

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources, Water and Northern Australia

Industry Research and Development Act 1986

Industry Research and Development (Northern Endeavour Temporary Operations Program)
Instrument 2020

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 (Northern Endeavour Temporary Operations Program) Instrument 2020* (the Legislative Instrument) is to prescribe the Northern Endeavour Temporary Operations Program (the Program). The funding for the Program has been secured through the Department of Industry, Innovation and Science 2019-20 Budget. The Program provides for an initial \$10 million as part of the Australian Government's commitment to ensure safe operations at the Northern Endeavour floating production storage and offtake (FPSO) facility (the facility) over the Laminaria-Corallina Oil and Gas Project in Commonwealth waters in the Timor Sea, following the liquidation of the title holder for this Project.

The aims of the Program are to ensure the safety of workers and protection of the marine environment, provide security of funding to a suitably qualified and experienced organisation to maintain day-to-day management and control of the facility and its activities, and the management of the contracts related to the day-to-day operations and maintenance of the

facility. The supported activities are subject to operational requirements and will include maintaining the facility in ‘lighthouse mode’, securing the facility and associated wells in the Laminaria-Corallina Oil and Gas Project and required operational activities to meet these program objectives.

Funding for the Program will be provided through the department’s cash reserves. The Program provides up to an initial \$10 million through a procurement.

Funding authorised by this Legislative Instrument comes from Program 2: Growing Business Investment and Improving Business Capability, Outcome 1. Details will be set out in the Portfolio Budget Statements 2020-21, Industry, Science, Energy and Resources Portfolio.

Spending decisions will be made by the Head of Resources Division within the department.

Decisions under this Program will be subject to the *Government Procurement (Judicial Review) Act 2018*.

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

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 legislation with respect to matters or things outside the geographical limits of Australia. This Program provides funding in relation to activities located in the Commonwealth offshore area, which is outside the geographical limits of Australia.

This Program will support activities related to the following:

- the safety of workers in the offshore area;
- resource management and security in the offshore area; and
- security and day-to-day management of the Northern Endeavour FPSO facility while located in the offshore area.

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 Department of the Prime Minister and Cabinet, the Department of Finance and 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 25323).

Details of the *Industry Research and Development (Northern Endeavour Temporary Operations Program) Instrument 2020*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Northern Endeavour Temporary Operations Program) Instrument 2020*.

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 Northern Endeavour Temporary Operations Program (the Program) for the purposes of s 33 of the Act.

The Program provides funding to temporarily support the operation and maintenance of the Northern Endeavour floating production storage and offtake facility in order to manage any safety and environmental risks in connection with the facility or related infrastructure or operations.

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 external affairs (s 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

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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 Northern Endeavour Temporary Operations Program (the Program).

The aim of the Program is to ensure the safety of workers and protection of the marine environment at the Laminaria-Corallina Project, while the *Northern Endeavour* floating production storage and offtake facility is temporarily in ‘lighthouse mode’ following the liquidation of the title holder for this project.

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 Keith Pitt MP

Minister for Resources, Water and Northern Australia