and Cultural Rights recognise the right to work, and provide that the steps to be taken by States Parties to achieve this right include technical and vocational training programs. A copy of the International Covenant on Economic, Social and Cultural Rights is freely accessible in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) in the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Articles 1 and 2 of the International Labour Organization's Convention concerning Employment Policy require Members to promote full, productive and freely chosen employment, and to decide on and apply measures to obtain that object within the framework of a co-ordinated economic and social policy. A copy of the International Labour Organization's Convention concerning Employment Policy is freely accessible in Australian Treaty Series 1970 No. 17 ([1970] ATS 17) in the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Articles 1, 2 and 4 of the International Labour Organization's Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources require Members to establish and develop open, flexible and complementary systems of general, technical and vocational education and vocational training, and to harmonise their systems of vocational training for young persons and adults in all sectors of the economy. A copy of the International Labour Organization's Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources is freely accessible in Australian Treaty Series 1986 No. 2 ([1986] ATS 2) in the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

To those ends, the Legislative Instrument will support education and training, including vocational education and training, in fields relating to natural hazards and disaster resilience and management, in order to assist communities to prepare for, respond to and recover from natural hazards and disasters.

Article 10(b) of the Kyoto Protocol requires Parties to formulate, implement, publish and regularly update national programs containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change. A copy of the Kyoto Protocol is freely accessible in Australian Treaty Series 2008 No. 2 ([2008] ATS 2) in the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Article 7(9) of the Paris Agreement requires Parties to engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions. A copy of the Paris Agreement is freely

accessible in Australian Treaty Series 2016 No. 24 ([2016] ATS 24) in the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Article 4(1)(b) of the United Nations Framework Convention on Climate Change requires Parties to formulate, implement, publish and regularly update national programs containing measures to mitigate climate change, and measures to facilitate adequate adaptation to climate change. A copy of the United Nations Framework Convention on Climate Change is freely accessible in Australian Treaty Series 1994 No. 2 ([1994] ATS 2) in the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

For the purposes of the above obligations in the Kyoto Protocol, the Paris Agreement, and the United Nations Framework Convention on Climate Change, the Legislative Instrument will support research, education and training in relation to the management and impacts of climate change-related natural hazards and disasters, in order to assist emergency services and communities to prepare for, respond to and recover from such hazards and disasters. The Legislative Instrument will also support the translation of research into tools and technology for responding to natural hazards and disasters related to climate change.

Executive power and express incidental power, including the nationhood aspect

The Legislative Instrument specifies that one of the legislative powers in respect of which it is made is the express incidental power in paragraph 51(xxxix) of the Constitution. The express incidental power in section 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.

In that regard, funding provided under the Legislative Instrument will support a coordinated, national and collaborative research program to assist communities to prepare for, respond to and recover from natural hazards and disasters.

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. In addition, the Department undertook a stakeholder consultation process with persons with expertise in fields relevant to this program to identify the common expectations of the research centre and to inform the program design.

Regulatory Impact

It is estimated that the regulatory burden is likely to be minor (OBPR reference number 26407).

Details of the *Industry Research and Development (Natural Hazards and Disaster Resilience Research Centre Program) Instrument 2021*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Natural Hazards and Disaster Resilience Research Centre 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 Natural Hazards and Disaster Resilience Research Centre Program (the Program) for the purposes of section 33 of the IR&D Act.

The Program provides grant funding to support the establishment of a new research centre to conduct research in relation to natural hazards and disasters in a changing climate.

The Program will support national collaborative research aimed at improving our understanding of the impacts of and our response to natural hazards and disasters. The research will be responsive to the needs of natural hazards and disaster resilience stakeholders, including local, state and territory governments, industry and the community.

The Program will include an education and training program that supports postgraduate and associate scholarships and vocational education and training in areas relevant to natural hazards and disaster resilience and management.

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 the provision of benefits to students (within the meaning of paragraph 51(xxiiiA) of the Constitution); external affairs (within the meaning of paragraph 51(xxix) of the Constitution), as it relates to measures to give effect to certain international treaty obligations; 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 (see 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 (Natural Hazards and Disaster Resilience Research Centre 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 (Natural Hazards and Disaster Resilience Research Centre Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Natural Hazards and Disaster Resilience Research Centre Program (the Program). The Program provides \$85 million funding over 10 years to support the establishment of a natural hazards and disaster resilience research centre. The Program will focus on natural hazard resilience and disaster risk reduction to support the needs of emergency service agencies and communities in preparing for, responding to and recovering from future natural disasters. The Program will:

- be a national collaborative research project aimed at improving our understanding of the impacts and our response to natural disasters
- be responsive to the needs of natural hazards and disaster resilience stakeholders, including local, state and territory governments, industry and the community
- include an education and training program that supports postgraduate and associate scholarships and vocational education and training in areas relevant to natural hazards and disaster response

Human rights implications

This Legislative Instrument engages the rights to work and the rights in work.

The Legislative Instrument promotes support for education and training, including vocational education and training, in fields relating to natural hazards and disaster resilience and management, and assist communities to prepare for, respond to and recover from natural hazards and disasters.

Articles 2 and 6 of the International Covenant on Economic, Social and Cultural Rights recognise the right to work, and provide that the steps to be taken by States Parties to achieve this right include technical and vocational training programs, and the obligations of States to take steps, including through international assistance and co-operation, especially economic and technical, to realise the rights recognised in the Covenant.

Articles 1 and 2 of the International Labour Organization's Convention concerning Employment Policy requires Members to promote full, productive and freely chosen employment, and to decide on and apply measures to obtain that object within the framework of a co-ordinated economic and social policy.

Articles 1, 2 and 4 of the International Labour Organization's Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources requires Members to establish and develop open, flexible and complementary systems of general, technical and vocational education and vocational training, and to harmonise their systems of vocational training, and to harmonise their systems of vocational training for young persons and adults in all sectors of the economy.

Conclusion

This Legislative Instrument is compatible with human rights as it has a positive effect on human rights issues.

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