**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Energy and Emissions Reduction

*Industry Research and Development Act 1986*

*Industry Research and Development (Hotel Energy Uplift Program) Instrument 2021*

**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 (Hotel Energy Uplift Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Hotel Energy Uplift Program (the Program). The funding for the Program has been secured through the Department of Industry, Science, Energy and Resources (the Department) 2020-2021 Budget. The Program provides $12 million in 2020-2021 as part of the Australian Government’s commitment to supporting reliable, secure and affordable energy. The purpose of the Program is to support hotels to reduce their energy consumption.

Program funding will be available for hotels (eligible applicants) to undertake eligible projects to reduce energy consumption by upgrading their equipment; upgrading their building fabric; undertaking energy management and carrying out energy management assessments such as energy systems assessments and feasibility studies; and investing in energy monitoring and management systems.

Examples of activities that could be supported include:

* upgrading heating, ventilation and air conditioning systems (HVAC);
* new solar hot water heaters or air source hot water heat pumps to replace existing bathroom hot water systems;
* new or replacement control components or systems for lighting, HVAC equipment or refrigeration equipment; and
* upgrades to the building fabric that reduce energy consumption such as installing external shading on windows.

Funding authorised by this Legislative Instrument comes from Department of Industry, Science, Energy and Resources, Program 3.1: Supporting reliable, secure and affordable energy, Outcome 3: Support the affordable, reliable, secure and competitive operation of energy markets for the long term benefit of the Australian community through improving Australia’s energy supply, efficiency, quality, performance and productivity as set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No. 1.9, Industry, Science, Energy and Resources Portfolio* (<https://www.industry.gov.au/sites/default/files/2020-10/2020-21-department-of-industry-science-enery-and-resources-pbs.pdf>)at page 70.

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

The Program is a demand driven grants program. The Program is administered by the Department in accordance with the *Commonwealth Grant Rules and Guidelines 2017* (<https://www.finance.gov.au/government/commonwealth-grants/commonwealth-grants-rules-and-guidelines>). Information about the Program and how applicants can assess their eligibility to apply will be available at www.business.gov.au, once grant opportunity guidelines are published. General information on the Program will also be available at www.energy.gov.au. Information about the grant opportunity and grants that have been awarded under the Program will be published on GrantConnect at www.grants.gov.au.

Spending decisions will be made by the Program Delegate, an official of AusIndustry, of the division of the same name within the Department.

Grant funding of $10.2 million will offered under the Program, for grants of between $10,000 and $25,000. The grant amount will be up to 100 per cent of eligible project costs, with no requirement for a co-contribution.

Applications must meet eligibility criteria and provide the relevant supporting information, as set out in the Program guidelines. The grant selection process will take into account the date and time that a completed application is received. AusIndustry will assess applications against eligibility criteria only, and refer eligible applications to the Program Delegate to make the final decision. The Program Delegate will approve eligible applications on a first come, first served basis up to the limit of the available grant funds.

AusIndustry will advise all applicants of the outcome of their application in writing. Unsuccessful applicants have an opportunity to seek further information on the outcome from AusIndustry. Successful grant recipients will be published on GrantConnect and www.business.gov.au.

Independent merits review of funding decisions made in connection with the Program is not considered appropriate because these decisions relate to the allocation of finite resources between competing applicants, and an allocation that has already been made to a party would be affected by overturning the original decision. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.11 to 4.19 of the guide, *What decisions should be subject to merit review?*).

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**

The Legislative Instrument specifies that the legislative power in respect of which it is made is the external affairs power (para 51(xxix) of the Constitution). The external affairs power supports Commonwealth legislation which gives effect to Australia’s obligations under international treaties. Australia has obligations under the following treaties related to climate change.

The *United Nations Framework Convention on Climate Change* [1994] ATS 2 (the UNFCCC) includes a range of obligations on Australia to take domestic actions that reduce Australia’s emissions of greenhouse gases.

The UNFCCC relevantly provides that Australia shall:

* formulate, implement, publish and regularly update national and, where appropriate, regional programs containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change (Article 4.1(b));
* promote and cooperate in the development, application and diffusion of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases in all relevant sectors including energy, transport, industry, agriculture, forestry and waste management sectors (Article 4.1(c)); and
* adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs (Article 4.2(a)).

The *Kyoto Protocol to the United Nations Framework Convention on Climate Change* [2008] ATS 2 also includes obligations on Australia to take action to reduce emissions, such as Article 10(b). Article 10(b) imposes obligations to formulate, implement and report upon climate change mitigation and adaptation programs.

The *Paris Agreement* [2016] ATS 24 was entered into by the parties to the UNFCCC to enhance its implementation. Under the Paris Agreement, Australia has a ‘nationally determined contribution’ of a 2030 emissions reduction target of 26 to 28 per cent below 2005 levels. Relevantly, Article 4.2 of the Paris Agreement provides that ‘[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions’.

Under the Program, hotels will be funded to improve energy efficiency practices and better manage energy consumption, which will deliver carbon abatement through reduced greenhouse gas emissions. This will result from the upgraded equipment and upgrades to building fabric which reduces energy consumption and actions taken by hotels in response to energy management activities funded under the Program. The reduced energy use supported by the program will therefore contribute to Australia’s obligations to reduce greenhouse gas emissions under these treaties.

**Authority**

Section 33 of the IR&D Act provides authority for the Legislative Instrument.

**Consultation**

The department consulted with three peak bodies representing accommodation providers in Australia on the design of the Program: Accommodation Hotels Association; Accommodation Association of Australia and Tourism Accommodation Australia.

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 42948).

**Details of the *Industry Research and Development (Hotel Energy Uplift Program) Instrument 2021***

**Section 1 – Name of Instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Hotel Energy Uplift Program) Instrument 2021.*

**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 IR&D Act) under which the Legislative Instrument is made.

**Section 4 – Definitions**

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

The Paris Agreement, Kyoto Protocol and United Nations Framework Convention on Climate Change are defined in the same way as other Commonwealth legislation and are available from the Australian Treaty Series at http://www.austlii.edu.au/au/other/dfat/treaties/ATS/. These treaties are defined for the purpose of specifying the external affairs power as the relevant legislative power for the Legislative Instrument under subsection 33(3) of the IR&D Act.

The text of the treaties is not applied, adopted or incorporated by the Legislative Instrument and so subsection 14(2) of the *Legislation Act 2003* does not apply to limit the reference to these treaties as in force for Australia from time to time. Australia continues to implement the obligations under these treaties as amended over time, such as in relation to Australia’s ratification of the Doha Amendment to the Kyoto Protocol, which commenced on 31 December 2020.

**Section 5 – Prescribed Program**

This section prescribes the Hotel Energy Uplift Program (the Program) for the purposes of section 33 of the IR&D Act.

The Program provides grants to support hotels to reduce their energy consumption with the primary goal to reduce their energy use, improve energy productivity and deliver carbon abatement. The Program’s core activity will be offering grants to eligible hotels to:

* upgrade equipment to reduce energy consumption;
* upgrade the building fabric to reduce energy consumption;
* undertake energy management activities and assessments, such as energy systems assessments and feasibility studies; and
* invest in energy monitoring and management systems.

**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 (paragraph 51(xxix) of the Constitution). The grounds for why this instrument is supported by the external affairs power are set out in the section above titled “External affairs power”.

**Statement of Compatibility with Human Rights**

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

*Industry Research and Development (Hotel Energy Uplift Program) Instrument 2021*

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 Hotel Energy Uplift Program.

The Program provides $10.2 million in grant funding as part of supporting the Australian Government’s commitment supporting reliable, secure and affordable energy. The purpose of the Program is to support hotels to reduce their energy consumption.

**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 Angus Taylor MP**

**Minister for Energy and Emissions Reduction**