

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Climate Change and Energy

Industry Research and Development Act 1986

Industry Research and Development (First Nations Renewable Hydrogen Engagement Fund Program) Instrument 2024

Purpose and Operation

Section 33 of the *Industry Research and Development Act 1986* (the 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 Minister responsible for administering the Act has delegated (under subsection 33(6) of the Act) the power to prescribe the First Nations Renewable Hydrogen Engagement Fund Program (the Program) to the Minister responsible for administering the *Australian Renewable Energy Agency Act 2011*.

The statutory framework provided by section 33 of the 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 Australian 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 under section 33 of the Act, subsection 34(1) of the Act 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) of the Act 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 of the Act).

The purpose of the *Industry Research and Development (First Nations Renewable Hydrogen Engagement Fund Program) Instrument 2024* (the Legislative Instrument) is to prescribe the Program under subsection 33(1) of the Act. Initial funding for the Program has been secured through the Department of Climate Change, Energy, the Environment and Water 2023-24 Budget. This was expanded in the 2024-25 Budget. The Program provides up to \$4 million as part of the Australian Government's commitment to support Aboriginal and Torres Strait Islander (First Nations) communities and organisations to engage with renewable hydrogen project developers and planning processes.

The growth of Australia's hydrogen industry is expected to take place largely in regional and remote areas on land traditionally owned by First Nations people. The Government is providing up to \$4 million to establish the Program to provide support to First Nations communities and organisations to:

- represent their interests and concerns are represented in ongoing project consultations and negotiations based on free, prior, and informed consent to development; and
- capture ongoing social and economic value from renewable hydrogen projects; and
- respond to the growing number of renewable hydrogen projects in development.

Meaningful engagement can deliver mutual cultural, social, economic and environmental benefits for the hydrogen sector, communities, First Nations people and Country. By embedding First Nations' perspectives into project development, design, and implementation processes, the hydrogen sector can improve its social licence to operate, its ongoing sustainability, and Australia's broader environmental, social, and corporate governance credentials.

Funding is available to eligible First Nations organisations, including prescribed bodies corporate under the *Native Title Act 1993* and local Aboriginal Land Councils, to undertake the engagement activities set out in the grant program guidelines, which may include:

- procuring independent, technical, environmental, or financial advice on projects;
- employing a community representative to engage with renewable hydrogen project developers;
- developing education materials and/or training programs; and
- supporting co-design opportunities in partnership with project developers.

Funding authorised by this Legislative Instrument comes from Program 1.2: Support reliable, secure and affordable energy, Outcome 1, as set out in the *Department of Climate Change, Energy, the Environment and Water Portfolio Budget Statements 2023-24* (<https://www.dcceew.gov.au/sites/default/files/documents/dcceew-2024-25-pbs.pdf>) at page 39.

The Program will be delivered by the Business Grants Hub in the Department of Industry, Science and Resources, which has extensive experience in delivering grants to Australian businesses, organisations and individuals. The Business Grants Hub partners with other government agencies to achieve their policy objectives through designing and implementing grants programs.

The Program is a closed, non-competitive grants program. The Program is administered by the Department of Climate Change, Energy, the Environment and Water (the Department) in accordance with the requirements of the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grant Rules and Guidelines 2017*.

In the first round, up to \$2 million will be available for two years from 2024-25 for eligible entities under the Program. Eligible entities will include First Nations representative organisations, associations or consortiums, including Prescribed Body Corporates, native title claim groups, and Local Aboriginal Land Councils.

Australia's most prospective large scale renewable hydrogen projects are being identified through the Hydrogen Headstart program. These projects, located in four states around Australia, will create new activity and generate an additional amount of engagement with nearby First Nations communities and organisations. Consequently, the Program is being launched in locations that host Hydrogen Headstart shortlisted projects. These projects are expected to commence operations from 2026-27 onwards. Therefore, consultation and

engagement, as well as the more intensive parts of project development, will take place from now until then. Accordingly, the Program will be available from 2024-25 for two years to ensure that resources are available to First Nations communities and organisations during this period.

Spending decisions will be made by the Program Delegate, taking into account the recommendations of an assessment by Departmental officers against the Program guidelines.

The Program Delegate will be a Senior Executive Service employee from the area of the Department with policy responsibility for the grant program. This will ensure the delegate has relevant expertise in, and understanding of, the policy objective as well as grant application assessment and administration and be able to perform relevant functions in accordance with the Commonwealth resource framework.

As this is a non-competitive grant 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 non-competitive grants to First Nations organisations on a needs basis. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 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 be able to provide feedback to the Department. The Department can investigate 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.

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:

Races power

Section 51(xxvi) of the Constitution empowers the Parliament with respect to ‘the people of any race for whom it is deemed necessary to make special laws’.

The Program is aimed at supporting First Nations communities and organisations to engage with the renewable hydrogen industry to ensure their perspectives, culture and traditions can be incorporated into the development and implementation of renewable hydrogen projects.

Further details on the Legislative Instrument are set out in Attachment A.

Background

The Australian Government announced \$2 million in funding to support First Nations hydrogen engagement alongside the \$2 billion Hydrogen Headstart program in the 2023-24 Budget. An additional \$2 million has been committed through the 2024-25 Budget, increasing total support available under the fund of \$4 million.

The scope of the Program was agreed through the 2023-24 Mid-Year Economic and Fiscal Outlook process. The Program is an important part in the foundation of Australia's renewable hydrogen industry, supporting a positive start for mutually beneficial and constructive relationships between project developers and First Nations people.

Authority

Section 33 of the Act provides authority for the Legislative Instrument.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the Attorney-General's Department and the Department of Industry, Science, and Resources have been consulted on this Legislative Instrument.

Regulatory Impact

The Program does not trigger Australian Government Impact Analysis requirements (OBPR reference number OIA23-05562).

Other

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

Details of the *Industry Research and Development (First Nations Renewable Hydrogen Engagement Fund Program) Instrument 2024*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (First Nations Renewable Hydrogen Engagement Fund Program) Instrument 2024* (the Legislative Instrument).

Section 2 – Commencement

This section provides that the Legislative Instrument commences on the day after it is registered.

Section 3 – Authority

This section specifies that the Legislative Instrument is made under section 33 of the *Industry Research and Development Act 1986* (the Act).

Section 4 – Definitions

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

Section 5 – Prescribed Program

This section prescribes the First Nations Renewable Hydrogen Engagement Fund Program (the Program) for the purposes of subsection 33(1) of the Act.

The purpose of the Program is to contribute to the capacity of Aboriginal and Torres Strait Islander communities and organisations to engage with industry and ensure their perspectives, culture and traditions can be incorporated into the development and implementation of renewable hydrogen projects. The funding will support Aboriginal and Torres Strait Islander communities and organisations to respond to the growing number of renewable hydrogen projects in development and ensure their interests and concerns in project consultations are represented.

Section 6 – Specified Legislative Power

This section specifies that the legislative power of the Parliament in respect of which the Legislative Instrument is made is the power to make laws with respect to the people of any race for whom it is deemed necessary to make special laws (within the meaning of paragraph 51(xxvi) 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 (First Nations Renewable Hydrogen Engagement Fund Program) Instrument 2024

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 (First Nations Renewable Hydrogen Engagement Fund Program) Instrument 2024* (the Legislative Instrument) provides legislative authority to commit Commonwealth funding for the First Nations Renewable Hydrogen Engagement Fund Program (the Program).

The Program provides funding to Aboriginal and Torres Strait Islander communities and organisations to support their engagement with nearby renewable hydrogen project developers.

Human rights implications

This Legislative Instrument positively engages the right to self-determination for Aboriginal and Torres Strait Islander communities and organisations by supporting those communities and organisations to engage in the development and implementation of projects that may impact them.

This Legislative Instrument does not engage any other applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Chris Bowen MP
Minister for Climate Change and Energy**