**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) Amendment 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 section 33 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 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 (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 was secured through the Australian Government’s July 2020 Economic and Fiscal Update. The Program provides $75.433 million in administered funding over two years 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 *Industry Research and Development (Northern Endeavour Temporary Operations Program) Amendment Instrument 2020* (the Amendment Instrument) amends the description of the Program in section 5 of the Legislative Instrument. The amended description will allow for the safe and efficient disconnection, removal and disposal of the facility and the decommissioning and remediation of the Laminaria-Corallina fields. To assist with clarity, the Amendment Instrument inserts a definition of ‘decommissioning’ in section 4, which aligns with that used by industry, and a definition of ‘Laminaria-Corallina fields’.

Funding for the Program comes from Outcome 1, Program 1.3: Supporting a strong resources sector. Details will be set out in the Industry, Science, Energy and Resources Portfolio Budget Statements and Portfolio Additional Estimates Statements.

The Legislative Instrument specifies that the legislative power in respect of which it is made is the external affairs power (within the meaning of paragraph 51(xxix) of the Constitution). The changes to the Program specified in the Amendment Instrument will continue to rely on the external affairs power.

**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. In that regard, the Program prescribed by the Legislative Instrument, and as amended by the Amendment Instrument, is aimed at supporting activities located in offshore areas, which are outside the geographical limits of Australia.

**Authority**

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

The Department of Industry, Science, Energy and Resources has consulted with members and the executive of the Australian Petroleum Production and Exploration Association, about actions being taken by Government with in respect to the Northern Endeavour facility and the Laminaria-Corallina fields and the priorities for Government, and sought views and expert advice from industry on options for a longer term solution to the facility and the fields.

**Regulatory Impact**

The Program has been assessed by the Office of Best Practice Regulation (OBPR) as being non-regulatory in nature (OBPR reference number 25323).

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

**Section 2 – Commencement**

This section provides that the Amendment 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 is a machinery clause that allows the Schedule to the Amendment Instrument to operate according to its terms.

**Schedule 1 - Amendments**

This Schedule amends section 4 of the Legislative Instrument to include a definition of ‘decommissioning’, ‘Laminaria-Corallina fields’ and ‘Northern Endeavour’.

This Schedule also repeals subsection 5(2) and substitutes with new language to include activities related to the decommissioning of the Northern Endeavour floating production and offtake (FPSO) facility, the decommissioning of the Laminaria-Corallina fields, and the obtaining of insurance in relation to the prescribed activities.

**Statement of Compatibility with Human Rights**

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

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

This Amendment 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 Amendment Instrument**

The *Industry Research and Development (Northern Endeavour Temporary Operations Program) Amendment Instrument 2020* (the Amendment Instrument) amends the description of the Program in section 5 of the *Industry, Research and Development (Northern Endeavour Temporary Operations Program) Instrument 2020* (the Legislative Instrument). The amended description allows for the safe and efficient disconnection, removal and disposal of the facility and the decommissioning and remediation of the Laminaria-Corallina fields. To assist with clarity, the Amendment Instrument inserts a definition of ‘decommissioning’ in section 4, which aligns with that used by industry, and a definition of ‘Laminaria-Corallina fields’.

**Human rights implications**

This Amendment Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Amendment 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**