# EXPLANATORY STATEMENT

## Issued by authority of the Minister for Employment, Workforce, Skills, Small and Family Business

*Industry Research and Development Act 1986*

*Industry Research and Development (Small Business Debt Helpline Program) Instrument 2022*

Section 33 of the *Industry Research and Development Act 1986* (the Act) provides a mechanism for the Minister for Industry, Energy and Emissions Reduction 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.

Under subsection 33(6) of the Act the Minister for Industry, Energy and Emissions Reduction has delegated the Minister’s power under subsection 33(1) to prescribe the Small Business Debt Helpline Program (the Program), to the Minister for Employment, Workforce, Skills, Small and Family Business.

Spending decisions will be made by the Minister for Employment, Workforce, Skills, Small and Family Business. 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 disallowable legislative instruments provides transparency and parliamentary oversight of Government programs and spending activities, while reducing the administrative burden on the Commonwealth.

Once a program is prescribed 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 (Small Business Debt Helpline* *Program) Instrument 2022* (the Legislative Instrument) is to prescribe the Program. Funding for the Program has been secured in a letter signed by the Prime Minister dated 12 January 2022 as part of supporting small business owners recover from the impacts of the COVID-19 pandemic. The Program funding provides $2.1 million over two years from 2021-22 to support small business owners across Australia who are experiencing financial distress, as outlined in the Treasury Portfolio Additional Estimates Statements 2021–22. The purpose of the Program is to rename, extend and expand the Small Business Financial Counselling Bushfire Support Line, delivered by Financial Counselling Australia (FCA), to provide a dedicated, national Small Business Debt Helpline offering free, independent, and confidential phone based financial counselling to small business owners.

The eligibility criteria for the Program would include the requirement that the recipient of the grant is FCA.

The ad hoc grant will be provided to FCA up to the amount of $1.5 million. This will allow FCA to support the continued engagement of financial counsellors to deliver financial counselling support to small business owners. It will also allow FCA to deliver communication and promotional activities and maintain and support required information and communications technology equipment. The final funding amount will be dependent on an assessment of eligible expenses against the ad hoc grant Program Guidelines.

The Program as set out in the Legislative Instrument provides funding to FCA by way of a grant. Subject to FCA satisfying the eligibility criteria for the Program, the decision maker will provide the grant to FCA. Decisions of this nature, that is procedural decisions, are not suitable for review and are therefore generally excluded from merits review as set out in paragraphs 4.3 – 4.4 of the Administrative Review Council guidance, *What decisions should be subject to merit review?* at <https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999>.

Persons who are otherwise affected by decisions or who have complaints about the Program will also have recourse to the Department of the Treasury (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 power in respect of which the Instrument is made is the communications power (section 51(v) of the Constitution). Section 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’.

In that regard, the Program specified in the Legislative Instrument will assist businesses experiencing financial distress by funding financial counselling services delivered via the telephone.

**Authority**

Section 33 of the Act provides authority for the Legislative Instrument.

There are no conditions that need to be met before the power to prescribe programs can be exercised.

**Consultation**

In accordance with section 17 of the *Legislation Act 2003*, the Attorney General’s Department and the Department of Industry, Science, Energy and Resources have been consulted on this Legislative Instrument.

In the development of the Program, consultation had been undertaken with the Department of Industry, Science, Energy and Resources, the Department of Infrastructure, Transport, Regional Development, the Department of the Prime Minister and Cabinet (including the Office of Best Practice Regulation (OBPR) and the Office for Women), the Department of Social Services, the Digital Transformation Agency, the Department of Agriculture, Water and the Environment, the National Resilience and Recovery Agency and Financial Counselling Australia.

Details of the Legislative Instrument are set out in Attachment A.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Legislative Instrument commenced on the day after registration on the Federal Register of Legislation.

### The OBPR has advised that this proposal is unlikely to have a more than minor regulatory impact and that no Regulatory Impact Statement is required.

### A statement of Compatibility with Human Rights is at Attachment B.

**ATTACHMENT A**

**Details of the** ***Industry Research and Development (Small Business Debt Helpline) Instrument 2022***

Section 1 – Name of the Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Small Business Debt Helpline Program) Instrument 2022* (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

The Instrument is made under section 33 of the *Industry, Research and Development Act 1986* (the Act).

Section 4 – Definitions

This section includes definitions of terms used in the Legislative Instrument.

Section 5 – Prescribed Program

This section prescribes the Small Business Debt Helpline Program (the Program) for the purposes of section 33 of the Act.

The Program provides funding by way of a grant to Financial Counselling Australia to provide a national telephone financial counselling service to small business owners.

Section 6 – Specified legislation power

The Legislative Instrument specifies that the legislation power in respect of which it is made are the powers of the Parliament to make laws with respect to postal, telegraphic, telephonic, and other like services (within the meaning of paragraph 51(v) of the Constitution).

**ATTACHMENT B**

### Statement of Compatibility with Human Rights

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

### *Industry Research and Development (Small Business Debt Helpline Program) Instrument 2022*

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 *Industry Research and Development (Small Business Debt Helpline Program) Instrument 2022* (the Legislative Instrument) prescribes the Small Business Debt Helpline Program (the Program) for the purposes of subsection 33(1) of the *Industry Research and Development Act 1986*. The purpose of the Program is to support small business owners across Australia who are experiencing financial distress by providing a dedicated small business financial counselling service offering free, independent, and confidential phone-based support to small business owners.

### 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.