

EXPLANATORY STATEMENT

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

Industry Research and Development Act 1986

Industry Research and Development (Dealership and Repairer Initiative for Vehicle Electrification Nationally (DRIVEN) 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 for Industry and Science has delegated the Minister's power under subsection 33(1) to the Minister responsible for administering the *Climate Change Act 2022*, under subsection 33(6) of the Act to prescribe the Dealership and Repairer Initiative for Vehicle Electrification Nationally (DRIVEN) Program (the program). This is currently the Minister for Climate Change and Energy.

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 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, 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 (Dealership and Repairer Initiative for Vehicle Electrification Nationally (DRIVEN) Program) Instrument 2024* (the Legislative Instrument) is to prescribe the program. The funding for the program has been secured through Department of Climate Change, Energy, the Environment and Water's (DCCEEW) 2024-25 Budget.

In line with the National Electric Vehicle Strategy, the Government announced a New Vehicle Efficiency Standard (the Standard) on 26 March 2024. The Standard places a regulatory obligation on vehicle suppliers to supply vehicles that meet a certain CO₂ g/km emissions target.

To support the automotive sector with this transition, the Government announced \$60 million to support the installation of electric vehicle (EV) charging infrastructure at Australian automotive dealerships and EV repairers across the country.

This recognises the significant role the automotive sector will play in the successful transition of the broader transport sector to net zero and the impact this will have on individual businesses. The program was announced as part of the Driving the Nation Fund, to deploy EV charging infrastructure in Australian automotive dealerships and EV repairers, to position the industry to support increasing EV uptake.

The program seeks to achieve this purpose by providing \$60 million to support the purchase and installation of EV charging infrastructure at automotive dealerships and EV repairers across the country. This funding is intended to support the automotive sector to transition to selling and servicing a higher proportion of EVs.

Funding authorised by this Legislative Instrument comes from Program 1.1 Reducing Australia's Greenhouse Gas Emissions, Outcome 1, as set out in the *Department of Climate Change, Energy, the Environment and Water Portfolio Budget Statements 2024-25* at page 38.

The program will be delivered by the Business Grants Hub in the Department of Industry, Science and Resources.

Eligibility and merit criteria will be outlined in the program guidelines. The program will be run in two streams, stream 1 being an entitlement rebate stream, and stream 2 being a merit-based grants stream.

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* (the PGPA Act) and the *Commonwealth Grant Rules and Guidelines 2017*.

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 delegate is a Senior Executive Service (SES) officer who holds delegation under relevant financial frameworks, including delegation under the PGPA Act, and sections 34 and 35 of the IR&D Act. The SES officer would be an appropriate person who would have the relevant expertise in, and understanding of, the subject matter, and be able to perform the relevant functions in accordance with their delegation and the Commonwealth resource framework. Day-to-day administration of the grant, including making relevant decisions, would be undertaken by the Business Grants Hub.

The program involves the allocation of finite resources between competing applicants under both streams of the program. Merits review would not provide an effective remedy to a party aggrieved by a decision because a successful application for review by one applicant would require a reduction in funding to other successful applicants. In addition, there will be a robust and extensive assessment process, and complaints mechanism for affected applicants. Therefore, external merits review does not apply to decisions about the provision of rebates

or grants under the program. This approach is consistent with the Administrative Review Council’s guidance document on which decisions should be subject to merits review (available at <https://www.ag.gov.au/legal-system/publications/what-decisions-should-be-subject-merit-review-1999>) (e.g., see paragraphs 4.11 – 4.15).

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 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.

Statement of the Relevance and Operation of Constitutional Heads of Power

The Legislative Instrument specifies that the legislative power in respect of which it is made is the external affairs power (paragraph 51(xxix) of the Constitution).

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to ‘external affairs’. The external affairs power supports legislation implementing Australia’s international obligations under treaties to which it is a party.

Australia has obligations relevant to this legislative instrument under the following treaties:

- the United Nations Framework Convention on Climate Change done at New York on 9 May 1992 ([1994] ATS 2) (UNFCCC), particularly Article 4;
- the Kyoto Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997 ([2008] ATS 2) (Kyoto Protocol), particularly Article 10;
- the Paris Agreement done at Paris on 12 December 2015 ([2016] ATS 24) (Paris Agreement), particularly Article 4.

Article 2 of the UNFCCC states its ultimate objective ‘and any related legal instruments that the Conference of the Parties may adopt is to achieve ... stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’. Article 4 includes a range of obligations for Australia to take domestic actions that reduce Australia’s emissions of greenhouse gases. Relevantly, it provides that parties shall:

- formulate, implement, publish and regularly update national and, where appropriate, regional programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol on Substances that Deplete the Ozone Layer done at Montreal on 16 September 1987 ([1989] ATS 18), and measures to facilitate adequate adaptation to climate change (see Article 4.1(b));
- promote and cooperate in the development, application and diffusion of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases in all relevant sectors including energy, transport, industry, agriculture, forestry and waste management sectors (see Article 4.1(c)); and

- adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs (see Article 4.2(a)).

Article 2(a) of the Kyoto Protocol includes obligations for each Party, in achieving its quantified emission limitation and reduction commitments, to ‘implement and/or further elaborate policies and measures’ to take action to reduce emissions. For example, Article 10(b) requires parties to formulate, implement and report upon climate change mitigation and adaptation programs.

The program seeks to fulfil Australia’s international obligations under the UNFCCC and the Kyoto Protocol by encouraging and supporting the use of vehicles that do not rely on fossil fuels.

The Paris Agreement was entered into by the parties to the UNFCCC to enhance its implementation. Article 3 of the Paris Agreement states all Parties are to ‘undertake and communicate ambitious efforts ... with the view to achieving the purpose of this Agreement’, which is outlined in Article 2 as to ‘strengthen the global response to the threat of climate change’. Relevantly, Article 4.2 of the Paris Agreement provides that ‘[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve’ and that ‘[p]arties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions’.

Under the Paris Agreement, Australia’s nationally determined contribution comprises a 2030 emissions reduction target of 43% below 2005 levels and net zero emissions by 2050. Australia’s greenhouse gas emissions reduction targets, which reflect its nationally determined contribution, have been legislated in the *Climate Change Act 2022*. The program will further contribute to achieving Australia’s nationally determined greenhouse gas reduction target.

Further details on the Legislative Instrument are set out in [Attachment A](#).

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.

The Department has undertaken extensive consultation on the program with industry and government stakeholders who are supportive of the program. As the program has undergone extensive consultation, it was considered unnecessary to undertake additional consultation in relation to the Legislative Instrument.

Regulatory Impact

The Office of Impact Analysis (OIA) has determined that detailed analysis is not required for program under the Australian Government's Policy Impact Analysis Framework, as the proposal seeks funding for voluntary rebate and grant programs only (OIA reference number OIA24-08317).

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 (Dealership and Repairer Initiative for Vehicle Electrification Nationally (DRIVEN) Program) Instrument 2024*

Section 1 – Name of Instrument

1. This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Dealership and Repairer Initiative for Vehicle Electrification Nationally (DRIVEN) Program) Instrument 2024* (the Legislative Instrument).

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

Section 4 – Definitions

4. This section provides for definitions of terms used in the Legislative Instrument.
5. The Paris Agreement, Kyoto Protocol and United Nations Framework Convention on Climate Change are defined in the same way as other Commonwealth legislation and are available from the Australian Treaty Series at <http://www.austlii.edu.au/au/other/dfat/treaties/ATS/>. These treaties are defined for the purpose of specifying the external affairs power as a relevant legislative power for the Legislative Instrument under subsection 33(3) of the Act.
6. The text of the treaties is not applied, adopted or incorporated by the Legislative Instrument and so subsection 14(2) of the *Legislation Act 2003* does not apply to limit the reference to these treaties as in force for Australia from time to time. Australia continues to implement the obligations under these treaties as amended over time.

Section 5 – Prescribed Program

7. This section prescribes the Dealership and Repairer Initiative for Vehicle Electrification Nationally (DRIVEN) Program (the program) for the purposes of subsection 33(1) of the Act.
8. The program provides funding, in the form of rebates and grants, to support the purchase and installation of EV charging stations in Australian automotive dealerships (including associated servicing centres) and EV repairers to position the industry to support increasing EV uptake.

Section 6 – Specified Legislative Power

9. 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 external affairs (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 (Dealership and Repairer Initiative for Vehicle Electrification Nationally (DRIVEN) 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 purpose of the *Industry Research and Development (Dealership and Repairer Initiative for Vehicle Electrification Nationally (DRIVEN) Program) Instrument 2024* (the Legislative Instrument) is to prescribe the Dealership and Repairer Initiative for Vehicle Electrification Nationally (DRIVEN) Program (the program). The program provides funding, in the form of rebates and grants, to support the purchase and installation of EV charging stations in Australian automotive dealerships and EV repairers to position the industry to support increasing EV uptake.

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 Chris Bowen MP
Minister for Climate Change and Energy**