

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources

Industry Research and Development Act 1986

*Industry Research and Development (Offshore Decommissioning Directorate 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 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 the 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 (Offshore Decommissioning Directorate Program) Instrument 2024* (the Legislative Instrument) prescribes the Offshore Decommissioning Directorate Program (the Program).

The funding for the Program has been secured through the Department of Industry, Science and Resources (the Department) 2024-25 Budget. The Program provides \$6.8 million as part of the Australian Government's commitment to support development of an efficient and effective offshore oil and gas decommissioning industry through establishment of an Offshore Decommissioning Directorate (the Directorate).

The purpose of the Program is to:

- work with industry, unions, First Nations groups, state and territory governments and the community to address barriers to the growth of Australia’s decommissioning industry;
- facilitate a coordinated approach to decommissioning oil and gas infrastructure in Commonwealth waters;
- create efficiencies in decommissioning campaigns in Australia and facilitate the development of an industry;
- support greater industry awareness of Commonwealth and other regulations;
- undertake research and provide advice on aspects of decommissioning policy, regulation, and industry activity; and
- engage internationally and with states and territories and encourage industry coordination.

Funding authorised by this Legislative Instrument comes from Program 1.3: Supporting a strong resources sector, 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 37.

The Program will be delivered by the Oil and Gas Division within the Department, which has expertise and capability in delivering similar programs.

Spending decisions will be made by the General Manager or Manager responsible for administering the Program (the Program Delegate). The Program Delegate holds delegation under the Department’s general financial framework, including delegation under the *Public Governance, Performance and Accountability Act 2013*, and sections 34(1)-(2) and 35(4) of the IR&D Act.

The quantum of funding allocated to the Program is \$6.8 million over 2 years from 2024-25. Funding will be used for staffing, operations and procurements that deliver on the outcomes of the Program.

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 paragraphs 4.18 to 4.19, *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>).

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.

Statement of the Relevance and Operation of Constitutional Heads of Power

For the purposes of subsection 33(3) of the IR&D Act, the Legislative Instrument specifies that the powers of the Parliament to make laws with respect to the following are specified for the Program prescribed by the Legislative Instrument:

- trade and commerce with other countries, and among the States (within the meaning of section 51(i) of the Constitution);
- external affairs (within the meaning of section 51(xxix) of the Constitution).

Trade and commerce power

The Legislative Instrument specifies that one legislative power in respect of which it is made is the Commonwealth trade and commerce power (section 51(i) of the Constitution). The trade and commerce power supports Commonwealth activities with respect to trade and commerce with other countries, and among the States.

In that regard, the Program prescribed by the Legislative Instrument relates to trade between Australia and other countries through supporting international engagement and cooperation for Australia's decommissioning industry.

External affairs power

The Legislative Instrument specifies that one legislative power in respect of which it is made is the external affairs power (section 51(xxix) of the Constitution). The external affairs power supports legislation with respect to places, persons, matters, or things outside the geographical limits of Australia. In that regard, funding provided under the Legislative Instrument will support coordination and collaboration across the decommissioning industry in relation to offshore oil and gas decommissioning activities in Commonwealth waters.

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

Consultation on the design of the Program was undertaken within the Australian Government and was informed by public consultation on the roadmap to establish an offshore decommissioning industry, which included industry, peak bodies and the community.

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 (Office of Impact Analysis (OIA) Regulation reference number OIA24-06363).

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 (Offshore Decommissioning Directorate Program) Instrument 2024*

Section 1 – Name

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Offshore Decommissioning Directorate 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*, *decommissioning* 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 support the operations of the Directorate as it works to grow Australia's decommissioning industry. Funding will allow the Directorate to, amongst other things, support greater regulatory awareness, provide advice on decommissioning policy, regulation and activities, encourage industry coordination, and engage internationally on decommissioning matters.

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:

- trade and commerce with other countries, and among the States (within the meaning of section 51(i) of the Constitution);
- external affairs (within the meaning of section 51(xxix) 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 (Offshore Decommissioning Directorate 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 (Offshore Decommissioning Directorate Program) Instrument 2024* (the Legislative Instrument) provides legislative authority to commit Commonwealth funding for the Offshore Decommissioning Directorate Program (the Program).

The Program will provide funding to support the operations of the Offshore Decommissioning Directorate (the Directorate) as it works to grow Australia's decommissioning industry. Funding will allow the Directorate to, amongst other things, support greater regulatory awareness, provide advice on decommissioning policy, regulation and activities, encourage industry coordination, and engage internationally on decommissioning matters.

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.

The Hon Madeleine King MP

Minister for Resources