

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 Program) Instrument
2019*

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).

The purpose of the *Industry Research and Development (Cooperative Research Centres Program) Instrument 2019* (the Legislative Instrument) is to prescribe the Cooperative Research Centres 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 Program. The Program provides \$731 million over four years as part of the Australian Government's commitment to business research, development and commercialisation. The Program is designed to provide incentives for business research, development and commercialisation to drive innovation and thus contribute to improved productivity.

The Program supports medium to long-term industry-led collaborative research partnerships to undertake high quality research to solve industry identified problems and deliver tangible outcomes. Program participants must maintain at least one industry entity and one research organisation in their collaboration.

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 in the *Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.13A, Industry, Innovation and Science Portfolio* (<https://www.industry.gov.au/sites/default/files/2018-19-department-of-industry-innovation-and-science-pbs.pdf>) at page 31.

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

The Program will be 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-CRCs-Grants#key-documents>.

Spending decisions are made by the Minister, taking into account the recommendations of the Cooperative Research Centre (CRC) Advisory Committee, a committee of Innovation and Science Australia, an independent statutory board.

CRC entities established under the Program receive grants for a maximum of 10 years. While there is no specified funding limit for CRC grants, the CRC entity must at least match the amount of grant funding sought through cash and/or in-kind contributions.

As spending decisions are made by the Minister, external merits review does not apply. 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. 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, 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.

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 CRC bid in future funding rounds. Where this occurs, applicants should seek 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 Program provides funding to 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, especially where Australia has a competitive strength, and in line with government priorities;
- foster high-quality research to solve industry-identified problems through industry-led and outcome-focused collaborative research partnerships between industry entities and research organisations; and
- encourage and facilitate the participation of small and medium enterprises in collaborative research.

The Legislative Instrument specifies that the Program spending is supported by the trade and commerce power in paragraph 51(i) of the Constitution, the provision of benefits to students in paragraph 51(xxiiiA) of the Constitution, and the implied nationhood power.

Trade and commerce power

The Legislative Instrument specifies that the legislative power in respect of which the Instrument is made is the Commonwealth trade and commerce power (s 51(i) of the Constitution). The trade and commerce power supports Commonwealth activities which relate to trade and commerce with other countries, and among the States. The Program prescribed by the Legislative Instrument is aimed at fostering and encouraging Australian industries to engage in interstate and overseas trade and commerce and to encourage growth of Australian industry. It does this by assisting industry participants to work with research organisations to develop new products and services that will increase the industry participants' capacity to engage in interstate and international trade.

Provision of benefits to students

Paragraph 51(xxiiiA) of the Constitution empowers the Parliament to make laws with respect to the provision of certain social welfare benefits and services, including ‘benefits to students’. Funding provided under the Legislative Instrument will contribute to an industry-focused education and training program. This includes fellowships, scholarships, stipends, and other direct material support to students who are enrolled in formal training programs. It also includes a PhD program that complements the research program and that increases engagement, technology development, skilled employees and Research and Development capacity within industry entities.

Implied nationhood power

The implied nationhood power enables the Commonwealth to engage in activities which are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation (s 61 and paragraph 51(xxxix) of the Constitution). The Commonwealth is uniquely placed to deliver the Program as it can distinctly synergise collaborative efforts of industry and research to overcome the difficulties arising from Australia’s industry, scientific and technological resources being vastly dispersed geographically and institutionally. This is achieved by supporting concentrations of researchers and providing a critical mass of resources. Funding provided under the Legislative Instrument will contribute to the national interest by increasing research skills in industry, increasing industry capacity in research, and improving competitiveness and productivity for industries participating in the program. The Program would yield research and provide information on issues of broad national significance such as improving the competitiveness, productivity, and sustainability of Australian industries, especially where Australia has a competitive strength, and one of the selection criteria is that an application must show some national benefit.

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 alter the regulatory burden (OBPR reference number 19942).

Details of the *Industry Research and Development (Cooperative Research Centres Program) Instrument 2019*

Section 1 – Name

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Cooperative Research Centres Program) Instrument 2019*.

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

Section 5 – Prescribed Program

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

The Program supports medium to long-term industry-led collaborative research partnerships to undertake high quality research to solve industry identified problems 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 6 – Specified Legislative Power

This section specifies the legislative powers in respect of which the Legislative Instrument is made are the powers of the Parliament to make laws with respect to the following provisions of the Constitution:

- (a) trade and commerce with other countries, and among the States (s 51(i));
- (b) the provision of benefits to students (within the meaning of paragraph 51(xxiiiA));
- and
- (c) the implied nationhood power.

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 Program) Instrument 2019

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 Program supports medium to long-term industry-led collaborative research partnerships to undertake high quality research to solve industry identified problems and deliver tangible outcomes.

Human rights implications

This Legislative Instrument positively engages the right to work and rights in work, and the right to education. The Program supports vocational and training programs designed to promote employment and capacity building. Furthermore, the Program relates to aspects of technical, vocational and higher education through the provision of funds for scholarships, fellowships, or stipends to students enrolled in formal education and training programs (such as PhD programs).

Conclusion

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

The Hon Karen Andrews MP

Minister for Industry, Science and Technology