

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry and Science

Industry Research and Development Act 1986

Industry Research and Development (Australia-Vietnam Science, Technology and Innovation Cooperation Initiative 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 *Industry Research and Development (Australia-Vietnam Science, Technology and Innovation Cooperation Initiative Program) Instrument 2023* (the Legislative Instrument) prescribes the Australia-Vietnam Science, Technology and Innovation Cooperation Initiative Program (the Program). The purpose of the Program is to strengthen Australia's relationship with Vietnam, supporting the Australian-Vietnam Enhanced Economic Engagement Strategy (AVEES) to increase trade and investment between Australia and Vietnam.

The Program will provide funding to the Australian Academy of Science (the Academy) to run a competitive funding round that would invite universities and research institutions to undertake joint research projects of mutual benefit with Vietnam. Funding is available for successful applicants to undertake projects in jointly agreed priority research areas such as renewable energy technologies, a sustainable blue economy, and recycling and waste management.

Funding authorised by the Legislative Instrument comes from Outcome 1 (departmental operating) as set out in the Portfolio Budget Statements 2023-24, Budget Related Paper No. 1.11, Industry, Science and Resources Portfolio (<https://www.industry.gov.au/sites/default/files/2023-05/2023-24-department-of-industry-science-resources-pbs.pdf>). The funding for the Program was secured and acquired through a Record of Understanding (ROU) between the Department of Foreign Affairs and Trade and the Department of Industry, Science and Resources (the Department) in 2021. The ROU established that the Department of Foreign Affairs and Trade would provide \$1.5 million to the Department for the purpose of funding this program as a part of the AVEES. The Program will provide \$1.5 million to the Academy, as part of the Australian Government's commitment to deepen engagement and strengthen its relationship with Vietnam. The Academy has effectively administered multiple similar programs providing funding to support Australian researchers to work with their regional project partners to deliver mutually beneficial, joint research projects.

Vietnam will provide a comparable level of funding for the program, as agreed under a Letter of Intent between the Department of International Cooperation of the Ministry of Science and Technology of Viet Nam and the Department of Industry, Science and Resources of Australia. The Academy will use the funding from the Department to support Australian researchers collaborating with Vietnam to deliver the Program.

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

The Program is a closed, ad-hoc grants program to an identified eligible recipient. 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 an ad-hoc, 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 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, taking into account the recommendations of an independent assessment committee. 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.

For the purposes of subsection 33(3) of the IR&D Act, the Legislative Instrument specifies that the legislative powers in respect of which the Instrument is made are the following:

- the trade and commerce power in paragraph 51(i) of the Constitution; and
- the external affairs power in paragraph 51(xxix) of the Constitution.

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’..

In that regard, the Program prescribed by the Legislative Instrument is designed to foster and promote international trade with Vietnam as a component of the AVEES. The prescribed activities in the program fund joint research projects between Australian and Vietnamese businesses, universities and research institutions as a mechanism to increase trade and investment between Australia and Vietnam.

External affairs power

Paragraph 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports Commonwealth legislation concerning Australia’s relations with other nations.

In that regard, the Legislative Instrument provides funding to enhance Australia’s relationship with Vietnam, by strengthening trade and investment between the two countries as part of a joint initiative.

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

In accordance with section 17 of the *Legislation Act 2003*, the Attorney-General’s Department has been consulted on this Legislative Instrument. In addition, Department of Foreign Affairs and Trade (Australia) and Ministry of Science and Technology (Vietnam) has been consulted during the policy development.

Regulatory Impact

It is estimated that the regulatory burden is likely to be minor (Office of Best Practice Regulation reference number 22-03007).

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 (Australia-Vietnam Science, Technology and Innovation Cooperation Initiative Program) Instrument 2023*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Australia-Vietnam Science, Technology and Innovation Cooperation Initiative 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 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 Australia-Vietnam Science, Technology and Innovation Cooperation Initiative Program (the Program) for the purposes of section 33 of the IR&D Act. The Program provides funding to strengthen Australia's relationship with Vietnam, supporting the Australian-Vietnam Enhanced Economic Engagement Strategy (AVEES) initiative to increase trade and investment between Australia and Vietnam. The prescribed program provides authority for funding to the Academy to provide and administer grants to business, universities and research institutions to undertake joint research projects in agreed priority areas, including new and renewable energy technologies, a sustainable blue economy, and recycling and waste management.

Section 6 – Specified Legislative Power

This section specifies that the legislative powers in respect of which the Legislative Instrument is made are the following:

- The trade and commerce power (paragraph 51(i) of the Constitution)
- The external affairs power (paragraph 51(xxix) 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 (Australia-Vietnam Science, Technology and Innovation Cooperation Initiative 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 (Australia-Vietnam Science, Technology and Innovation Cooperation Initiative Program) Instrument 2023* (the Legislative Instrument) provides legislative authority to commit Commonwealth funding for the *Australia-Vietnam Science, Technology and Innovation Cooperation Initiative Program* (the Program).

The Program is a component of the Australian-Vietnam Enhanced Economic Engagement Strategy (the Strategy) announced in December 2021, to strengthen Australia's relationship with Vietnam, to increase trade and investment between Australia and Vietnam. The Program aims to promote collaboration between Australian businesses, universities and research institutions and their Vietnamese counterparts in joint research projects in priority areas including new and renewable energy technologies, a sustainable blue economy, recycling and waste management.

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