**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Resources and Minister for Northern Australia

*Industry Research and Development Act 1986*

*Industry Research and Development (Australia-India Critical Minerals Investment Partnership Program) 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 Commonwealth entity, or by their delegate (under section 36).

The purpose of the *Industry Research and Development (Australia-India Critical Minerals Investment Partnership Program) Instrument 2022* (the Legislative Instrument) is to prescribe the Australia-India Critical Minerals Investment Partnership Program (the Program). The funding for the Program has been secured through the Department of Industry, Science and Resources 2021-22 Mid-Year Economic and Fiscal Outlook. The Program provides $5.8 million to undertake due diligence exercises ($0.8 million for administrative costs) to promote and further the ongoing relationship between the Commonwealth and the government of India through investment in critical minerals.

The Commonwealth’s contribution makes up 50 per cent of the Program’s funding. The remaining funding contribution will be provided by Khanij Bidesh India Ltd. The Program’s funding will be used to undertake due diligence exercises to assist the development of a business case for prospective Indian investment in Australia.

Funding authorised by this Legislative Instrument comes from the Australia-India Critical Minerals Investment Partnership, as re-committed to by the Minister for Resources and Minister for Northern Australia the Hon Madeleine King MP on 4 July 2022.

The Program’s funding will be managed by the Critical Minerals Office (CMO), which is the Australian Government's central coordination point to help grow Australia’s critical minerals sector, within the Department of Industry, Science and Resources. The CMO works across government with key agencies like Austrade and the Department of Foreign Affairs and Trade to help connect Australian critical minerals projects with investors, regulators, government financing facilities and Australia's strategic partners.

Spending decisions will be made by Australian Government officials. The Program Delegate is the General Manager of the CMO, who is responsible for disbursing the funds after spending decisions have been made by respective senior officials. The Program Delegate is a SES officer who holds delegation under the Department’s general financial framework, including delegation under the *Public Governance, Performance and Accountability Act 2013*, and sections 34 and 35 of the IR&D Act.

Funding will be used to procure a third-party adviser to undertake technical and due diligence services under the Program. The Departmental procurement will involve the allocation of finite resources between competing tenders and therefore falls within the category of decisions that would not usually be subject to merits review according to paragraph 4.11 of the Administrative Review Council guide, *What decisions should be subject to merits review?* In addition, there is a robust and extensive assessment process, an enquiry and feedback process, and an existing complaints mechanism for affected tenderers. Therefore, external merits review does not apply to decisions about the provision of funding under the Program.

The Legislative Instrument specifies that the legislative power in respect of which it is made is the external affairs power (para 51(xxix) of the Constitution). The external affairs power supports Commonwealth legislation concerning Australia’s relations with other nations. This Program provides funding to promote and further the ongoing relationship with the government of India. It does this by providing for expenditure on due diligence activities which is a preliminary and complementary step in advancing an investment relationship between the Australian and Indian governments for investment in Australian critical minerals projects.

**Background**

Underpinning the Program is a Memorandum of Understanding between the Commonwealth of Australia, as represented by the Critical Minerals Office, and Khanij Bidesh India Ltd. (the MoU) dated 10 March 2022. The MoU provides a framework for building an Australia‑India partnership in critical minerals investment. It sets out the objectives and actions that will deliver on the ambition of both Australia and India to develop robust and commercially viable critical minerals supply chains through investing in upstream mineral assets and associated development projects in Australia.

**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.

**Regulatory Impact**

It is estimated that the regulatory burden is likely to be minor (OBPR reference number OBPR21-01059).

**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 A**.

**Details of the *Industry Research and Development (Australia-India Critical Minerals Investment Partnership Program) Instrument 2022***

**Section 1 – Name**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Australia-India Critical Minerals Investment Partnership Program) Instrument 2022.*

**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 Australia-India Critical Minerals Partnership Program (the Program) for the purposes of subsection 33(1) of the IR&D Act.

The Program provides funding to identify potential critical minerals investment opportunities and perform due diligence exercises to promote and further the ongoing relationship between the Commonwealth and the government of India through investment in critical minerals.

**Section 6 – Specified Legislative Power**

This section specifies that the legislative power in respect of which the Legislative Instrument is made is the power of the Parliament to make laws with respect to external affairs (paragraph 51(xxix) of the Constitution).

**Attachment A**

**Statement of Compatibility with Human Rights**

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

*Industry Research and Development (Australia-India Critical Minerals Investment Partnership 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 purpose of the *Industry Research and Development (Australia-India Critical Minerals Investment Partnership Program) Instrument 2022* (the Legislative Instrument) is to prescribe the Australia-India Critical Minerals Investment Partnership Program (the Program).

The Program provides $5.8 million AUD ($0.8 million for administrative costs) to promote and further the ongoing relationship between the Commonwealth and the Government of India through investment in critical minerals, and undertake technical and due diligence exercises.

**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 Madeleine King MP**

**Minister for Resources**