**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Climate Change and Energy

*Industry Research and Development Act 1986*

*Industry Research and Development (National Electric Vehicle Charging Network Grant 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 Minister for Industry and Science has delegated the Minister’s power under subsection 33(1) to the Minister responsible for administering the *Climate Change Act 2022*, under subsection 33(6) of the IR&D Act to prescribe the National Electric Vehicle Charging Network Grant Program (the Program). This is currently the Minister for Climate Change and Energy.

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 under section 33, subsection 34(1) of the IR&D 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 entity, or by their delegate (under section 36).

The purpose of the *Industry Research and Development (National Electric Vehicle Charging Network Grant Program) Instrument 2022* (the Legislative Instrument) is to prescribe the Program. The funding for the Program has been secured through the Department of Climate Change, Energy, the Environment and Water’s 2022-23 Budget. The Program is a part of the Australian Government’s Driving the Nation Fund, which implements a commitment to double the Commonwealth’s electric vehicle charging and refuelling infrastructure and fleet investments.

The purpose of the Program is to increase the number of electric vehicle charging stations in Australia and to encourage further uptake of electric vehicles in Australia.

The Program seeks to achieve this purpose by providing $39.3 million to the National Roads and Motorists’ Association (NRMA) through the entity NRMA Electric Highways Pty Ltd. Funding from the Commonwealth will be matched by the NRMA and will be used to connect Australia with a ‘backbone’ national electric vehicle highway charging network. Fast charging infrastructure will be located, on average, every 150 kilometres, connecting national highways and all areas with a population greater than 10,000 people. The network will include 117 highway sites to complement existing fast charging sites and will be owned and operated by the NRMA.

Funding authorised by this Legislative Instrument comes from Program 1.1 Reducing Australia’s Greenhouse Gas Emissions, Outcome 1, as set out in the *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.3, Climate Change, Energy, the Environment and Water Portfolio (*[*https://www.dcceew.gov.au/sites/default/files/documents/dcceew-2022-23-pbs.PDF*](https://www.dcceew.gov.au/sites/default/files/documents/dcceew-2022-23-pbs.PDF)*)* at page 36.

The Program is administered by the Department of Climate Change, Energy, the Environment and Water (the Department).

The Program will be delivered over four years from 2022-23 to 2025-26 through the Department of Industry, Science and Resources’ Business Grants Hub. This will be done in accordance with the requirements of the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Commonwealth Grant Rules and Guidelines 2017* ([*https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf*](https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf)).

The Program provides funding to the NRMA through an ad-hoc grant. Eligibility and assessment criteria will be outlined in the Program guidelines and released to the grant applicant. The eligibility criteria include that the recipient is NRMA Electric Highways Pty Ltd (ABN 35 659 311 163). The decision whether to approve the grant will be made by a delegate in the Department, taking into account the recommendations of an assessment against the eligibility and assessment criteria. The delegate is a Senior Executive Service (SES) officer who holds delegation under relevant financial frameworks, including delegation under the PGPA Act, and sections 34 and 35 of the IR&D Act. The SES officer would be an appropriate person who would have the relevant expertise in, and understanding of, the subject matter, and be able to perform the relevant functions in accordance with their delegation and the Commonwealth resource framework. Day-to-day administration of the grant, including making relevant decisions, would be undertaken by the Business Grants Hub.

As this is an ad-hoc grant that supports the implementation of policy decisions made by the Government, the Program will not be subject to merits review. Merits review of the Program would not be appropriate because decisions will relate to the provision of ad-hoc grants to a certain service provider over other service providers. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 4.16 to 4.19 of *What decisions should be subject to merits review?* ([https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999)](https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999%29)).

Persons who are otherwise affected by decisions or who have complaints 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 the Constitutional Head of Power**

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

The United Nations Framework Convention on Climate Change (UNFCCC) [1994] ATS 2 includes a range of obligations on Australia to take domestic actions that reduce Australia’s emissions of greenhouse gases. Relevantly, it provides that parties shall:

* formulate, implement, publish and regularly update national and, where appropriate, regional programs 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 on Substances that Deplete the Ozone Layer [1989] ATS 18, and measures to facilitate adequate adaptation to climate change (see Article 4.1(b));
* promote and cooperate in the development, application and diffusion of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases in all relevant sectors including energy, transport, industry, agriculture, forestry and waste management sectors (see Article 4.1(c)); and
* adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs (see Article 4.2(a)).

The Kyoto Protocol to the United Nations Framework Convention on Climate Change [2008] ATS 2 also includes obligations on Australia to take action to reduce emissions. For example, article 10(b) requires parties to formulate, implement and report upon climate change mitigation and adaptation programs.

The Paris Agreement [2016] ATS 24 was entered into by the parties to the UNFCCC to enhance its implementation. Under the Paris Agreement, Australia has a “nationally determined contribution” comprising a 2030 emissions reduction target of 43 per cent below 2005 levels. Relevantly, article 4.2 of the Paris Agreement provides that “[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve” and that “[p]arties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions”.

The Program prescribed by the Legislative Instrument seeks to fulfil Australia’s international obligations under these treaties by encouraging and supporting the use of vehicles that do not rely on fossil fuels.

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

**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 and the Department of Industry, Science, Energy and Resources have been consulted on this Legislative Instrument.

The Department has undertaken extensive consultation on the Program with NRMA who are supportive of the Program. As the Program has undergone extensive consultation, it was considered unnecessary to undertake additional consultation specially on the Legislative Instrument.

**Regulatory Impact**

It is estimated that the regulatory burden is likely to be minor. The Office of Best Practice Regulation assessed the Program is unlikely to have a regulatory impact on business, individuals or community organisations (OBPR reference number: OBPR22-02676).

**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.

**ATTACHMENT A**

**Details of the *Industry Research and Development (National Electric Vehicle Charging Network Grant Program) Instrument 2022***

**Section 1 – Name of Instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (National Electric Vehicle Charging Network Grant Program) Instrument 2022* (the Legislative Instrument)*.*

**Section 2 – Commencement**

This section provides that the Legislative Instrument commences on the day after it is registered 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 section provides for definitions of terms used in the Legislative Instrument.

The Paris Agreement, Kyoto Protocol and United Nations Framework Convention on Climate Change are defined in the same way as other Commonwealth legislation and are available from the Australian Treaty Series at <http://www.austlii.edu.au/au/other/dfat/treaties/ATS/>. These treaties are defined for the purpose of specifying the external affairs power as a relevant legislative power for the Legislative Instrument under subsection 33(3) of the IR&D Act.

The text of the treaties is not applied, adopted or incorporated by the Legislative Instrument and so subsection 14(2) of the *Legislation Act 2003* does not apply to limit the reference to these treaties as in force for Australia from time to time. Australia continues to implement the obligations under these treaties as amended over time.

**Section 5 – Prescribed Program**

This section prescribes the National Electric Vehicle Charging Network Grant Program (the Program) for the purposes of subsection 33(1) of the IR&D Act.

The purpose of the Program is to increase the number of electric vehicle charging stations in Australia and to encourage further uptake of electric vehicles in Australia. The Program seeks to achieve this purpose by providing $39.3 million to the NRMA to co-fund a national electric vehicle highway charging network which will be owned and maintained by the NRMA. Fast charging infrastructure will be located, on average, every 150 kilometres, connecting national highways and all areas with a population greater than 10,000 people. The network will include 117 highway sites to complement existing fast charging sites.

**Section 6 – Specified Legislative Power**

This section specifies that, for the purposes of subsection 33(3) of the IR&D Act, 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 (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:

1. the Kyoto Protocol, particularly Article 10;
2. the Paris Agreement, particularly Article 4;
3. the United Nations Framework Convention on Climate Change, particularly Article 4.

The relevance of this power is discussed in the introduction to this statement.

**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 (National Electric Vehicle Charging Network Grant 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 (National Electric Vehicle Charging Network Grant Program) Instrument 2022* (the Legislative Instrument) is to prescribe the National Electric Vehicle Charging Network Grant Program (the Program) for the purposes of section 33 of the *Industry Research and Development Act 1986*.

The Program provides $39.3 million to the NRMA to co-fund a national electric vehicle highway charging network which will be owned and maintained by the NRMA. Fast charging infrastructure will be located, on average, every 150 kilometres, connecting national highways and all areas with a population greater than 10,000 people. The network will include 117 highway sites to complement existing fast charging sites.

**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 Chris Bowen MP**

**Minister for Climate Change and Energy**