

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Forestry and Fisheries | Assistant Minister for Regional Tourism

Industry Research and Development Act 1986

Industry Research and Development (Eat Seafood Australia 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 Minister for Industry, Science and Technology has delegated the Minister's power under subsection 33(1) to the Assistant Minister for Forestry and Fisheries, under subsection 33(6) of the IR&D Act to prescribe the Eat Seafood Australia Program (the Program).

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 (Eat Seafood Australia Program) Instrument 2020* (the Legislative Instrument) is to prescribe the Eat Seafood Australia Program (the Program). The funding for the Program has been secured through the \$1 Billion COVID-19 Relief and Recovery Fund.

The Program will provide \$4.0 million to Seafood Industry Australia Limited (SIA), the peak national seafood representative body, to lead the development and implementation of a 12-month national campaign to encourage Australians to eat more Australian seafood by increasing awareness of the seafood industry and the benefits of eating Australian seafood. The Program will support the survival and recovery of the seafood industry, which has been disproportionately affected by the COVID-19 crisis, and in turn support regional and coastal communities and industry sectors.

The intended outcome of the Program is to stimulate a boost in domestic demand that will assist the industry's survival and bolster a strong, industry-wide recovery as markets normalise. SIA will leverage its networks within the wildcatch, aquaculture, and post-harvest

sectors of the seafood industry to provide credibility to the campaign's messaging and ensure that the Program strengthens the seafood industry's domestic position into the future.

Funding will be provided to SIA, through an ad-hoc grant process, to undertake eligible activities to deliver the campaign. The campaign will involve a range of traditional and digital media platforms to implement the campaign including, but not limited to, paid advertising and social media. SIA will engage a creative agency or agencies through a competitive tender process to manage the design and delivery of the campaign.

Funding authorised by this Legislative Instrument comes from Program 3.4: Fishing Industry, Outcome 3. Details will be set out in the Portfolio Budget Statements 2020-21, Budget Related Paper No. [1.1] Agriculture, Water and Environment Portfolio.

The Program will be delivered by the Community Grants Hub, which is a specialised design, management and delivery body with extensive expertise and capability in delivering similar programs.

The Program's grant guidelines were developed by the Department of Agriculture, Water and the Environment (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 Secretary of the Department.

The Program involves the allocation of finite resources to the appropriate industry peak body, SIA. A non-competitive process will be used to award the grant as the Program is specifically dependent on an industry peak body with the expertise to meet policy objectives under the Program. In particular, the SIA has a strong understanding and knowledge of the seafood industry and can leverage its networks within the industry's diverse sectors, and will have credibility to represent the seafood industry and provide messaging to the community on this issue.

Merits review will not apply to the Program as it is a single grant to a single industry peak body to allow the Program to meet required timeframes and achieve the Australian Government objectives. This approach was elected due to the urgent need for the Program to help mitigate the impact of COVID-19 on the seafood industry.

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.

For the purposes of subsection 33(3) of the Act, the powers of the Parliament to make laws with respect to the following are specified:

- (a) postal, telegraphic, telephonic and other like services (within the meaning of paragraph 51(v) of the Constitution); and
- (b) enterprises and activities that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation.

Communications power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'. Funding provided under the Legislative Instrument will be utilized for the development of content for the campaign, which will be disseminated through telecommunications services, including radio, television and the internet, as well as through non-electronic media.

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 the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution 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 will be directed towards alleviating and mitigating the short term economic consequences of COVID-19 on the seafood sector, an unforeseen crisis of immediate national significance.

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 and the Department of Industry, Science, Energy and Resources have been consulted on this Legislative Instrument.

Regulatory Impact

It is estimated that the regulatory burden is likely to be minimal (OBPR reference number 42526).

Details of the *Industry Research and Development (Eat Seafood Australia Program) Instrument 2020*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Eat Seafood Australia 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 Eat Seafood Australia Program (the Program) for the purposes of s33 of the Act.

The Program provides funding in the form of an ad-hoc grant to Seafood Industry Australia Limited (SIA), Australia's peak national seafood representative body, to deliver a 12-month national campaign that encourages domestic consumption of Australian seafood. The purpose of this Program is to stimulate a boost in domestic demand for Australian seafood, to support the seafood industry's survival through the national crisis resulting from the coronavirus known as COVID-19, and bolster a strong, industry-wide recovery as markets normalise.

Section 6 – Specified Legislative Power

This section specifies that the legislative powers in respect of which the Legislative Instrument is made are the power of the Parliament to make laws with respect to 'postal, telegraphic, telephonic, and other like services' (paragraph 51 (v) of the Constitution) and the power of the Parliament to make laws with respect to measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation otherwise than by the Commonwealth (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 (Eat Seafood Australia Program) Instrument 2020.

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 object of the Legislative Instrument is to prescribe the Eat Seafood Australia Program (the Program). The purpose of this Program is to provide a boost in domestic demand for Australian seafood to assist the industry's survival through the COVID-19 crisis, and bolster a strong, industry-wide recovery as markets normalise.

The Program will provide funding in the form of an ad-hoc grant to Seafood Industry Australia (SIA), Australia's peak national seafood representative body, to deliver a 12-month national campaign that encourages Australians to eat more Australian seafood.

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. Jonathan Duniam

Assistant Minister for Forestry and Fisheries | Assistant Minister for Regional Tourism