

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Resources and Water

*Industry Research and Development Act 1986*

*Industry Research and Development (Northern Endeavour Temporary Operations Program)  
Amendment Instrument 2022*

### **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 (Northern Endeavour Temporary Operations Program) Instrument 2020* (the NETOP Instrument), as amended by the *Industry Research and Development (Northern Endeavour Temporary Operations Program) Amendment Instrument 2022* (the Amendment Instrument), is to prescribe the Northern Endeavour Temporary Operations Program (the Program). The funding for the Program has been secured through the Department of Industry, Science, Energy and Resources (the Department) March 2022 Budget Process. The Program is the Australian Government's commitment to ensuring the safety and security of the Northern Endeavour Floating Production and Storage Offtake (FPSO) facility and its workers, and minimising risks to its surrounding environment. Prior to this amendment, the NETOP Instrument prescribed funding to support:

- a. the operation and maintenance of the Northern Endeavour, and the wells and subsea infrastructure in the Laminaria-Corallina fields;

- b. decommissioning and activities in preparation for decommissioning; and
- c. obtaining insurance in relation to the matters at paragraphs (a) and (b).

The Amendment Instrument amends the NETOP Instrument to authorise Commonwealth expenditure on a broad range of emergencies and to obtain necessary oil spill memberships, in addition to matters that had already been prescribed in the NETOP Instrument.

Legislative authority is required for spending Program funds in the event of an emergency incident involving the FPSO and/or the subsea infrastructure. This is to ensure that immediate action can be taken to minimise harm to human lives and the environment, and secure the safety of the FPSO and associated wells and subsea infrastructure.

Legislative authority is required for spending Program funds on oil spill memberships, and other insurances from relevant organisations in relation to emergencies, for the Commonwealth and current operator of the Northern Endeavour, Upstream Production Solutions (UPS), as well as any future operators throughout decommissioning. Oil spill memberships would enable the Department to seek assistance with oil spill management in the event this occurs and ensures that UPS can continue to maintain and operate the Northern Endeavour in line with the Environment Plan for the Northern Endeavour, by ensuring that oil spill support can be provided.

Funding authorised by this Amendment Instrument comes from Program 1.3 Supporting a strong resources sector, Outcome 1, as set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.9, Industry, Science, Energy and Resources Portfolio*.

The Program is being delivered by the Department's Northern Endeavour Branch. Funding decisions will be made by the General Manager and Head of Division with responsibility for the Program. These are existing delegations under the Department's financial frameworks pursuant to the IR&D Act and *Public Governance, Performance and Accountability Act 2013*.

All costs will be offset by the Laminaria-Corallina Decommissioning Levy.

Further details of the Amendment Instrument are set out at **Attachment A**.

### **Authority**

Section 33 of the *Industry Research & Development Act 1986* provides authority for the Amendment Instrument.

### **External affairs power**

The external affairs power (para 51(xxix) of the Constitution) supports legislation with respect to places, persons, matters, or things outside the geographical limits of Australia. In that regard, funding provided under the Legislative Instrument will relate to activities to

respond to emergencies relating to the Northern Endeavour which is geographically external to Australia.

### **Consultation**

In accordance with section 17 of the *Legislation Act 2003*, the Attorney-General's Department and the Australian Maritime Safety Authority have been consulted on the Amendment Instrument.

### **Regulatory Impact**

The Program has been assessed by the Office of Best Practice Regulation (OBPR) as being non-regulatory in nature (OBPR reference number 44616).

### **Statement of Compatibility with Human Rights**

A Statement of Compatibility with Human Rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at **Attachment B**.

**Details of the *Industry Research and Development (Northern Endeavour Temporary Operations Program) Amendment Instrument 2022***

**Section 1 – Name of Instrument**

This section specifies the name of the Amendment Instrument as the *Industry Research and Development (Northern Endeavour Temporary Operations Program) Amendment Instrument 2022*.

**Section 2 – Commencement**

This section provides that the Amendment 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* under which the Amendment Instrument is made.

**Section 4 – Schedules**

This section is a machinery clause that allows the Schedule to the Amendment Instrument to operate according to its terms.

**Schedule 1 – Amendments**

This Schedule amends section 5 of the *Industry Research and Development (Northern Endeavour Temporary Operations Program) Instrument 2020* to provide that the program provides funding to support activities for responding to emergencies relating to the Northern Endeavour and its wells and subsea infrastructure in the Laminaria-Corallina Fields. This includes activities to:

- minimise harm to human life and the environment;
- secure the safety and structural integrity of the Northern Endeavour and the wells and subsea infrastructure; and
- obtain insurance for emergencies relating to the Northern Endeavour
- memberships of organisations that provide oil spill response services, training and equipment.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*  
*Industry Research and Development (Northern Endeavour Temporary Operations Program)*  
*Amendment Instrument 2022*

This Amendment 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 Amendment Instrument**

The *Industry Research and Development (Northern Endeavour Temporary Operations Program) Amendment Instrument 2022* (the Amendment Instrument) amends the *Industry Research and Development (Northern Endeavour Temporary Operations Program) Instrument 2020* (the NETOP Instrument). It inserts additional paragraphs in section 5 of the NETOP Instrument, which prescribes the Northern Endeavour Temporary Operations Program, to authorise Commonwealth expenditure on a broad range of emergencies and to obtain necessary oil spill memberships, in addition to matters that had already been prescribed in the NETOP Instrument.

### **Human rights implications**

This Amendment Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Amendment Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Keith Pitt MP**  
**Minister for Resources and Water**