

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry and Science

Industry Research and Development Act 1986

Industry Research and Development (Central Coast Food Manufacturing Innovation Hub 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 (Central Coast Food Manufacturing Innovation Hub Program) Instrument 2022* (the Legislative Instrument) is to prescribe the Central Coast Food Manufacturing Innovation Hub Program (the Program). The funding for the Program has been secured through the Department of Industry, Science and Resources (the Department) 2022-23 Budget. The Program provides \$17.2 million of funding across the 2022-23, 2023-24, 2024-25 financial years to Central Coast Industry Connect Limited (CCIC) to support the establishment of a pilot Food Manufacturing Innovation Hub at Lisarow, New South Wales, as part of the Australian Government's "Plan for A Better Economy, Better Budget, Better Future".

This Program will support the establishment of a pilot Food Manufacturing Innovation Hub, which will encourage collaboration on research in food manufacturing innovation, provide the local sector access to resources and facilities to develop and implement new ideas and

technologies for the commercial benefit of the region, and help attract investment and tourism to the region.

Funding authorised by this Legislative Instrument comes from Program 1.2 Growing innovative and competitive businesses, Outcome 1, as set out in the *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.11, Industry, Science and Resources Portfolio* (https://www.industry.gov.au/sites/default/files/2022-10/October_2022-23_Industry%2C%20Science%20and%20Resources_PBS.pdf) at pages 15 and 39. This Program forms part of the “Local Industry Grants” package.

The Program will be delivered by AusIndustry, which is a specialised design, management and delivery body within the Department with extensive expertise and capability in delivering similar programs.

The Program provides \$17.2 million through a one-off, non-competitive grant to CCIC. The Program is administered by the Department in accordance with the *Commonwealth Grant Rules and Guidelines 2017* (<https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf>). As this is a one-off, non-competitive grant to the identified eligible recipient (which is a trading corporation), there are no selection criteria; however, the grant is contingent on the submission of an acceptable project proposal with sufficient relevant supporting information commensurate with the funding amount. This is subject to assessment of merit in accordance with the Grant Opportunity Guidelines, including but not limited to consideration of value for money, ability of the project to deliver intended outcomes, and associated risk. To be successful the application must demonstrate merit in each of these areas.

Spending decisions will be made by the Program Delegate who is the General Manager responsible for administering the Program. The Program Delegate is an 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.

As this is a one-off, non-competitive grant to an identified recipient 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 a one-off, non-competitive grant to a certain service provider over other service providers. The Administrative Review Council has recognised that decisions of this nature should be excluded from merits review (see paragraphs 4.16 to 4.19 of *What decisions should be subject to merits review?* available at <https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999>).

Persons who are otherwise affected by decisions or who have complaints about the Program will also have recourse 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.

The Legislative Instrument specifies that the legislative power in respect of which the Instrument is made is the following:

Corporations power

Section 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 IR&D Act are substantially different to the provisions considered by the High Court in *Williams No 2*. Section 34 of the IR&D 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 IR&D Act.

Subsection 35(2) of the IR&D 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.

Only a constitutional corporation will be eligible to receive benefits under the Program prescribed by the Legislative Instrument. The benefits conferred by the Program will be directed to assisting CCIC in the conduct of their ordinary activities (assisting manufacturers discover opportunities through building relationships and facilitating collaboration). The Program will impose terms and conditions on CCIC under a grant agreement in accordance with section 35 of the IR&D Act, in relation to receipt of benefits under the Program. The terms and conditions will set out what the funding may be used for, and the circumstances in which it must be repaid.

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

Authority

Section 33 of the IR&D Act provides authority for the Legislative Instrument.

Consultation

The Department consulted CCIC on the outcomes expected from the Program and the activities necessary to be undertaken. These consultations informed the design of the Program.

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 nil (the Office of Impact Analysis (OIA) reference number 22-02805).

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 (Central Coast Food Manufacturing Innovation Hub Program) Instrument 2022*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Central Coast Food Manufacturing Innovation Hub 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 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 Program for the purposes of section 33 of the IR&D Act.

The Program provides funding for a one-off grant to CCIC to support the establishment of a pilot Food Manufacturing Innovation Hub at Lisarow, New South Wales. The purpose of the Program is to encourage collaboration on research in food manufacturing innovation, provide the local sector access to resources and facilities to develop and implement new ideas and technologies for the commercial benefit of the region, and help attract investment and tourism to the region.

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 foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

Statement of Compatibility with Human Rights

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

Industry Research and Development (Central Coast Food Manufacturing Innovation Hub 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

This Instrument provides legislative authority to commit Commonwealth funds to support the Central Coast Food Manufacturing Innovation Hub Program (the Program). The Program provides \$17.2 million of funding across the 2022-23, 2023-24, 2024-25 financial years to Central Coast Industry Connect Limited (CCIC) to support the establishment of a pilot Food Manufacturing Innovation Hub at Lisarow, New South Wales, as part of the Australian Government's "Plan for A Better Economy, Better Budget, Better Future".

The purpose of the Program is to support the establishment of a pilot Food Manufacturing Innovation Hub, which will encourage collaboration on research in food manufacturing innovation, provide the local sector access to resources and facilities to develop and implement new ideas and technologies for the commercial benefit of the region, and help attract investment and tourism to the region.

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 Ed Husic MP

Minister for Industry and Science