

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Agriculture, Fisheries and Forestry

*Industry Research and Development Act 1986*

*Industry Research and Development (Zero Net Emissions from Agriculture Cooperative Research Centre Partnership 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 delegated, under subsection 33(6) of the IR&D Act, power under subsection 33(1) to prescribe the Zero Net Emissions from Agriculture Cooperative Research Centre Partnership Program (the Program) to the Minister responsible for administering the *Primary Industries Research and Development Act 1989*. This is currently the Minister for Agriculture, Fisheries and Forestry.

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 efficiently and appropriately to the need to implement innovations and pilot programs. 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 (Zero Net Emissions from Agriculture Cooperative Research Centre Partnership Program) Instrument 2024* (the Legislative Instrument) is to prescribe the Program. The funding for the Program has been secured through the Department of Agriculture, Fisheries and Forestry 2024-25 Budget. The Program provides \$4.4 million as part of the Australian Government's commitment to helping to mitigate greenhouse gas emissions in the agricultural sector and to meeting Australia's obligations under Article 4 of the United Nations Framework Convention on Climate Change, Article 10 of the Kyoto Protocol and Article 4 of the Paris Agreement.

The Program will provide funding for the Commonwealth, through the Department of Agriculture, Fisheries and Forestry, to participate as a partner to the Zero Net Emissions from Agriculture Cooperative Research Centre (the CRC). The purpose of the Program is to enable

the Commonwealth to influence and shape the CRC's activities in reducing agricultural greenhouse gas emissions towards those that align with the government's emissions mitigation objectives across the economy.

The Program is one measure being progressed under the Agriculture and Land Sector Plan (the sector plan). The sector plan is one of six sector plans being developed to support a 2035 national emissions reduction target and a 2050 Net Zero Plan.

On 12 December 2023, the Hon. Ed Husic MP, Minister for Industry and Science, approved funding of \$87 million over 10 years for the establishment of the CRC under Round 24 of the Cooperative Research Centres Program. Funding commenced on 1 July 2024 and the CRC will be undertaking low emissions agriculture research and development (R&D).

Funding authorised by this Legislative Instrument comes from Program 1.1 Agriculture and Land Sectors – low emissions future, Outcome 1, as set out in the *Portfolio Budget Statements 2024-25, Budget Related Paper No. 1.1, Agriculture, Fisheries and Forestry Portfolio* (<https://www.agriculture.gov.au/sites/default/files/documents/2024-25-DAFF-PBS.pdf>) at page 21.

Funding for the Program will be provided by the Department of Agriculture, Fisheries and Forestry (the department) to the CRC across its full lifespan of ten years.

The Program is an 'other financial arrangement', rather than a grant or a procurement. The Program is administered by the department in accordance with the requirements of the Commonwealth resource management framework, including the *Public Governance, Performance and Accountability Act 2013*

Spending decisions will be made by the Minister for Agriculture, Fisheries and Forestry or, under section 36 of the IR&D Act, the Program delegate. It is anticipated that the delegate of the Minister of Agriculture, Fisheries and Forestry would be an SES employee, or acting SES employee, of the Department, and would have relevant expertise in, and understanding of, climate policy, and be able to perform relevant functions in accordance with the Commonwealth resource framework. The SES employee, or acting SES employee, as the delegate would have responsibility for administering the Program.

Merits review will not apply to the Program. The CRC is the only organisation that could meet the Program's outcome and objective of enabling the department to become a partner to the CRC and, alongside other partners, influence the CRC's work program and domestic low emissions agriculture R&D agenda.

Given the non-competitive nature of the funding under the Program and the absence of another appropriate body, it would not be appropriate to subject the decision to join as a partner to the CRC to merits review. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions to provide one-off payments to certain providers, over other service providers (see items 4.16 and 4.19 of *What decisions should be subject to merits review?*).

Persons who are otherwise affected by decisions or who have complaints 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.

### **Statutory preconditions to the making of the Legislative Instrument**

Subsection 33(2) of the IR&D Act prescribes statutory conditions for the making of a legislative instrument under section 33(1) of the IR&D Act. Subsection 33(2) provides that a program may only be prescribed under subsection 33(1) to the extent that it is with respect to one or more legislative powers of the Parliament, and where it is not a program to subsidise the extraction of coal or natural gas.

For the purposes of paragraph 33(2)(a) of the IR&D Act, the ‘Statement of the Relevance and Operation of Constitutional Heads of Power’ section of this Explanatory Statement below outlines the extent to which the Program is with respect to one or more of the legislative powers of the Parliament.

For the purposes of paragraph 33(2)(b) of the IR&D Act, the Program is not a program to subsidise the extraction of coal or natural gas. The purpose of the Program is to provide funding for the Commonwealth to participate as a partner to the CRC, which will coordinate and facilitate R&D into emission reductions from Australian agriculture.

### **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 legislative powers in respect of which the Instrument is made are the following:

#### **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 obligations under the *United Nations Framework Convention on Climate Change* (UNFCCC), the Kyoto Protocol (entered into within the UNFCCC) and the Paris Agreement.

#### *UNFCCC*

Australia has relevant obligations under the UNFCCC, particularly under Article 4 to address climate change and its impacts, including by:

- (a) formulating, implementing, publishing and regularly updating national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change (Article 4.1(b));
- (b) promoting and cooperating in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors (Article 4.1(c)); and

- (c) adopting national policies and taking corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs (Article 4.2(a)).

### *Kyoto Protocol*

Article 10(b) of the Kyoto Protocol relevantly obliges Australia to formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change. Under Article 10(b)(i) of the Kyoto Protocol, these programmes include programmes in the agriculture sector.

### *Paris Agreement*

Australia has obligations under the Paris Agreement. Article 4.2 of the Paris Agreement commits contracting parties to preparing, communicating and maintaining successive nationally determined contributions that it intends to achieve. It requires parties to pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

The UNFCCC, Kyoto Protocol and the Paris Agreement as outlined above, impose general obligations on Australia to mitigate climate change, limit emissions of greenhouse gases, and protect, conserve and enhance greenhouse gas sinks and reservoirs, and extends those requirements to the agricultural industry. The Program provides funding for the department to become a partner to the CRC which will be a vehicle for long-term research into emission reductions from the Australian agricultural industry.

Further details on the Legislative Instrument are set out in [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, the Australian Government Solicitor and the Department of Industry, Science and Resources have been consulted on this Legislative Instrument.

The development of the broader sector plan has been informed by extensive stakeholder engagement through public consultation processes, workshops, the Sustainable Agriculture Summit and other key events. A key theme from the consult was the need for improved national collaboration to support innovation, research and adoption. The partnership with the CRC (the Program) is one mechanism that will help achieve this.

### **Regulatory Impact**

It is estimated that the regulatory burden is likely to be minor (OIA reference number OIA24-07003).

## **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 (Zero Net Emissions from Agriculture Cooperative Research Centre Partnership Program) Instrument 2024***

#### **Section 1 – Name of Instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Zero Net Emissions from Agriculture Cooperative Research Centre Partnership Program) Instrument 2024* (the Legislative Instrument).

#### **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* (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.

#### **Section 5 – Prescribed Program**

This section prescribes the Zero Net Emissions from Agriculture Cooperative Research Centre Partnership Program (the Program) for the purposes of subsection 33(1) of the IR&D Act.

The purpose of the Program is to provide funding for the Commonwealth to participate as a partner to the Zero Net Emissions from Agriculture Cooperative Research Centre (the CRC), including by the payment of partnership fees. The Program will enable the Commonwealth to influence and shape the CRC's activities in reducing agricultural greenhouse gas emissions towards those that align with the government's emissions mitigation objectives across the economy. The Program will also contribute to meeting Australia's obligations under Article 4 of the United Nations Framework Convention on Climate Change, Article 10 of the Kyoto Protocol and Article 4 of the Paris Agreement.

#### **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 external affairs (within the meaning of paragraph 51(xxix) of the Constitution), as it relates to measures to give effect to Australia's obligations under one or more of the following:

- (a) the United Nations Framework Convention on Climate Change, particularly Article 4;
- (b) the Kyoto Protocol, particularly Article 10;
- (c) the Paris Agreement, particularly Article 4.

## **Statement of Compatibility with Human Rights**

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

*Industry Research and Development (Zero Net Emissions from Agriculture Cooperative Research Centre Partnership 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 purpose of the *Industry Research and Development (Zero Net Emissions from Agriculture Cooperative Research Centre Partnership Program) Instrument 2024* (the Legislative Instrument) is to prescribe the Zero Net Emissions from Agriculture Cooperative Research Centre Partnership Program (the Program). The Program provides funding for the Commonwealth, through the Department of Agriculture, Fisheries and Forestry, to participate as a partner to the Zero Net Emissions from Agriculture Cooperative Research Centre. The Program will allow the department to influence and shape the CRC's activities in reducing agricultural greenhouse gas emissions towards those that align with the government's emissions mitigation objectives across the economy.

In December 2023, funding was approved for the establishment of the CRC under Round 24 of the Cooperative Research Centres Program. Funding commenced on 1 July 2024 and will continue for a period of 10 years. The CRC will be undertaking research and development activities in relation to reducing agricultural greenhouse gas emissions.

### **Human rights implications**

This 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. Julie Collins MP**  
**Minister for Agriculture, Fisheries and Forestry**