

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Resources

Industry Research and Development Act 1986

*Industry Research and Development (Resourcing Australia's Prosperity 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 and 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 (Resourcing Australia's Prosperity Program) Instrument 2024* (the Legislative Instrument) prescribes the Resourcing Australia's Prosperity Program (the program).

Funding for the program has been secured through the 2024-25 Budget. The program provides \$566.1 million over 10 years, and then an average of \$111.8 million per year in ongoing funding over 35 years to 2058-59 for Geoscience Australia (GA) to implement the program.

The purpose of the program is to deliver an improved understanding of Australia's potential for mineral, energy and groundwater resources onshore and offshore. The program will identify the resources for a net zero emissions economy, attract investment, accelerate resource discovery and development, secure Australia's sovereign capability in critical resources development, support agriculture and support sustainable management of our natural resources. It will also empower First Nations peoples and local community to understand and manage their land and water resources.

Funding authorised by this Legislative Instrument comes from Program 1.1 Geoscientific and Spatial Information Services, Outcome 1, as set out in the *Portfolio Budget Statements 2024-25, Budget Related paper No. 1.11, Industry, Science and Resources Portfolio* (<https://www.industry.gov.au/sites/default/files/2024-05/2024-25-department-of-industry-science-resources-pbs.pdf>) at page 137.

The program will be delivered by Geoscience Australia, the national public sector geoscience organisation. This is consistent with responsibilities for ‘geoscience research and information services including geodesy, mapping, remote sensing, groundwater and spatial data co-ordination’ under the Administrative Arrangements Order – 13 October 2022 (as amended on 29 July 2024). Geoscience Australia has extensive expertise and capability in delivering the program, which builds on the success of the Exploring for the Future program which ceased in June 2024.

Funding will be appropriated directly to Geoscience Australia (a non-corporate Commonwealth entity) and made available from 2024-25. Spending decisions will be made by a delegate of the Accountable Authority (the Chief Executive Officer of Geoscience Australia).

The program will fund a broad range of activities including:

- collecting and analysing new and existing geoscience data using geophysical, geochemical, geological and other tools and techniques;
- assessing Australia’s mineral, energy, and groundwater resource potential, geological storage potential, offshore renewable energy site suitability, techno-economics, and environmental, social and governance factors;
- developing, maintaining and delivering geoscience data and information, decision support tools, and online platforms; and
- working with regional communities, industry, landholders, academia and First Nations peoples including through awareness raising, consultation and co-design of projects.

As this is a decision to allocate funding to the program as a whole, which 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 are budgetary decisions of a policy nature, rather than decisions immediately affecting any particular person’s interests. The Administrative Review Council has recognised that decisions of this nature should be excluded from merits review (see paragraph 4.18 to 4.19 of What decisions should be subject to merits review? Available at <https://www.ag.gov.au/legal-system/publications/what-decisions-should-be-subject-merit-review-1999>).

Persons who are otherwise affected by decisions or who have complaints about the program may make a complaint to the Department of Industry, Science and Resources (the Department) (<https://www.industry.gov.au/contact-us/feedback-and-complaints>). 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 IR&D Act, the Instrument specifies that the legislative powers in respect of which the Instrument is made are as follows:

- enterprises and activities that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation (see paragraph 51(xxxix) and section 61 of the Constitution);
- the external affairs power in paragraph 51(xxix) of the Constitution;
- the races power in paragraph 51(xxvi) of the Constitution; and
- the trade and commerce power in paragraph 51(i) of the Constitution.

Executive power and express incidental power, including the nationhood aspect

The express incidental power in paragraph 51(xxxix) of the Constitution empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth.

The program will deliver an improved understanding of Australia's potential for mineral, energy and groundwater resources onshore and offshore.

External affairs power

Paragraph 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'.

The external affairs power supports legislation implementing Australia's international obligations under treaties to which it is a party.

Australia has the following international obligations under Article 2 of the *United Nations Framework Convention on Climate Change* [1994] ATS 2 (UNFCCC), Article 4.2 of the *Paris Agreement* [2016] ATS 24 and Article 10(b) of the *Kyoto Protocol* to the UNFCCC.

Article 2 of the UNFCCC lists the ultimate objective of the Convention, and any legal instruments that the Conference of the Parties may adopt, as the 'stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'.

Article 4.2 of the *Paris Agreement* obliges State-Parties to take domestic measures to mitigate the effects of climate change 'with the aim of achieving the objectives' of their nationally determined contributions.

Article 10(b) of the *Kyoto Protocol* to the UNFCCC requires State-Parties to implement national and regional programmes containing measures to mitigate climate change, including measures relating to the abatement of increases in greenhouse gas emissions, which may concern the energy, transport and industry sectors.

The program will deliver an improved understanding of Australia's potential for mineral, energy and groundwater resources onshore and offshore. It will accelerate resource discovery and development, identify resources required by a net-zero economy, supporting Australia's energy transition, and enable collaboration and research with international partners on global resource systems and geology for the benefit of Australia.

The external affairs power supports legislation with respect to matters or things outside the geographical limits of Australia.

Races power

Paragraph 51(xxvi) of the Constitution empowers the Parliament to make laws with respect to 'the people of any race for whom it is deemed necessary to make special laws'.

The program proposes the establishment of a First Nations Steering Committee and facilitation of skills and knowledge sharing with First Nations for example through a cadetship program. The program also proposes to undertake regional assessments in partnership with First Nations Groups on Indigenous Estate. Providing detailed data about the resource potential of Indigenous Estate will empower First Nations peoples to manage their land and water resources.

Trade and commerce power

Paragraph 51(i) of the Constitution empowers the Parliament to make laws with respect to 'trade and commerce with other countries, and among the states'.

The program will support Australia's energy transition to a net-zero economy, including by attracting investment and accelerating the discovery and development of Australia's critical minerals and other resources.

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

Geoscience Australia undertook a broad consultation process with key stakeholders, including representatives from academia, industry, state and territory governments, and geological survey agencies as well as relevant Australian Government departments and science agencies, to inform the implementation of the program. The consultations provided insights that shaped the program's objectives and priorities, which is the subject of the Legislative Instrument.

Geoscience Australia and the Department collaborated closely on the development and drafting of the Legislative Instrument, to ensure the Legislative Instrument effectively supports the program's objectives in accordance with legislative and regulatory requirements.

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

Regulatory Impact

A regulation impact statement is not required as this Legislative Instrument only applies to non-corporate Commonwealth entities and does not adversely affect the private sector. It is estimated that the regulatory burden is likely to be minor (Office of Impact Analysis reference number OIA24-06433).

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 at **Attachment B**.

Details of the *Industry Research and Development (Resourcing Australia's Prosperity Program) Instrument 2024*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Resourcing Australia's Prosperity 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 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, namely *Act* and *program*.

Section 5 – Prescribed program

This section prescribes the program for the purposes of section 33(1) of the IR&D Act.

The program provides funding to deliver an improved understanding of Australia's potential for mineral, energy and groundwater resources onshore and offshore. The program will identify the resources for a net zero emissions economy, attract investment, accelerate resource discovery and development, secure Australia's sovereign capability in critical resources development, support agriculture and support sustainable management of our natural resources. It will also empower First Nations peoples and local community to understand and manage their land and water resources.

Section 6 – Specified Legislative Power

This section specifies that, for the purposes of subsection 33(3) of the Act, the powers of the Parliament to make laws with respect to the following are specified:

- enterprises and activities that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation (see paragraph 51(xxxix) and section 61 of the Constitution);
- the external affairs power in paragraph 51(xxix) of the Constitution;
- the races power in paragraph 51(xxvi) of the Constitution; and
- the trade and commerce power in paragraph 51(i) 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 (Resourcing Australia's Prosperity 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 (Resourcing Australia's Prosperity Program) Instrument 2024* (the Legislative Instrument) provides legislative authority to commit Commonwealth funding for the Resourcing Australia's Prosperity Program (the program).

The program will allow Geoscience Australia to deliver an improved understanding of Australia's potential for mineral, energy and groundwater resources onshore and offshore. The program will identify the resources for a net zero emissions economy, attract investment, accelerate resource discovery and development, secure Australia's sovereign capability in critical resources development, support agriculture and support sustainable management of our natural resources. It will also empower First Nations peoples and local community to understand and manage their land and water resources.

Human rights implications

This Legislative Instrument engages the rights to equality and non-discrimination because it assists the interests of a particular group in the community who could be viewed as disadvantaged, being First Nations Australians.

Rights to equality and non-discrimination

Article 2(1) of the *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force in full on 28 January 1993) (**ICCPR**), and Article 2(2) of the *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976) (**ICESCR**) require State Parties to respect and ensure to all individuals the rights recognised in the Covenants without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The right to equal protection of the law is recognised in Article 26 of the ICCPR. Article 2(2) of the ICESCR, and Articles 2(1) and 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) (**CERD**) prohibit discriminations on the basis of race.

Differences in treatment will not amount to prohibited discrimination (that is, they will be legitimate) if the reasons for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate. The Committee on the Elimination of Racial Discrimination, *General Recommendation No. 32 : The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination*, 75th session, UN Doc CERD/C/GC/32 (24 September 2009), paragraph 8, recognises that ‘non-discrimination’ does not necessitate uniform treatment when there are significant differences in situation between one person or group and another, or, in other words, if there is an objective and reasonable justification for differential treatment.

This Legislative Instrument engages the rights to equality and non-discrimination because it supports the interests of First Nations Australians therefore it applies to a certain group of persons within the population and draws a distinction between persons who are First Nations Australians.

Although, *prima facie*, this program specifically identifies that it will work with First Nations people including to empower them to understand and manage their land and water resources, the purpose which the program aims to achieve is legitimate and the reasons for differentiation are reasonable and objective.

This program positively draws upon each of the above principles and statements of International Humans Rights instruments through the various measures and initiatives set out above. This program aims to promote rights to equality and non-discrimination by providing detailed data about the resource potential of Indigenous Estate.

Conclusion

This Legislative Instrument is compatible with human rights as it promotes and recognises the rights to equality and non-discrimination provisions of international human rights instruments and conventions and does not raise any human rights issues.

The Hon Madeleine King MP
Minister for Resources