

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry and Science

Industry Research and Development Act 1986

Industry Research and Development (Industry Growth 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, while 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 (Industry Growth Program) Instrument 2023* (the Legislative Instrument) is to prescribe the Industry Growth Program (the Program). The funding for the Program has been secured through the Department of Industry, Science and Resources (the Department) 2023-24 Budget. The Program provides \$340 million in administered funding over four financial years from 2023-24, including \$287 million in grant funding for startups and innovative small and medium enterprises (SMEs), as part of the Australian Government's commitment to driving the transformation, growth and competitiveness of Australia's industries and building domestic capability to meet the needs of the Australian economy.

Startups and innovative SMEs play a crucial role in the Australian economy by introducing new products and services to market, creating jobs, and increasing productivity. The early stages of commercialisation and business growth can be high risk and high cost, resulting in significant challenges for many SMEs.

The purpose of the Program is to support innovative Australian SMEs and startups undertaking projects in the National Reconstruction Fund (NRF) priority areas to:

- commercialise their ideas into new products and services, and grow their operations;

- improve their ability to engage in or increase their interstate and/or international trading operations; and
- better position them to seek NRF or other investment in the future.

The Program will consist of two components:

- delivery of advisory services by a national network of expert business growth and commercialisation advisers, and specialised sectoral advisers to be provided by contracted industry organisations.
- delivery of matched grant funding to eligible startups and SMEs to undertake commercialisation and growth projects and expand their businesses in NRF priority areas.

Funding authorised by this Legislative Instrument comes from Program 1.1, Outcome 1, 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/about-us/finance-reporting/budget-statements>) at page 37.

The Program will be delivered by AusIndustry, within the Department of Industry, Science and Resources (the Department), which has extensive expertise and capability in delivering similar programs.

The Department will engage expert business growth and commercialisation advisers through contractual arrangements or employment as Australian Public Service staff. This will be via an open request for tender process or an open and transparent recruitment process. The procurement will be in accordance with the Commonwealth Procurement Rules.

The Departmental procurement will involve the allocation of finite resources between competing tenders and therefore falls within the category of decisions that would not usually be subject to merits review according to paragraph 4.11 of the Administrative Review Council guide, *What decisions should be subject to merits review?* In addition, there is a robust and extensive assessment process, an enquiry and feedback process, and an existing complaints mechanism for affected tenderers. Therefore, external merits review does not apply to decisions about the provision of funding under the Program.

The Program's financial assistance to eligible startups and innovative SMEs is through an open and non-competitive merit-based grant program. The Program will be administered 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>). Eligibility and merit criteria will be outlined in the Program Guidelines (Industry Growth Program Grant Opportunity Guidelines), which will be available at <https://business.gov.au>.

Grant 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 (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.

Grants will be a minimum of \$50,000 up to a maximum of \$5 million. The grant amount may be up to half of eligible project costs. No more than 50 per cent of eligible project costs can be funded from Commonwealth government grants. The total amount of grant funding for startups and innovative SMEs through the Program is \$287 million from 2023-24 to 2026-27.

The Program involves the allocation of finite resources between competing applicants and therefore falls within the category of decisions that would not usually be subject to merits review according to paragraph 4.11 of the Administrative Review Council guide, *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>. In addition, there is a robust and extensive assessment process, an enquiry and feedback process, and an existing complaints mechanism for affected applicants. Therefore, external merits review does not apply to decisions about the provision of grants under the Program.

Grant applications will be assessed against eligibility and merit criteria set out in the Program Guidelines. At first instance, applications will be assessed by AusIndustry against the eligibility criteria. The Committee will then assess all eligible applications individually against the merit criteria. The Committee will include up to seven members who will bring a strong understanding of commercialisation and critical success factors for scaling businesses. The Committee may also be assisted by other persons engaged by the Commonwealth to inform their assessments.

Grant applications must address the eligibility and merit criteria and provide relevant supporting information. The amount of detail and supporting evidence should be relative to the project size, complexity and funding amount requested. Larger and more complex projects should include more detailed evidence. To be competitive, applications must score highly against each merit criterion.

After considering the applications, the Committee will make recommendations to the Program Delegate regarding those applications suitable for funding. The Program Delegate will make the final decision about which grants to approve, taking into consideration the Committee's recommendations, and the availability of grant funds. The Program Delegate will not approve funding if there are insufficient Program funds available across relevant financial years for the Program.

Both successful and unsuccessful applicants will be informed in writing of the outcome of their application. Unsuccessful applicants will have an opportunity to discuss the outcome with the Department and can submit a new application for the same or similar project in future funding rounds. Where this occurs, applicants should include new or additional information to address the weaknesses identified in their previous application.

Persons who are otherwise affected by decisions or who have complaints about the Program will also have recourse to the Department. The Department investigates all complaints about the Program in accordance with its complaints policy and procedures. If a person is not satisfied with the way the Department handles a complaint, they can lodge a complaint with the Commonwealth Ombudsman.

Statement of the Relevance and Operation of Constitutional Heads of Power

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

Trade and commerce power

Section 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 aimed at fostering and facilitating the development of innovative SMEs and startups to commercialise novel ideas and grow business operations to trade interstate and internationally as well as increase chances of success in interstate and/or international markets.

Territories Power

Section 122 of the Constitution empowers the Parliament to ‘make laws for the government of any territory’. In that regard, the Program prescribed by the Legislative Instrument is also aimed at fostering and facilitating the development of SMEs and startups to grow business operations to trade between a State and a Territory, between two Territories or within a Territory.

Authority

Section 33 of the *Industry Research and Development Act 1986* provides authority for the Legislative Instrument.

Consultation

A range of businesses, peak industry bodies, universities, investors, and government representatives were consulted during the development of the Program.

The Department of Industry, Science and Resources conducted a public and targeted consultation process with stakeholders in the startup and innovation ecosystem to inform the design of the Industry Growth Program. A total of 218 submissions were received through the online consultation hub or directly via email. The department also held a series of roundtables over July and August 2023, adding to the feedback received. Insights from consultation were sought to help inform program settings.

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 there the regulatory burden is likely to be minor (Office of Best Practice Regulation reference number - 03994).

Details of the *Industry, Research and Development (Industry Growth Program) Instrument 2023*

Section 1 – Name of Instrument

1. This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Industry Growth Program) Instrument 2023*.

Section 2 – Commencement

2. This section provides that the Legislative Instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

3. This section specifies the provision of the *Industry, Research and Development Act 1986* under which the Legislative Instrument is made.

Section 4 – Definitions

4. This section provides for definitions of terms used in the Legislative Instrument.

Section 5 – Prescribed Program

This section prescribes the Industry Growth Program (the Program) for the purposes of subsection 33(1) of the *Industry Research and Development Act 1986*.

The purpose of the Program is to provide advice and grants to innovative small and medium enterprises (SMEs) and startups to commercialise their ideas into new products, and services and grow their operations in National Reconstruction Fund (NRF) priority areas. This is intended to improve their ability to engage in or increase their interstate and/or international trading operations and better position them to seek future investment.

Funding is available for commercialisation advisers to provide commercialisation and early-stage growth advice to innovative SMEs. Grant funding is also available to successful innovative SMEs to undertake eligible projects to commercialise their projects and expand their businesses in NRF priority areas.

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 trade and commerce power (paragraph 51(i) of the Constitution), and
- the government of a Territory (section 122 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 (Industry Growth 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 purpose of the *Industry Research and Development (Industry Growth Program) Instrument 2023* (the Legislative Instrument) is to prescribe the Industry Growth Program (the Program). The purpose of the Program is to support innovative Australian small and medium enterprises (SMEs) and startups undertaking projects in National Reconstruction Fund (NRF) priority areas to commercialise their ideas into new products and services and grow their operations.

The Program will focus on providing advisory services, with grant funding also available to successful innovative SMEs and startups to undertake eligible projects to commercialise their projects and expand their businesses in NRF priority areas. The Program provides \$340 million in administered funding over four financial years from 2023-24, as part of the Australian Government's commitment to driving the transformation, growth and competitiveness of Australia's industries and building domestic capability to meet the needs of the Australian economy.

Human rights implications

The 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