

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry and Science

Industry Research and Development Act 1986

Industry Research and Development (Central Coast Food Manufacturing Innovation Hub Program) Amendment Instrument 2023

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 Commonwealth entity, or by their delegate (under section 36).

The *Industry Research and Development (Central Coast Food Manufacturing Innovation Hub Program) Instrument 2022* (the Legislative Instrument) prescribed the Central Coast Food Manufacturing Innovation Hub Program (the Program). The Program provides for a Commonwealth Government grant of \$17.2 million to Central Coast Industry Connect Limited (CCIC) to support the establishment of a pilot Food Manufacturing Innovation Hub at Lisarow, New South Wales, as part of the Australian Government's "Plan for A Better Economy, Better Budget, Better Future".

The *Industry Research and Development (Central Coast Food Manufacturing Innovation Hub Program) Amendment Instrument 2023* (the Amendment Instrument) amends the location of the Program in subsection 5(2) of the Legislative Instrument. The amended description will allow for the location of the Food Manufacturing Innovation Hub to change from "at Lisarow", New South Wales, to "in the Central Coast Region", New South Wales. It also defines the Central Coast Region by reference to the local government area of the

Central Coast Council. The change in location is due to CCIC's project partner who was supplying the land, withdrawing from the project. CCIC has subsequently found another site in which to build the Food Manufacturing Innovation Hub in the Central Coast Region of New South Wales.

The changes to the Program specified in the Amendment Instrument do not change the source of the funding for the Program, which remains Growing innovative and competitive businesses, Outcome 1, as set out in the *Portfolio Budget Statements 2022-23, Budget Related Paper No. 1.11, Industry, Science and Resources Portfolio* (https://www.industry.gov.au/sites/default/files/2022-10/October_2022-23_Industry%2C%20Science%20and%20Resources_PBS.pdf) at pages 15 and 39. This Program forms part of the "Local Industry Grants" package.

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

Corporations power

Section 51(xx) of the Constitution empowers the Parliament to make laws with respect to 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth' (together, constitutional corporations).

In *Williams v Commonwealth* (2014) 252 CLR 416 (*Williams No 2*), the High Court, considering section 32B of the *Financial Management and Accountability Act 1997* (the FMA Act), held (at [50]) that:

A law which gives the Commonwealth the authority to make an agreement or payment of that kind is not a law with respect to trading or financial corporations. The law makes no provision regulating or permitting any act by or on behalf of any corporation.

However, the relevant provisions of the IR&D Act are substantially different to the provisions considered by the High Court in *Williams No 2*. Section 34 of the IR&D Act corresponds to section 32B of the FMA Act considered by the High Court in *Williams No 2*. However, the FMA Act contained no provision in terms equivalent to those of section 35 of the IR&D Act.

Subsection 35(2) of the IR&D Act limits the arrangements made under section 34 so that, where a party to an arrangement made under section 34 is a constitutional corporation, the arrangement must be subject to a written agreement containing terms and conditions under which money is payable by the Commonwealth. The corporation must comply with the terms and conditions. The activities of the corporation are therefore regulated through the terms and conditions made under each agreement pursuant to subsection 35(2).

Further, subsection 35(3) provides that the agreement must provide for circumstances in which the corporation must repay amounts to the Commonwealth.

The Program prescribed by the Legislative Instrument and as amended by the Amendment Instrument confers on a constitutional corporation, CCIC, benefits which will be directed to assisting CCIC in the conduct of their ordinary activities (assisting manufacturers to discover opportunities through building relationships and facilitating collaboration). The Program imposes terms and conditions on CCIC under a grant agreement in accordance with section 35 of the IR&D Act, in relation to receipt of benefits under the Program. The terms and conditions will set out what the funding may be used for, and the circumstances in which it must be repaid.

Further details of the Amendment Instrument are set out at **Attachment A**.

Authority

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

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the Attorney-General's Department has been consulted on the Amendment Instrument.

Regulatory Impact

The Office of Impact Analysis (OIA) advises the proposal does not require detailed Impact Analysis (OBPR22-02805).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at **Attachment B**.

Details of the *Industry Research and Development (Central Coast Food Manufacturing Innovation Hub Program) Amendment Instrument 2023*

Section 1 – Name of Instrument

This section specifies the name of the Amendment Instrument as the *Industry Research and Development (Central Coast Food Manufacturing Innovation Hub Program) Amendment Instrument 2023*.

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 IR&D Act under which the Amendment Instrument is made.

Section 4 – Schedules

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

Schedule 1 – Amendments

Item 1 of Schedule 1 inserts a definition of the Central Coast Region into section 4 of the Legislative Instrument.

Item 2 of Schedule 1 repeals the definition of “region” in section 4 and substitutes it with a definition of “relevant Proclamation” to mean the *Local Government (Council Amalgamations Proclamation 2016* (NSW), as in force or existing at the time when this instrument commences.

Item 3 of Schedule 1 amends subsection 5(2) of the Legislative Instrument to omit “at Lisarow” and substitute it with “in the Central Coast Region”.

Item 4 of Schedule 1 amends paragraphs 5(2)(b) and (c) of the Legislative Instrument to omit “region” and substitute it with “Central Coast Region.”

Statement of Compatibility with Human Rights

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

Industry Research and Development (Central Coast Food Manufacturing Innovation Hub Program) Amendment Instrument 2023

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 *Industry Research and Development Central Coast Food Manufacturing Innovation Hub Program) Instrument 2023* provides legislative authority to commit Commonwealth funding for the Central Coast Food Manufacturing Innovation Hub Program (the Program).

The Program provides Commonwealth funding of \$17.2 million to Central Coast Industry Connect Limited to support the establishment of a pilot Food Manufacturing Innovation Hub in the Central Coast Region, New South Wales, as part of the Australian Government's "Plan for A Better Economy, Better Budget, Better Future".

The purpose of the *Industry Research and Development Central Coast Food Manufacturing Innovation Hub Program) Amendment Instrument 2023* (the Amendment Instrument) is to amend the description of the Program in subsection 5(2) of the Legislative Instrument to allow for a change of location from Lisarow, New South Wales to, the Central Coast Region.

Human rights implications

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

Conclusion

The Amendment Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Ed Husic MP

Minister for Industry and Science