

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Employment and Workplace Relations

*Industry Research and Development Act 1986*

*Industry Research and Development (WHS Accreditation Scheme Residential Builders Assistance Grant Program) Instrument 2024*

### **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 and Science has, under subsection 33(6), delegated the Minister's power under subsection 33(1) to the Minister or Ministers responsible for administering the *Federal Safety Commissioner Act 2022* (FSC Act), to prescribe the WHS Accreditation Scheme Residential Builders Assistance Grant Program (the Program). This is currently the Minister for Employment and Workplace Relations.

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 purpose of the *Industry Research and Development (WHS Accreditation Scheme Residential Builders Assistance Grant Program) Instrument 2024* (the Legislative Instrument) is to prescribe the Program.

Funding for the Program was announced in the 2024-25 Budget as part of the Department of Employment and Workplace Relations (the Department) Program 3.1 Workplace Support. The Program provides \$6 million across the 2024-25 financial year for a grant program, to

support residential builders who wish to build projects funded under the Housing Australia Future Fund Facility (HAFFF) and the National Housing Accord Facility (NHAF).

The Program will provide grants to building industry peak employer associations to support residential builders to uplift their safety systems and processes to the level required to obtain accreditation under the Work Health and Safety Accreditation Scheme (the Scheme) referred to in section 43 of the FSC Act. The Federal Safety Commissioner is the accrediting authority under the Scheme (under subsection 43(2)).

The HAFFF and NHAF seek to finance 40,000 social and affordable homes over five years from 2024. Where HAFFF and NHAF funds are used directly or indirectly for building work that meets certain funding thresholds, the FSC Act requires that a builder accredited under the Scheme must be engaged. Grant recipients will use the funds to provide targeted WHS advice services to residential builders who have applied for HAFFF or NHAF funding in the first funding round to gain accreditation under the Scheme.

Funding authorised by this Legislative Instrument comes from Program 3.1, Outcome 3, as set out in the *Portfolio Budget Statements 2024-25, Budget Related Paper No. 1.6, Employment and Workplace Relations Portfolio* (<https://www.dewr.gov.au/download/16189/employment-and-workplace-relations-2024-25-portfolio-budget-statements/37019/employment-and-workplace-relations-2024-25-portfolio-budget-statements/pdf>) at pages 21 and 50. This Program forms part of the “Housing Support” package.

The Program will be administered by the Department 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>). The eligibility and merit criteria will be outlined in the Grant Opportunity Guidelines, which will be published prior to eligible prospective funding recipients being invited to apply. The grant opportunity is a one-off ad-hoc process. The specific nature of the grant is dependent on the provision of advice and engagement by organisations with an intimate knowledge of WHS systems and direct relationships with a broad cross-section of the residential building industry. These organisations already provide advice to their members on WHS safety systems and processes and have the capacity to scale-up that service to include advice on meeting accreditation requirements. Only the organisations listed in the Grant Opportunity Guidelines and who receive an invitation to apply through the Department are eligible to receive a grant. No further organisations will be invited to apply.

The Secretary of the Department can exercise powers under sections 34 and 35 of the IR&D Act in relation to the Program, and may delegate these powers to an official under subsection 36(3) of the IR&D Act.

As this is a non-competitive grants program 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 a non-competitive grants program to certain service providers over other service providers. The Administrative Review Council has recognised that decisions of this nature should be excluded from merits review (see paragraphs 4.16 to 4.19 of *What decisions should be subject to merits review?* available at <https://www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999>).

The Legislative Instrument specifies that the legislative power in respect of which it is made is the express incidental power in paragraph 51(xxxix) of the Constitution. This power provides that the Commonwealth may make laws with respect to matters incidental to the execution of any power vested by the Constitution in the Parliament.

The Program is necessary or conducive to Housing Australia's administration of the HAFFF and NHAF. Housing Australia has established, and administers, the HAFFF and the NHAF in accordance with the *Housing Australia Investment Mandate Direction 2018* (the Direction), made under section 12 of the *Housing Australia Act 2018* (HA Act): see sections 7A and 7B, and parts 4A and 4B, of the Direction. The Legislative Instrument is accordingly a law with respect to matters incidental to the execution of the legislative powers that support the HA Act, in its operation concerning the HAFFF and the NHAF, being:

- the corporations power in paragraph 51(xx) of the Constitution (see paragraph 8(1A)(a) of the HA Act) – the support coming from the fact that some constitutional corporations are eligible funding recipients (see paragraphs 28F(1)(c)-(f), (i) and (j), and paragraphs 28T(c)-(f), (i) and (j), of the Direction)
- the state grants power and the Territories power in sections 96 and 122 of the Constitution (see paragraph 8(1A)(b) of the HA Act) – the support coming from the fact that State and Territory governments, and local governments, are eligible funding recipients (see paragraphs 28F(1)(a) and (b), and paragraphs 28T(1)(a) and (b), of the Direction), and
- the defence power and races power in paragraphs 51(vi) and (xxvi) of the Constitution (see subparagraph 8(1A)(c)(ii) and (iii) of the HA Act) – the support coming from the fact that registered charities are eligible funding recipients if they have the primary purpose of improving housing outcomes for (i) Aboriginal and Torres Strait Islander people or (ii) defence force members or former members (see paragraphs 28F(1)(g)-(i), and paragraphs 28T(1)(g)-(i), of the Direction).

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

### **Authority**

Section 33 of the IR&D 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 and Resources have been consulted on this Legislative Instrument.

### **Regulatory Impact**

The Office of Impact Analysis considers that a Detailed Impact Analysis is not required (OIA24-07250).

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 (WHS Accreditation Scheme Residential Builders Assistance Grant Program) Instrument 2024***

**Section 1 – Name**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (WHS Accreditation Scheme Residential Builders Assistance Grant Program) Instrument 2024*.

**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* (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.

**Section 5 – Prescribed Program**

This section prescribes the WHS Accreditation Scheme Residential Builders Assistance Grant Program (the Program) for the purposes of section 33 of the IR&D Act.

The Program will provide grants to enable peak building industry employer associations to assist residential builders that have applied for HAFF and NHAFF funding in the first funding round to obtain accreditation under the Work Health and Safety Accreditation Scheme (the Scheme) referred to in section 43 of the *Federal Safety Commissioner Act 2022* (FSC Act). The Scheme is administered by the Federal Safety Commissioner.

**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 matters incidental to the execution of the powers vested by the Constitution in the Parliament (paragraph 51(xxxix) of the Constitution) to make laws with respect to:

- the naval and military defence of the Commonwealth and of the several States (within the meaning of paragraph 51(vi) of the Constitution);
- foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution);

- the people of any race for whom it is deemed necessary to make special laws (within the meaning of paragraph 51(xxvi) of the Constitution);
- matters in respect of which the Constitution makes provision until the Parliament otherwise provides (within the meaning of paragraph 51(xxxvi) of the Constitution), together with section 96 of the Constitution (financial assistance to States);
- the government of a Territory (within the meaning of section 122 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 (WHS Accreditation Scheme Residential Builders Assistance Grant Program) Instrument 2024*

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 (WHS Accreditation Scheme Residential Builders Assistance Grant Program) Instrument 2024* (the Legislative Instrument) provides legislative authority to commit Commonwealth funds to the WHS Accreditation Scheme Residential Builders Assistance Grant Program (the Program). The Program will provide \$6 million across the 2024-25 financial year to building industry peak employer associations to assist residential builders to obtain accreditation under the WHS Accreditation Scheme.

### **Human rights implications**

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

### **Conclusion**

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

**Senator the Hon. Murray Watt**

**Minister for Employment and Workplace Relations**