

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Industry and Science

*Industry Research and Development Act 1986*

*Industry Research and Development (International Space Investment Initiative Program)  
Amendment 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 entity, or by their delegate (under section 36).

The purpose of the *Industry Research and Development (International Space Investment Initiative Program) Amendment Instrument 2023* (the Legislative Instrument) is to prescribe an expansion of the International Space Investment Initiative Program (the Program). Initial funding of \$15 million for the Program was secured through the Department of Industry, Innovation and Science's (the Department) 2018-19 Budget. Subsequent funding of \$23.7 million for an India-focused expansion of the Program was secured through the Department's 2022-2023 (October) Budget. The Program provides funding as part of the Australian Government's commitment to provide Australian organisations and businesses opportunities to be involved with international space projects and collaborate with relevant overseas organisations (such as international space agencies and foreign organisations or businesses). These projects will generate employment and business opportunities for Australians, with a minimum of 80 per cent of the investment to be made in Australia. Projects will encourage scientific and technical collaboration between Australians and relevant overseas organisations.

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>).

This Legislative Instrument prescribes an expansion of the Program. The Program will otherwise continue to be administered consistent with the original scope of the Program. The explanatory statement to the *Industry Research and Development (International Space Investment Initiative Program) Instrument 2020* (the Principal Instrument) provides further detail about how the Program is delivered and is available on the Federal Register of Legislation website:

(<https://www.legislation.gov.au/Details/F2020L00089/Explanatory%20Statement/Text>)

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

- (a) trade and commerce with other countries, and among the States (within the meaning of paragraph 51(i) of the Constitution);
- (b) external affairs (within the meaning of paragraph 51(xxix) of the Constitution);
- (c) the government of a Territory (within the meaning of section 122 of the Constitution);
- (d) measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation.

The Program specified in the Principal Instrument, as amended by this Legislative Instrument, will continue to rely on these powers.

### **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 Principal Instrument as amended by this Legislative Instrument will promote trade and commerce with other countries by providing funding so that Australian businesses and organisations can participate in international space projects with relevant overseas organisations. The Program will also allow Australian businesses and organisations to engage in global space industry supply chains by providing funding to allow them to supply goods and services to relevant overseas organisations.

### **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 legislation with respect to places, persons, matters, or things outside the geographical limits of Australia. In that regard, funding provided under the Principal Instrument as amended by this Legislative Instrument will support international space projects, which will occur outside of Australia.

The external affairs power also supports legislation with respect to matters concerning Australia's relations with other countries. In that regard, funding provided under the Principal Instrument as amended by this Legislative Instrument, will enhance Australia's relations with other countries by allowing the Australian Space Agency to make contributions towards major projects propounded by its international counterparts.

### **Executive power and express incidental power**

The express incidental power in paragraph 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested by the Constitution in the Parliament, the executive or the courts. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

In that regard, funding provided under the Principal Instrument as amended by this Legislative Instrument will be used to grow Australia's space industry. This requires a level of coordination and strategy that is peculiarly adapted to the government of the nation and cannot otherwise be carried on for the benefit of the nation. Moreover, space activities have historically been carried out at a national level of responsibility and have the potential to involve or raise matters of international concern.

### **Territories power**

Section 122 of the Constitution empowers the Parliament to 'make laws for the government of the territory'.

In that regard, funding provided under the Principal Instrument as amended by this instrument may include the provision of funding for an activity led by a Territory-based partner organisation or undertaken within a Territory.

### **Background**

This Legislative Instrument amends the *Industry Research and Development (International Space Investment Initiative Program) Instrument 2020* to ensure it is inclusive of the policy intent of the India-focused expansion to the Program. This amendment expands the definition of 'relevant overseas organisation' to include 'a foreign organisation or business'. In particular, in the context of international space projects, this amended definition will allow Australian organisations and businesses to be funded to collaborate with, or play a role in delivering products and services for use by, relevant overseas organisations that include foreign businesses and organisations across industry and academia.

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

### **Authority**

Section 33 of the *Industry Research and Development Act 1986* 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.

### **Regulatory Impact**

It is estimated that the regulatory burden is likely to be minor (Office of Impact Analysis reference numbers: OBPR 22970, 44427, and 04391).

### **Statement of Compatibility with Human Rights**

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 (International Space Investment Initiative Program) Amendment Instrument 2023***

**Section 1 – Name of instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (International Space Investment Initiative Program) Amendment 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 – Schedules**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

This schedule amends the definition of ‘relevant overseas organisation’ to add ‘a foreign organisation or business’.

## **Statement of Compatibility with Human Rights**

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

*Industry Research and Development (International Space Investment Initiative Program)  
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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 (International Space Investment Initiative Program) Amendment Instrument 2023* (the Legislative Instrument) amends the *Industry Research and Development (International Space Investment Initiative Program) Instrument 2020* that provides legislative authority to commit Commonwealth funding for the International Space Investment Initiative Program (the Program).

The Program provides Australian businesses with opportunities to become involved with relevant overseas organisations and international space projects. Projects will generate employment and business opportunities for Australians, with a minimum of 80 per cent of the investment to be made in Australia.

### **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**