

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Small Business

*Industry Research and Development Act 1986*

*Industry Research and Development (Australian Small Business Advisory Services Program)  
Instrument 2017*

### **Purpose and Operation**

Section 33 of the *Industry Research and Development Act 1986* (the Act) provides a mechanism for the Minister for Industry, Innovation and Science 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, Innovation and Science has delegated the Minister's power under subsection 33(1) to the Minister for Small Business, under subsection 33(6) of the Act to prescribe the Australian Small Business Advisory Services Program (the Program).

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 (Australian Small Business Advisory Services Program) Instrument 2017* (the Legislative Instrument) is to prescribe the Program.

The Program will provide funding to business advisory services providers that are trading corporations within the meaning of paragraph 51(xx) of the Constitution, to assist them in the conduct of their business advisory activities. The funding will be provided on terms and conditions in accordance with section 35 of the Act. The purpose of the Program is to enhance the capabilities of business advisory services providers to deliver low cost, high value advisory services to small businesses.

Program funding will be provided through a competitive, merit based process in accordance with the *Commonwealth Grants Rules and Guidelines* (<http://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines-July2014.pdf>) and the *Public Governance, Performance and Accountability Act 2013*.

To be eligible to receive funding, business advisory services providers must meet the eligibility and merit criteria, which will be outlined in the Program guidelines. The Program guidelines will be subject to change with each funding round. Information on the Program will be available at <https://www.business.gov.au/>.

Funding authorised by the Legislative Instrument comes from Program 1.3: Support for Markets and Business and was set out in *Small Business Advisory Services program – continuation* in the Budget Measures 2012-13 Budget Paper No.2 Industry, Innovation, Science, Research and Tertiary Education Portfolio. Funding for the Program is ongoing, with an administered value of around \$6 million per year. The value of each grant will vary depending on the number of providers for each funding round.

The Program will be administered by the Department of Industry, Innovation and Science on behalf of the Department of the Treasury. The decision-maker for grants made under the Program will be the Minister for Small Business.

Applications will be assessed against the eligibility criteria and merit criteria set out in the Program guidelines. In the first instance, applications will be assessed by AusIndustry against the eligibility criteria. AusIndustry will then assess eligible applications against the merit criteria. This will include comparing the applications and scoring each application out of 100.

Applications must address the eligibility criteria and all merit criteria and 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.

The assessments and recommendations on which applications are suitable for funding are provided to the Minister for Small Business. The Minister for Small Business will make the final decision about which grants to approve, taking into consideration the assessments, and the availability of grant funds. The Minister for Small Business 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. Unsuccessful applicants will have an opportunity to discuss the outcome with the Department of Industry, Innovation and Science, and can submit a new application for the same or similar project in future funding rounds. Applicants should include new or more information to address the weaknesses identified in their previous application.

Persons who are otherwise affected by decisions or who have complaints about the Program also have recourse to the Department of Industry, Innovation and Science. The Department

will 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.

The Program will not be subject to merits review<sup>1</sup> as funding decisions:

- involve the allocation of finite resources and overturning the original decision could affect an allocation to another party;
- support the implementation of policy decisions made by government about the delivery of the Program;
- are informed by a merit assessment process whereby applicants must meet the eligibility criteria and score highly against all merit criteria; and
- are subject to final approval by the Minister for Small Business who is responsible for approval of applications for funding, the amount of grant awarded and any conditions attached to the funding.

### **Consultation**

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

Relevant state agencies and business advisory services providers who received funding under an earlier version of the Program were consulted as part of a review conducted in early 2017, however it was not considered necessary to consult on the Legislative Instrument itself.

### **Regulatory Impact**

A Regulatory Impact Statement is not required as the proposed change is machinery (OBPR reference number: 22649).

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<sup>1</sup> Administrative Review Council, *What decisions should be subject to merit review?*, <https://www.arc.ag.gov.au/Publications/Reports/Pages/Downloads/Whatdecisionsshouldbesubjecttomeritreview1999.aspx> (last accessed on 13 November 2017).

## **Details of the *Industry Research and Development (Australian Small Business Advisory Services Program) Instrument 2017***

### **Section 1 – Name of Instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Australian Small Business Advisory Services Program) Instrument 2017*.

### **Section 2 – Commencement**

This section provides that the Legislative Instrument commenced 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* (the Act) 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 Australian Small Business Advisory Services Program for the purposes of subsection 33(1) of the Act.

This section describes the type of funding that may be provided under the Program. The Program will provide funding, subject to terms and conditions in accordance with section 35 of the Act, to business advisory services providers that are trading corporations formed within the limits of the Commonwealth, to assist them in the conduct of their business advisory activities.

The purpose of the Program is to enhance the capabilities of business advisory services providers to deliver low cost, high quality advisory services to small businesses.

This will in turn provide small businesses across metropolitan, regional and remote areas of Australia with increased access to advisory services that enhance their skills and competencies.

### **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 trading corporations (within the meaning of paragraph 51(xx) of the Constitution) formed within the limits of the Commonwealth. The corporations power supports Commonwealth activities which assist the activities of foreign corporations, and trading or financial corporations (together,

constitutional corporations). In that regard, the Program prescribed by the Legislative Instrument singles out and confers on some constitutional corporations (namely, trading corporations) benefits which are directed to assisting those corporations in the conduct of their ordinary activities, and imposes terms and conditions on those corporations under the grant agreements in accordance with section 35 of the Act, in relation to receipt of the benefits under the Program. In particular, the Program will provide funding to trading corporations to assist them in the conduct of their business advisory activities. Eligibility to receive funding under the Program will be limited to businesses which are trading corporations to which s51(xx) applies.

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

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

*Industry Research and Development (Australian Small Business Advisory Services 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**

This instrument provides legislative authority to commit Commonwealth funds for the Australian Small Business Advisory Services 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 Small Business, the Hon Michael McCormack MP**