EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry, Innovation and Science

Industry Research and Development Act 1986

Industry Research and Development (Portland Aluminium Smelter Assistance Program) Instrument 2017

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 s33 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 s33, 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 s36).

The purpose of the Industry Research and Development (Portland Aluminium Smelter Assistance Program) Instrument 2017 (the Legislative Instrument) is to prescribe the Portland Aluminium Smelter Assistance Program (the Program). The Program is a $30 million one-off grant to assist the Portland Aluminium Smelter (the Smelter) to restore production capacity of the Smelter to the same level as before damage caused by an electricity power outage on 1 December 2016 (which was 300,000 tonnes of aluminium ingots). The funding will be used to support the restarting and continuity of operations at the Smelter until 30 June 2021 through capital improvements, repairs and maintenance to the Smelter.

Funding authorised by this instrument will come from Program 2: Growing Business Investment and Improving Business Capability, Outcome 1: Enabling growth and productivity for globally competitive industries through supporting science and commercialisation, growing business investment and improving business capability and
streamlining regulation, as set out in the Portfolio Budget Statements 2016-17, Budget Related Paper No. 1.2, Industry, Innovation and Science Portfolio at page 33. The funding will be paid to the Portland Aluminium Smelter Project Unincorporated Joint Venture through the operator of the Smelter, Alcoa Portland Aluminium Pty Ltd, in early 2017 to immediately facilitate the capital improvements, repairs and maintenance to the Smelter.

As this is a one-off grant, there are no selection criteria and the Program will not be subject to merits review.

The Program will be administered by the Department of Industry, Innovation and Science. Spending decisions will be made by the s34 delegate, who will be the Deputy Secretary with responsibility for Industry Growth Division. The Program will also be administered in accordance with the Commonwealth Grants Rules and Guidelines (https://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines-July2014.pdf).

The Legislative Instrument specifies that the legislative power in respect of which the Instrument is made is the Commonwealth trade and commerce power (section 51(i)) of the Constitution. In that regard, the Program prescribed by the Instrument is aimed at supporting the Smelter to continue its relevant trade and commerce activities, being the production of aluminium for export.

**Consultation**

In accordance with section 17 of the Legislation Act 2003, the Attorney-General’s Department and the Department of Finance have been consulted on this Legislative Instrument. The Portland Aluminium Smelter Project Unincorporated Joint Venture, including Alcoa Portland Aluminium Pty Ltd, and the Victorian State government, were consulted on the development of the Program, however it was not considered necessary to consult on the Legislative Instrument itself (because it simply specifies the Program).

**Regulatory Impact**

It is estimated that the Program will have minimal regulatory impact (OBPR reference number: 21675).
Details of the *Industry Research and Development (Portland Aluminium Smelter Assistance Program) Instrument 2017*

**PART 1 – PRELIMINARY**

**Section 1 – Name of Instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Portland Aluminium Smelter Assistance Program) Instrument 2017*.

**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 *Industry, Research and Development Act 1986* under which the Legislative Instrument is made.

**Section 4 – Definitions**

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

**Section 5 – Prescribed program**

This section prescribes the Portland Aluminium Smelter Assistance Program under which financial assistance will be provided to the Portland Aluminium Smelter Project Unincorporated Joint Venture through the operator of the Smelter to support the production of aluminium at the Portland Aluminium Smelter for export.

The table specifies in column 1 the name of the program, and in column 2 the description and purpose of the program.

**Section 6 – Specified legislative power**

This section specifies that the legislative power in respect of which the instrument is made is the power of the Parliament to make laws with respect to trade and commerce with other countries, and among the States.
Statement of Compatibility with Human Rights

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

Industry Research and Development (Portland Aluminium Smelter Assistance Program)
Instrument 2017

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

This instrument provides legislative authority to commit Commonwealth funds for the Portland Aluminium Smelter Assistance Program.

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 Minister for Industry, Innovation and Science, the Hon Greg Hunt MP