**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for the Environment

*Industry Research and Development Act 1986*

*Industry Research and Development (Australasian Recycling Label Program) Instrument 2021*

**Purpose and Operation**

Section 33 of the *Industry Research and Development Act 1986* (the 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 Minister responsible for administering the *Environmental Protection and Biodiversity Conservation Act 1999* under subsection 33(6) of the Act to prescribe the Australasian Recycling Label Program (the Program). This is currently the Minister for the Environment.

The statutory framework provided by section 33 of the 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 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 (Australasian Recycling Label Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Program. The funding for the Program has been secured through the Department of Agriculture, Water and the Environment 2021-22 Budget. The Program provides $5 million in funding to a partnership of key industry representative bodies to encourage and support small-to-medium enterprise (SME) businesses to adopt the Australasian Recycling Label on their packaging and improve the sustainability of their packaging.

The Australasian Recycling Label is the only verified label that informs Australian consumers on how to correctly dispose of each part of a product’s packaging. This will improve consumer recycling behaviours to reduce contamination in kerbside bins, which will lead to cleaner recycling streams and reduced the amount of recyclable material that is sent to landfill. SME businesses will be provided with education, resources and assistance, which will be delivered by a partnership of key industry bodies, including the Australian Packaging Covenant Organisation, the National Retailers Association, the Australian Food and Grocery Council and the Australian Institute of Packaging.

Funding for the Program comes from Program 1.6, as set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.1, Agriculture, Water and Environment Portfolio* ([*https://www.awe.gov.au/sites/default/files/2021-05/pbs2021-22\_awe.pdf*](https://www.awe.gov.au/sites/default/files/2021-05/pbs2021-22_awe.pdf)) at page 34.

The Program is administered by the Department of Agriculture, Water and the Environment (the Department) and delivered by the Business Grants Hub in accordance with the *Commonwealth Grant Rules and Guidelines 2017* ([*https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf*](https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf)). Eligibility criteria will be outlined in the Program guidelines and released to the ad hoc grant applicant. The eligibility criteria will include that eligibility for funding is limited to the ad hoc grant recipients. Spending decisions will be made by the Minister for the Environment who is responsible for administering the program.

The Program provides funding to a partnership of industry representative bodies through an ad-hoc grant.

As this is an ad-hoc grant that supports the implementation of policy decisions made by the Government, the Program will not be subject to merits review. Merits review of the Program would not be appropriate because decisions will relate to the provision of ad-hoc grants to a certain service provider over other service providers. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see items 4.16 to 4.19 of *What decisions should be subject to merits review?*).

Persons who are otherwise affected by decisions or who have concerns about the Program will be able to provide feedback 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.

**Statement of the Relevance and Operation of Constitutional Heads of Power**

For the purposes of subsection 33(3) of the Act, the power of the Parliament to make laws with respect to postal, telegraphic, telephonic and other like services (paragraph 51(v) of the Constitution) (the communications power) is specified.

Paragraph 51(v) of the Constitution empowers the Parliament to make laws with respect to ‘postal, telegraphic, telephonic and other like services’.

The Program prescribed by the Legislative Instrument will provide assistance through communication services (internet and telephone) to SME businesses to adopt the Australasian Recycling Label on their packaging and to improve the sustainability of their packaging. This will include education and resources implemented through online communication services, and online and telephone support to SME businesses applying the Australasian Recycling to the packaging of their products.

Further details on the Legislative Instrument are set out in Attachment A.

**Authority**

Section 33 of the Act 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.

The Department will consult with the partnership of key industry representative bodies on an ongoing basis to ensure that the grant will be administered and used effectively to achieve the aims of the Program.

The recipient of the grant will provide Program milestone reporting on behalf of the partnership of key industry representative bodies as set out in the guidelines to ensure the grant will be administered and used effectively to achieve the aims of the Program. The Department will consult with the grant recipient and the partnership of key industry representative bodies on the progress of the Program as necessary.

**Regulatory Impact**

It is estimated that the regulatory burden is likely to be minor (OBPR reference number 43498).

**Other**

The Legislative Instrument is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.* A full statement of compatibility is set out in Attachment B.

**ATTACHMENT A**

**Details of the *Industry Research and Development (Australasian Recycling Label Program) Instrument 2021***

**Section 1 – Name**

1. This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Australasian Recycling Label Program) Instrument 2021* (the Legislative Instrument).

**Section 2 – Commencement**

1. This section provides that the Legislative Instrument commences on the day after registration on the Federal Register of Legislation.

**Section 3 – Authority**

1. 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**

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

**Section 5 – Prescribed program**

1. This section prescribes the Australasian Recycling Label Program (the Program) for the purposes of subsection 33(1) of the Act.
2. The purpose of the Program is to provide funding to industry representative bodies to develop and deliver (online or by telephone) education, resources and assistance to encourage and support small to medium enterprises (SMEs) to adopt the Australasian Recycling Label on their packaging and improve the sustainability of their packaging.
3. The Australasian Recycling Label is the only verified label that informs Australian consumers on how to correctly dispose of each part of a product’s packaging. The Australasian Recycling Label helps to improve consumer recycling behaviours to reduce contamination in kerbside bins, leading to the reduction of recyclable materials being sent to landfill and cleaner recycling streams.

**Section 6 – Specified legislative power**

1. This section specifies that, for the purposes of subsection 33(3) of the Act, the legislative power in respect of which the Legislative Instrument is made is the power of the Parliament to make laws with respect to postal, telegraphic, telephonic and other like services (paragraph 51(v) of the Constitution).

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

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

***Industry Research and Development (Australasian Recycling Label 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**

The purpose of the *Industry Research and Development (Australasian Recycling Label Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Australasian Recycling Label Program (the Program). The Program provides $5 million to a partnership of industry body representatives to encourage and support small-to-medium enterprise (SME) businesses to adopt the Australasian Recycling Label (ARL) on their packaging and improve the sustainability of their packaging. This support will be provided through online education and resources, and online and telephone assistance to SME businesses. The uptake in the ARL will help to improve consumer recycling behaviour, leading to lower kerbside bin contamination and a reduction in recyclable material being sent to landfill.

**Human rights implications**

The 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. Sussan Ley MP**

**Minister for the Environment**