

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Agriculture, Fisheries and Forestry

Industry Research and Development Act 1986

Industry Research and Development (Accelerate Adoption of Wood Processing Innovation Program) Instrument 2022

Purpose and Operation

Section 33 of the *Industry Research and Development Act 1986* (the 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 Minister for Industry and Science has delegated the Minister's power under subsection 33(1) to the Minister responsible for administering the *Regional Forest Agreements Act 2002*, under subsection 33(6) of the Act to prescribe the Accelerate Adoption of Wood Processing Innovation Program (the Program). This is currently the Minister for Agriculture, Fisheries and Forestry.

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 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) 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 (Accelerate Adoption of Wood Processing Innovation Program) Instrument 2022* (the Legislative Instrument) is to prescribe the Program. The funding for the Program has been secured through the Department of Agriculture, Fisheries and Forestry's (the Department) 2022-23 Budget. The Program provides up to \$112.9 million in funding over six years from 2021-22 as part of the Australian Government's 2022 election commitment and is part of a package of forestry commitments under *A Future Grown in Australia*.

The Program will provide funding to commercial wood processing facilities located in an Australian state or territory to enable innovation in wood processing. For the purposes of the Program, **wood** includes timber, pulp and wood fibre.

The purpose of the Program is to support commercial wood processing facilities to undertake eligible projects to develop new wood products, improve their capacity to make existing products, increase the utilisation of wood supply, and/or improve the sustainability of wood processing by reducing carbon emissions. The Program would result in better use of available wood supply, increased production efficiency, value-adding to existing products, and a reduction in the forestry industry's carbon footprint.

Funding authorised by this Legislative Instrument comes from Program 1.3, Outcome 1, as set out in the *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.1, Agriculture, Fisheries and Forestry Portfolio* (<https://www.agriculture.gov.au/sites/default/files/documents/2022-23-october-daff-pbs.pdf>) at pages 28 and 38.

The Program will be delivered by the Department and the Community Grants Hub.

The Program is a restricted competitive grants program. The Program is administered by the Department in accordance with the requirements of the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grant Rules and Guidelines 2017* (<https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf>).

The Commonwealth will provide up to 40% of the funds and at least 60% will be industry funds. The maximum amount for grants awarded, is \$5 million, with a minimum grant amount of \$1 million. Commercial wood processing facilities located in an Australian state or territory, that are not a State Forestry wood processing facility or Commonwealth wood processing facility, and are owned by an Australian entity, will be able to apply for grants under the Program. Guidelines for the Program including eligibility criteria will be developed and published on the Community Grants Hub. To be eligible for the Program, it is intended that a wood processing facility must be owned by an Australian entity that is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, a company under the *Corporations Act 2001*, a co-operative, an incorporated association or a consortium arrangement. Additional eligibility criteria will be outlined in the Program Guidelines.

Spending decisions will be made by the Minister for Agriculture, Fisheries and Forestry or the Program Delegate, against the Program Guidelines, taking into account the recommendations of an assessment panel made up of Departmental officers and external industry representatives.

The delegate of the Minister for Agriculture, Fisheries and Forestry would be a SES employee, or acting SES employee, of the Department, and would have relevant expertise in, and understanding of, forestry policy, and be able to perform relevant functions in accordance with the Commonwealth resource framework.

Expenditure decisions made in connection with the Program are not considered suitable for independent merits review, as they are decisions relating to the allocation of a finite resource, from which all potential claims for a share of the resource cannot be met. In addition, any funding that has already been allocated would be affected if the original decision was overturned. The Administrative Review Council has recognised that it is justifiable to

exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

Persons who are otherwise affected by decisions or who have concerns about the Program will be able to provide feedback 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.

Statement of the Relevance and Operation of Constitutional Heads of Power

For the purposes of subsection 33(3) of the Act, the powers of the Parliament to make laws with respect to the following are specified for the Program prescribed by the Legislative Instrument:

- trade and commerce with other countries, and among the States (paragraph 51(i) of the Constitution) (trade and commerce power);
- foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (paragraph 51(xx) of the Constitution) (corporations power);
- external affairs (paragraph 51(xxix) of the Constitution) (external affairs power), as it relates to Australia's obligations under one or more of the following:
 - the Kyoto Protocol, particularly Article 10;
 - the Paris Agreement, particularly Article 4; and
 - the United Nations Framework Convention on Climate Change, particularly Article 4; and
- the government of any Territory (section 122 of the Constitution) (territories power).

Trade and commerce power

Paragraph 51(i) of the Constitution empowers the Parliament to make laws with respect to 'trade and commerce with other countries, and among the States'.

The Program prescribed by the Legislative Instrument will provide grants to commercial wood processing facilities to develop new wood products or improve their capacity to deliver existing products, that they intend to sell into interstate and/or international markets.

Corporations power

Paragraph 51(xx) of the Constitution empowers the Parliament to make laws with respect to 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth' (together, constitutional corporations).

In *Williams v Commonwealth (2014) 252 CLR 416 (Williams No 2)*, the High Court, considering section 32B of the *Financial Management and Accountability Act 1997* (the FMA Act), held (at [50]) that:

A law which gives the Commonwealth the authority to make an agreement or payment of that kind is not a law with respect to trading or financial corporations. The law makes no provision regulating or permitting any act by or on behalf of any corporation.

However, the relevant provisions of the Act are substantially different to the provisions considered by the High Court in *Williams No 2*. Section 34 of the Act corresponds to section 32B of the FMA Act considered by the High Court in *Williams No 2*. However, the FMA Act contained no provision in terms equivalent to those of section 35 of the Act. Subsection 35(2) of the Act limits the arrangements made under section 34 so that, where a party to an arrangement made under section 34 is a constitutional corporation, the arrangement must be subject to a written agreement containing terms and conditions under which money is payable by the Commonwealth. The corporation must comply with the terms and conditions. The activities of the corporation are therefore regulated through the terms and conditions made under each agreement pursuant to subsection 35(2).

Further, subsection 35(3) provides that the agreement must provide for circumstances in which the corporation must repay amounts to the Commonwealth.

The Program prescribed by the Legislative Instrument will provide funding to commercial wood processing facilities. This may include constitutional corporations. Where a grant recipient is a constitutional corporation, the Program will impose terms and conditions on it in accordance with section 35 of the Act, in relation to receipt of that grant. In particular, the Program will provide funding to commercial wood processing facilities (some of which may be constitutional corporations) to undertake one or more of the following:

- develop new wood products;
- improve the capacity of the facility to make existing products;
- increase the utilisation of wood supply;
- improve the sustainability of wood processing by reducing carbon emissions.

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing Australia’s international obligations under treaties to which it is a party.

Australia has obligations under the *United Nations Framework Convention on Climate Change* [1994] ATS 2 (UNFCCC), the *Kyoto Protocol to the UNFCCC* [2008] ATS 2 and the *Paris Agreement* [2016] ATS 24 (entered into within the UNFCCC). Australia has the following relevant obligations under these agreements:

- Article 4(1)(b) of the UNFCCC obliges contracting parties to formulate, implement, publish and regularly update national and, where appropriate regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change.
- Article 10(b) of the Kyoto Protocol obliges contracting Parties to formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change.
- Article 4.2 of the Paris Agreement obliges contracting parties to ‘prepare, communicate and maintain successive nationally determined contributions that it intends to achieve’ and to ‘pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions’.

The UNFCCC, Kyoto Protocol and Paris Agreement as outlined above, impose general obligations on Australia to reduce greenhouse gas emissions. The Program provides funding to commercial wood processing facilities to assist in undertaking a number of activities, which may include improving the sustainability of wood processing by reducing their carbon emissions.

Territories power

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’.

The funding provided under the Legislative Instrument will be directed towards assisting commercial wood processing facilities, including those based in a territory.

Further details on the Legislative Instrument are set out in Attachment A.

Authority

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

Consultation

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.

Regulatory Impact

It is estimated that the regulatory burden is likely to be minor (the Office of Best Practice Regulation reference number 44327).

Other

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

Details of the *Industry Research and Development (Accelerate Adoption of Wood Processing Innovation Program) Instrument 2022*

Section 1 – Name

1. This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Accelerate Adoption of Wood Processing Innovation Program) Instrument 2022*.

Section 2 – Commencement

2. This section provides that the Legislative Instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

3. This section specifies the provision of the *Industry Research and Development Act 1986* (the Act) under which the Legislative Instrument is made.

Section 4 – Definitions

4. This section provides for definitions of terms used in the Legislative Instrument, including *commercial wood processing facility*, *Commonwealth wood processing facility*, *State Forestry wood processing facility*, *wood* and *wood product*.

Section 5 – Prescribed Program

5. This section prescribes the Accelerate Adoption of Wood Processing Innovation Program (the Program) for the purposes of subsection 33(1) of the Act.
6. The Program provides funding to commercial wood processing facilities to enable innovation in wood processing, including developing new wood processing lines and improving wood processing capability and capacity.
7. The purpose of the Program is to support commercial wood processing facilities to undertake one or more of the following in order to boost participation in the domestic and international timber market:
 - (a) develop new wood products;
 - (b) improve the capacity of the facility to make existing products;
 - (c) increase the utilisation of wood supply;
 - (d) improve the sustainability of wood processing by reducing carbon emissions.

Section 6 – Specified Legislative Power

8. This section specifies that, for the purposes of subsection 33(3) of the Act, the powers of the Parliament to make laws with respect to the following are specified:
 - (a) trade and commerce with other countries, and among the States (within the meaning of paragraph 51(i) of the Constitution);

- (b) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution);
- (c) external affairs power (within the meaning of paragraph 51(xxix) of the Constitution), as it relates to measures that would assist Australia to meet its obligations under one or more of the following:
 - i. the Kyoto Protocol, particularly Article 10;
 - ii. the Paris Agreement, particularly Article 4;
 - iii. the United Nations Framework Convention on Climate Change, particularly Article 4;
- (d) the government of a Territory (within the meaning of section 122 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 (Accelerate Adoption of Wood Processing Innovation 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 (Accelerate Adoption of Wood Processing Innovation Program) Instrument 2022* (the Legislative Instrument) is to prescribe the Accelerate Adoption of Wood Processing Innovation (the Program). The Program provides up to \$112.9 million as part of the Australian Government's 2022 election commitment and is part of a package of forestry commitments under *A Future Grown in Australia*.

The Program provides funding to commercial wood processing facilities located in an Australian state or territory to enable innovation in wood processing. The purpose of the Program is to support commercial wood processing facilities to undertake one or more of the following in order to boost participation in the domestic and international timber market:

- develop new wood products;
- improve their capacity to make existing products;
- increase the utilisation of wood supply;
- improve the sustainability of wood processing by reducing carbon emissions.

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.

Senator the Hon Murray Watt
Minister for Agriculture, Fisheries and Forestry