

EXPLANATORY STATEMENT

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

Industry Research and Development Act 1986

Industry Research and Development (Global Innovation Strategy – Strategic Funding Program) Instrument 2019

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 (Global Innovation Strategy – Strategic Funding Program) Instrument 2019* (the Legislative Instrument) is to prescribe the Global Innovation Strategy – Strategic Funding Program (the Program). The Program is a new stream of the existing Global Innovation Strategy. Legislative authority for the existing Global Innovation Strategy is provided under item 143 of Schedule 1AB to the [*Financial Framework \(Supplementary Powers\) Regulations 1997 \(Cth\)*](#).

The funding for the Program has been secured through the Department of Industry, Innovation and Science (the Department) 2018-19 Budget. The Program will provide up to \$5.1 million in financial years 2019/20, 2020/21 and 2021/22 as part of the Australian Government's \$20 million *Supporting Australian innovation in Asia* 2018-19 Budget measure. The Program represents a commitment to develop a strategic approach to support enhanced innovation engagement internationally. Through government-to-government engagements, the Program will provide financial assistance to foster, improve and promote

international collaboration, and a whole-of-government global engagement on entrepreneurship, innovation, science and research.

The Program's funding will:

- Help Australians take their ideas to the world, particularly through building strong research and business connections internationally;
- Encourage and leverage foreign governments and private sector investments in Australia;
- Help to build relationships at a government-to-government level, attracting strong interest in, and the ability to leverage, co-investment in Australian business and research by foreign governments and organisations; and
- Assist Australian business, entrepreneurs and researchers to capitalise on opportunities to develop and commercialise innovative products and services internationally.

Funding will be available to successful recipients to undertake eligible projects that include, for example:

- Workshops and missions involving businesses, entrepreneurs and researchers to seed new collaborations and commercial partnerships;
- Collaborative projects for businesses and researchers to work with leading global partners on cutting-edge research, development and commercialisation projects; and
- Exchanges and fellowships for exceptional early career entrepreneurs and researchers, both inbound and outbound, to improve their professional capabilities and forge long-lasting networks.

Funding authorised by this Legislative Instrument comes from Program 1: Supporting Science and Commercialisation, 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 2018-19, Budget Related Paper No. 1.13A, Jobs and Innovation Portfolio (Industry, Innovation and Science)* (<https://www.industry.gov.au/sites/default/files/2018-19-department-of-industry-innovation-and-science-pbs.pdf>) at page 31.

The Program will be delivered by the Department, which has extensive expertise and capability in delivering similar programs.

The Program is an ad-hoc grants program, with potential for the recipient to conduct competitive processes for additional grant activities. Additional grant activities conducted by recipients of the Program's ad-hoc grants will require tailored selection and assessment processes. These competitive processes will be unique to the programs or projects established by recipients of the initial ad-hoc grant, and be required to meet the terms and conditions specified in the overarching contractual agreement established via the Government's Grants Hub. The initial ad-hoc grant will be administered by the Department in accordance with the *Commonwealth Grant Rules and Guidelines 2017*

<http://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf>).

Spending decisions will be made by the Minister for Industry, Science and Technology, taking into account the recommendations of the Department. Proposed spending activities will be assessed by the Department against a set of strategic international engagement principles, which will be made available to funding recipients. These principles will be determined in consultation with other portfolios and relevant experts as appropriate, to ensure strategic benefit to Australia and alignment with broader Australian Government priorities.

Merits review will not apply to decisions about the provision of non-competitive grants under the Program. This is appropriate as grants will represent a budgetary decision of a policy nature, affecting Australia's relations with other countries.

Persons who are otherwise affected by decisions or who have complaints about the Program will also have recourse 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.

The Legislative Instrument specifies that the Program spending is supported by the trade and commerce power in paragraph 51(i) of the Constitution, the external affairs power in paragraph 51(xxix) of the Constitution, and the executive power in s 61 taken together with the express incidental power in s 51(xxxix), including the nationhood aspect.

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'. Funding provided under the Program will help Australian business, entrepreneurs and researchers to capitalise on opportunities to develop and commercialise innovative products and services internationally. The funding will also help to build relationships at a government-to-government level, attracting strong interest in collaboration and co-investment in Australian business and research by foreign governments and organisations, further enhancing Australia's innovation, science and research credentials to the world. This promotion of international trade and commerce will in turn support Australia's efforts to attract and retain the capabilities required for strong economic growth in a fast evolving international digital economy. The Program will also act to further Australia's science diplomacy efforts, promoting international collaboration for public good.

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports laws affecting Australia's relations with other countries. Funding provided under the Legislative Instrument will include funding which promotes co-investment from foreign governments and allows resourcing of global

innovation and collaboration activities. Further, the Legislative Instrument will support Australia's foreign policy objectives and align with whole-of-government strategic collaboration under bilateral and multilateral relationships. The external affairs power also supports legislation with respect to matters or things outside the geographical limits of Australia. Funding provided under the Legislative Instrument may include funding for activities outside Australia, such as overseas workshops and outbound exchanges, and to that extent, would be supported by the geographically external aspect of the external affairs power.

Executive power and express incidental power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in it by the Constitution. Together with the executive power in section 61 of the Constitution, the express incidental power supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth. Funding provided under the Legislative Instrument is for international collaboration that only the Commonwealth could practically initiate, such as through Ministerial-led and departmental bilateral and multilateral government-to-government engagements and dialogues.

Authority

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

Consultation

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 the regulatory burden is likely to be minor (OBPR reference number ID 21847).

Details of the *Industry Research and Development (Global Innovation Strategy – Strategic Funding Program) Instrument 2019*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Global Innovation Strategy – Strategic Funding Program) Instrument 2019*.

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* (the Act) under which the Legislative Instrument is made.

Section 4 – Definitions

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

Section 5 – Prescribed Program

This section prescribes the Global Innovation Strategy – Strategic Funding Program (the Program) for the purposes of s 33 of the Act.

The Program will provide funding to support the building of new science, innovation and entrepreneurship partnerships internationally. This will involve funding the linking of domestic science and innovation projects with international counterparts and activities such as exchanges, joint research and workshops. Funding will be dependent on a matched contribution from participating international counterparts, whether that be governments, businesses and/or research institutions.

Section 6 – Specified Legislative Power

This section specifies that the legislative powers in respect of which the Legislative Instrument is made are the trade and commerce power in paragraph 51(i) of the Constitution, the external affairs power in paragraph 51(xxix) of the Constitution, and measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation (section 61 and paragraph 51(xxxix) 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 (Global Innovation Strategy – Strategic Funding Program) Instrument 2019

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 Program has been developed as part of the Australian Government's commitment to support enhanced innovation engagement internationally. The program will provide financial assistance to foster, improve and promote international collaboration and whole-of-government global engagement on entrepreneurship, innovation, science and research.

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.

Senator the Hon Karen Andrews MP

Minister for Industry, Science and Technology