

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Industry and Science

*Industry Research and Development Act 1986*

*Industry Research and Development (Flinders University Factory of the Future Program)  
Instrument 2023*

### **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 (Flinders University Factory of the Future Program) Instrument 2023* (the Legislative Instrument) is to prescribe the Flinders University Factory of the Future Program (the Program). The funding for the Program has been secured through the Department of Industry, Science and Resources (the Department) 2022-23 October Budget. The Program provides \$10 million over the 2022-23, 2023-24 and 2024-25 financial years to Flinders University as part of the Australian Government's *Supporting Australian Industry* package and the Government's *Plan for a Better Future: Better Budget, Better Economy*.

The Program will support Flinders University to establish and operate a permanent facility at the Tonsley Innovation District, South Australia (the Facility) to carry out research and development into advanced manufacturing and digital technologies and develop and administer industry co-investment programs aimed at supporting small-to-medium enterprises to develop and apply advanced manufacturing and digital technologies. The permanent

Facility will provide a physical centre for businesses to engage with cutting-edge technologies and build partnership opportunities. The Program will allow industry and technology to be embedded with researchers and students to research and develop new technology applications. This will enhance skills development in digital and advanced manufacturing technologies and build workforce capabilities.

Funding authorised by this Legislative Instrument comes from Program 1.2 – Growing Business Investment, 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](https://www.industry.gov.au/sites/default/files/2022-10/October_2022-23_Industry%2C%20Science%20and%20Resources_PBS.pdf)) at pages 16 and 39.

This Program is a 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.

This Program provides \$10 million through a one-off, non-competitive grant to Flinders University. The Program is administered by the Department in accordance with the *Commonwealth Grant Rules and Guidelines 2017* (<https://www.finance.gov.au/government/commonwealth-grants/commonwealth-grants-rules-and-guidelines>). As this is a one-off, non-competitive grant to the identified eligible recipient, there are no selection criteria; however, the grant is contingent on the submission of an acceptable project proposal with sufficient relevant supporting information 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 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, taking into account the recommendations of the Department. 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.

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 is not 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 have complaints about the Program or who are otherwise affected by decisions will 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 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’.

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 constitutional corporations will be eligible to receive benefits under the Program prescribed by the Legislative Instrument. The Program prescribed by the Legislative Instrument confers benefits on a trading corporation (Flinders University) which are directed to the conduct of its ordinary activities (the delivery of educational programs and research and development activities). The Program will impose terms and conditions 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 with Flinders University on the expected outcomes of the Program and the activities necessary to be undertaken. The Department also consulted with the South Australian Government in relation to its \$9 million contribution of funding to support the Factory of the Future's development. 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 minor (the Office of Impact Analysis (OIA) reference number: OBPR22-02848).

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 (Flinders University Factory of the Future Program) Instrument 2023***

**Section 1 – Name of Instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Flinders University Factory of the Future Program) Instrument 2023*.

**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 Flinders University Factory of the Future Program (the Program) for the purposes of section 33 of the IR&D Act.

The Program will support Flinders University to establish and operate a permanent facility at the Tonsley Innovation District, South Australia, to carry out research and development into advanced manufacturing and digital technologies and develop and administer industry co-investment programs aimed at supporting small-to-medium enterprises to develop and apply advanced manufacturing and digital technologies.

**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 the corporations power (paragraph 51(xxx) 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 (Flinders University Factory of the Future Program)  
Instrument 2023*

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 *Industry Research and Development (Flinders University Factory of the Future Program) Instrument 2023* (the Legislative Instrument) provides legislative authority to commit Commonwealth funding for the *Flinders University Factory of the Future Program* (the Program).

The purpose of the Program is to support Flinders University to establish and operate a permanent facility at the Tonsley Innovation District, South Australia, to carry out research and development into advanced manufacturing and digital technologies and develop and administer industry co-investment programs aimed at supporting small-to-medium enterprises to develop and apply advanced manufacturing and digital technologies.

### **Human rights implications**

The Legislative Instrument or does not engage any of the applicable rights or freedoms.

### **Conclusion**

The 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**