

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry, Science and Technology

Industry Research and Development Act 1986

*Industry Research and Development (Cooperative Research Centres Projects Program)
Instrument 2018*

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 s 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 s 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 s 36).

Subsection 35(2) of the IR&D Act limits the arrangements made under s 34 so that, where a party to an arrangement under s 34 is a corporation to which s 51(xx) of the Constitution applies, the arrangement must be subject to a written agreement containing terms and conditions under which money is payable by the Commonwealth and that 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 s 35(2).

The purpose of the *Industry Research and Development (Cooperative Research Centres Projects Program) Instrument 2018* (the Legislative Instrument) is to prescribe the Cooperative Research Centres Projects Program (the Program). The funding for the Program has been secured through the Department of Industry, Innovation and Science 2018-19 Budget under the contributing component Cooperative Research Centres (CRC) Program. The CRC Program provides \$731 million over four years as part of the Australian Government's commitment to business research, development and commercialisation. The

CRC Program is designed to provide incentives for business research, development and commercialisation to drive innovation and thus contribute to improved productivity.

The Cooperative Research Centres Projects (CRC-Ps) Program (the Program) supports short term (no longer than three years) industry-led collaborations between industry, researchers and the community to develop a product, service or process that will solve problems for industry and deliver tangible outcomes. Projects must maintain two industry entities, including at least one small or medium sized entity, and one research organisation amongst its partners.

Funding authorised by this Legislative Instrument from the Department of Industry, Innovation and Science (the Department) comes from Program 1: Supporting Science and Commercialisation, Outcome 1, as set out on in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.13A, Industry, Innovation and Science Portfolio* (<https://www.industry.gov.au/AboutUs/Budget/Documents/2018-19-Department-of-Industry-Innovation-and-Science-PBS.doc>) at page 31.

In addition to the funding from the Department, the Program may also include funding from other non-corporate Commonwealth entities that are participants in the Program.

The Program is delivered by the Department's Business Grants Hub, which is a specialised program design, management and delivery body with extensive expertise and capability in delivering similar programs.

The Program is a competitive, merits based grants program. The Program is administered by the Department in accordance with the *Commonwealth Grant Rules and Guidelines 2017* (<http://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf>). Eligibility and merit criteria are outlined in the grant opportunity guidelines, available at <https://www.business.gov.au/Assistance/Cooperative-Research-Centres-Programme/Cooperative-Research-Centres-Projects-CRC-Ps#key-documents>.

Spending decisions are made by the Minister for Industry, Science and Technology, taking into account the recommendations of the CRC Advisory Committee, a committee of Innovation and Science Australia, an independent statutory board.

Grants are a minimum of \$100,000 up to a maximum of \$3 million. The grant amount may be up to half of the approved project value.

As spending decisions are made by the Minister for Industry, Science and Technology, external merits review does not apply. Further the Program involves the allocation of finite resources between competing applicants. In addition, there is a robust and extensive assessment process, an enquiry and feedback process, and an existing complaints mechanism for affected applicants.

Applications will be assessed against the eligibility criteria and merit criteria set out in the grant opportunity guidelines in two stages. Applications will be assessed by AusIndustry

against the eligibility criteria. The CRC Advisory Committee will then consider eligible applications against the merit criteria. This will include comparing the applications and scoring each application out of 100 and reaching a consensus on those applications that best meet the merit criteria. The committee comprises experts from a variety of sectors.

Applications must address the eligibility and merit criteria, and provide relevant supporting information. The amount of detail and supporting evidence should be relative to the project size, complexity and funding amount requested. Larger and more complex projects should include more detailed evidence. To be competitive, applications must score highly against all merit criteria.

After considering the applications, the CRC Advisory Committee will make recommendations to the Minister regarding those applications suitable for funding. The Minister will make the final decision about which grants to approve, taking into consideration the CRC Advisory Committee's recommendations, and the availability of grant funds. The Minister will not approve funding if there are insufficient program funds available across relevant financial years for the Program.

Both successful and unsuccessful applicants will be informed in writing. Unsuccessful applicants will be advised of the reasons why they were not successful. Unsuccessful applicants can submit a new application for the same or a similar project in future funding rounds. Where this occurs, applicants should include new or more information to address the weaknesses identified in their previous application.

Persons who are otherwise affected by decisions or who have complaints about the Program will also 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.

The Legislative Instrument specifies that the legislative power in respect of which the instrument is made is the power of the Parliament to make laws with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (s 51(xx) of the Constitution) (the corporations power).

The corporations power supports Commonwealth activities which assist the activities of foreign corporations, and trading or financial corporations (together, constitutional corporations). In that regard, the Program prescribed by the Legislative Instrument singles out and confers on some constitutional corporations (namely, trading or financial corporations) benefits which are directed to assisting those corporations in the conduct of their ordinary activities, and imposes terms and conditions on those corporations under the grant agreements in accordance with s 35 of the IR&D Act, in relation to receipt of the benefits under the Program. The activities of the constitutional corporations which receive funding under the Program are regulated through the terms and conditions imposed under the grant agreements made under the Program. In particular, s 35(2)(b) expressly requires a

constitutional corporation which is a party to an arrangement for the purposes of the Program to comply with the terms and conditions specified in the arrangement. Further, s 35(3) provides that the terms and conditions must provide for the circumstances in which the corporation must repay amounts to the Commonwealth.

In particular, the Program provides funding to trading or financial corporations to assist them to undertake eligible projects that support science, research and commercialisation as well as enabling growth and productivity for globally competitive businesses to:

- Improve the competitiveness, productivity and sustainability of Australian industries.
- Foster high quality research to solve problems through industry-led and outcomes focussed collaborative research partnerships between industry entities and research organisations.
- Encourage and facilitate small and medium business enterprise (SME) participation in collaborative research.

Eligibility to receive funding under the Program is limited to applicants which are trading or financial corporations to which s 51(xx) of the Constitution applies.

Authority

Section 33 of the *Industry Research and Development Act 1986* provides authority for the Legislative Instrument.

Consultation

In accordance with s 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 Program will not change regulatory burden. (OBPR reference number 19942).

Details of the *Industry Research and Development (Cooperative Research Centres Projects Program) Instrument 2018*

Section 1 – Name

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Cooperative Research Centres Projects Program) Instrument 2018*.

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 – Schedules

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

Section 5 – Definitions

This section provides for definitions of terms used in the Legislative Instrument.

Section 6 – Prescribed Program

This section prescribes the Cooperative Research Centres Projects (CRC-P) Program (the Program) for the purposes of s 33 of the IR&D Act.

The Program supports short term (no longer than three years) industry-led collaborations between industry, researchers and the community to develop a product, service or process that will solve problems for industry and deliver tangible outcomes.

Co-contributions

This section also specifies that in addition to funding from the Department administering the Program, the Program may also include funding from other non-corporate Commonwealth entities that are participants in the Program.

Section 7 – 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 foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth (s 51(xx) of

the Constitution) (the corporations power). The corporations power supports Commonwealth activities which assist the activities of foreign corporations, and trading or financial corporations (together, constitutional corporations).

Section 8 – Eligibility criteria relating to program

This section sets out the eligibility criteria relating to the Program for the purposes of s 33(4) of the IR&D Act. The eligibility criteria include that applicants must be trading or financial corporations to which s 51(xx) of the Constitution applies.

Schedule 1 – Repeals

This Schedule repeals the *Industry Research and Development (Cooperative Research Centres Projects Program) Instrument 2017* (the 2017 Instrument). The *Industry Research and Development (Cooperative Research Centres Projects Program) Instrument 2018* replaces that instrument.

The 2018 Instrument reflects changes made to the Program since the 2017 Instrument.

Statement of Compatibility with Human Rights

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

Industry Research and Development (Cooperative Research Centres Projects Program) **Instrument 2018**

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 Cooperative Research Centres Projects (CRC-Ps) Program supports short term industry-led collaborations between industry, researchers and the community to develop a product, service or process that will solve problems for industry and deliver tangible outcomes.

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 Karen Andrews

Minister for Industry, Science and Technology