

EXPLANATORY STATEMENT

Issued by authority of the Minister for Housing, Minister for Homelessness and Minister for Small Business as delegate for the Minister for Industry and Science

Industry Research and Development Act 1986

Industry Research and Development (Small Business Programs) Amendment Instrument 2022

Subsection 33(1) of the *Industry Research and Development Act 1986* (the Act) provides a mechanism for the Minister for Industry and Science 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 power provided under section 33 to prescribe such programs 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 under section 33, subsection 34(1) of the Act 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 of the Act).

Subsection 33(6) of the Act provides that the Minister may delegate, to another Minister, the Minister's power under subsection 33(1) of the Act to a prescribe program. Delegations under subsection 33(6) of the Act are in place for the BusinessBalance Program and the Small Business Debt Helpline Program that empower the Minister for Housing, Minister for Homelessness and Minister for Small Business to prescribe (and, by virtue of subsection 33(3) of the *Acts Interpretation Act 1901*, amend) the programs.

The purpose of the *Industry Research and Development (Small Business Programs) Amendment Instrument 2022* (the Instrument) is to amend the *Industry Research and Development (Small Business Debt Helpline Program) Instrument 2022* (SBDH Instrument) and the *Industry Research and Development (BusinessBalance Program) Instrument 2020* (BusinessBalance Instrument) to expand the scope of the purposes for which funding may be made available under the programs prescribed in these instruments.

The Small Business Debt Helpline (SBDH) is a prescribed program under the SBDH Instrument. The program is delivered by Financial Counselling Australia Ltd (FCA), which provides specialised and independent small business financial counselling services to small business owners nationally who are experiencing financial distress. The Australian Government has committed \$4 million in grant funding for the continued operation of the program for two calendar years from 1 January 2023. The amendments to the program, made by the Instrument, provide for the online elements of the counselling service (e.g. web chat and video counselling) that are provided to small business owners and for the secondary telephone and online counselling service FCA provides to generalist financial counsellors to better enable them to support their small business clients.

The NewAccess for Small Business Owners (NASBO) program is part of the BusinessBalance Program prescribed under the BusinessBalance Instrument. The NASBO program is delivered by Beyond Blue Limited. The NASBO program provides small business owners with preventative mental health coaching to help them manage the pressures associated with running a business. The Australian Government has committed \$10.9 million in grant funding for the continued operation of the NASBO program for two calendar years from 1 January 2023. The amendments made by the Instrument provide a broader purpose of the BusinessBalance Program of providing mental health and financial wellbeing support to Australian small business owners to help them manage the pressures associated with running a business and reflect that the NASBO program has moved beyond the initial expansion and tailoring phase into the service delivery phase.

Funding for the extended SBDH and NASBO comes from Program 1.3: Support for markets and business, Outcome 1, as set out in the *Portfolio Budget Statements October 2022-23, Budget Related Paper No. 1, Treasury Portfolio (Portfolio Budget Statements 2022-23)* ([treasury.gov.au](https://www.treasury.gov.au)) (at page 23).

The SBDH Instrument and the BusinessBalance Instrument specify that the legislative power in respect of which they are made is the communications power (within the meaning of paragraph 51(v) of the Constitution). Paragraph 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’. The changes to the programs specified in the Instrument continue to rely on the communications power as the expanded programs will continue to be delivered by phone and by way of the internet.

Details of the Instrument are set out in [Attachment A](#).

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. The Instrument is subject to disallowance under section 42 of the *Legislation Act 2003* and will automatically be repealed in accordance with paragraph 48A(2)(aa) of that Act.

The Instrument commenced on the day after the Instrument was registered on the Federal Register of Legislation.

A statement of Compatibility with Human Rights is at [Attachment B](#).

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

The Treasury consulted with the following agencies in developing the proposal to expand and extend the NASBO and the SBDH: Department of the Prime Minister and Cabinet; Department of Health and Aged Care; Department of Social Services; Department of Employment and Workplace Relations; Department of Industry, Science and Resources; Department of Infrastructure, Transport, Regional Development, Communications and the Arts; and the National Emergency Management Agency. The Treasury also consulted with Beyond Blue Limited and FCA.

The Office of Best Practice Regulation has advised that the proposal will have nil regulatory impacts and that no Regulation Impact Statement is required (OBPR22-03133).

Details of the *Industry Research and Development (Small Business Programs) Amendment Instrument 2022*

Section 1 – Name of the Instrument

This section provides that the name of the Instrument is the *Industry Research and Development (Small Business Programs) Amendment Instrument 2022* (the Instrument).

Section 2 – Commencement

The Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments

Industry Research and Development (BusinessBalance Program) Instrument 2020

Item 1 of Schedule 1 inserts a definition of ABN into section 4 of the *Industry Research and Development (BusinessBalance Program) Instrument 2020* (BusinessBalance Instrument). The ABN of Beyond Blue Limited is included in new paragraph 5(2)(a) to accurately identify the funding recipient.

Paragraph 5(2)(a) of the BusinessBalance Instrument provides that the prescribed program provides funding to expand nationally and tailor to small business owners, the NewAccess program delivered by Beyond Blue Limited.

Item 2 of Schedule 1 repeals paragraph 5(2)(a) of the Business Balance Instrument and substitutes a new paragraph 5(2)(a).

New paragraph 5(2)(a) provides that funding under the prescribed program is to fund the ongoing delivery of the NewAccess for Small Business Owners (NASBO) program by Beyond Blue Limited (ABN 87 093 865 840). This reflects that the NASBO program has moved beyond the initial expansion and tailoring phase and is now in a service delivery phase.

Subsection 5(3) of the BusinessBalance Instrument provides that the purpose of the prescribed program is to provide immediate, short-term support for the mental health

and financial wellbeing of small business owners through the response and recovery phase of the COVID-19 pandemic.

Item 3 of Schedule 1 repeals subsection 5(3) of the BusinessBalance Instrument and inserts a new subsection 5(3).

New subsection 5(3) specifies that the purpose of the BusinessBalance Program is to provide mental health and financial wellbeing support to Australian small business owners to help them manage the pressures associated with running a business.

This change reflects that, going forward, the NASBO program will focus on supporting small business owners more generally than just in relation to impacts of the COVID-19 pandemic in recognition of the fact that small business owners are impacted by a variety of domestic and global events and factors.

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

Item 4 of Schedule 1 inserts a definition of ABN into section 4 of the *Industry Research and Development (Small Business Debt Helpline Program) Instrument 2022* (SBDH Instrument). The ABN of Financial Counselling Australia Ltd is included in new subsection 5(2) to accurately identify the funding recipient.

Subsection 5(2) of the SBDH Instrument describes the program prescribed under the SBDH Instrument.

Item 5 of Schedule 1 repeals subsection 5(2) of the SBDH Instrument and inserts a new subsection 5(2).

New subsection 5(2) specifies that the prescribed program provides funding, by way of a grant to Financial Counselling Australia Ltd (ABN 67 073 167 361) (FCA), to fund the activities specified in paragraphs 5(2)(a) and (b).

New paragraph 5(2)(a) specifies the national financial counselling service offered to small business owners by telephone and by internet to reflect that, in addition to counselling on the telephone, counselling service may be delivered by online means (for example, web chat and email).

New paragraph 5(2)(b) specifies the telephone and online consultation service that Financial Counselling Australia Ltd provides to financial counsellors, to better enable these counsellors to support their small business clients.

These changes reflect a broadening of the scope of the program prescribed under the SBDH Instrument.

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 Programs) Amendment 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 (Small Business Programs) Amendment Instrument 2022* (the Instrument) is to amend the *Industry Research and Development (Small Business Debt Helpline Program) Instrument 2022* (SBDH Instrument) and the *Industry Research and Development (BusinessBalance Program) Instrument 2020* (BusinessBalance Instrument) to expand the scope of the purposes for which funding may be made available under the programs prescribed in these instruments.

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The amendments made by the Instrument provide a broader purpose of the BusinessBalance Program of providing mental health and financial wellbeing support to Australian small business owners to help them manage the pressures associated with running a business and reflect that the NASBO program has moved beyond the initial expansion and tailoring phase into the service delivery phase.

Human rights implications

The Instrument engages the following rights:

Right to health

Article 12 of the International Covenant on Economic, Social and Cultural Rights recognises the right to the enjoyment of the highest attainable standards of physical and mental health.

The NASBO program has been designed to improve awareness of mental health issues within small businesses, and is targeted to the specific needs of small business owners. The NASBO program encourages small business owners to engage early with mental health interventions and to integrate good mental wellness practices into their lifestyle.

The NASBO program also promotes, within small businesses, the creation of safe and healthy working conditions. Through engagement with the NASBO program, small business owners will benefit through the use of tailored business and mental health supports to meet their mental health needs.

By broadening the purpose of the NASBO program, the Instrument provides for the support described above to be delivered to more small business owners.

Conclusion

This Legislative Instrument is compatible with human rights as it promotes the protection of human rights.