



AUSTRALIAN
SENATE

Senate Standing Committee for the
Scrutiny of Delegated Legislation

Parliament House, Canberra ACT 2600
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www.aph.gov.au/senate_sdlc

4 February 2021

The Hon David Littleproud MP
Minister for Agriculture, Drought and Emergency Management
Parliament House
CANBERRA ACT 2600

Via email: minister.littleproud@agriculture.gov.au

CC: DLO-MO@agriculture.gov.au


Dear Minister,

**Industry Research and Development (Supporting Agricultural Shows and Field Days Program)
Instrument 2020 [F2020L01401]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable legislative instruments against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Parliamentary oversight

Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

The Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 (the instrument) prescribes the Supporting Agricultural Shows and Field Days Program (the Program) to provide agricultural show societies and organisers of field days with reimbursements for shows cancelled due to COVID-19.

The Program will be eligibility based, and the explanatory statement explains that the applications will be assessed against eligibility criteria in two stages. The explanatory statement further explains that the eligibility criteria for accessing the program will be set out in the program guidelines, to be available on the Department's website.

The committee considers that details relating to the operation of measures prescribed by an instrument, including at least broad details in relation to eligibility criteria for grants, should be set out in the explanatory statement to an instrument so that such details are available to be scrutinised by the Parliament.

In light of the above, the committee requests your advice as to whether the explanatory statement to the instrument could be amended to include further details about the operation of the Program, including at least broad details in relation to the eligibility criteria for grants under the Program.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. Noting that the 15th sitting day after the instrument was tabled in the Senate is 15 February 2021, the committee has resolved to give a notice of a motion to disallow the instrument on that day as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **18 February 2021**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

Senator ~~the~~ Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation



The Hon David Littleproud MP
Minister for Agriculture, Drought and Emergency Management
Deputy Leader of the Nationals
Federal Member for Maranoa

Ref: MS21-000215

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

17 FEB 2021

Via email: sldc.sen@aph.gov.au

Dear Chair

Thank you for your correspondence of 4 February 2021 concerning the Senate Standing Committee for the Scrutiny of Delegated Legislation's (the Committee) concerns in relation to the explanatory statement for the *Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020* (the Instrument).

I note the Committee's concerns regarding the need for additional details on the operation of measures prescribed by the Instrument in its explanatory statement, to ensure these details are available for scrutiny by the Parliament.

I asked the Department of Agriculture, Water and the Environment to prepare a replacement explanatory statement to address the Committee's concerns. Specifically, the replacement explanatory statement for the Instrument includes additional details about the operation of the Supporting Agricultural Shows and Field Days program, including the eligibility criteria for grants under the program. I expect the replacement explanatory statement for the instrument to be lodged for registration on the Federal Register of Legislation in the coming weeks.

A copy of the replacement explanatory statement is enclosed with this letter.

Thank you for raising this matter.

Yours sincerely

DAVID LITTLEPROUD MP

Enc.

REPLACEMENT EXPLANATORY STATEMENT

Issued by the authority of the Minister for Agriculture, Drought and Emergency Management

Industry Research and Development Act 1986

Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020

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, Science and Technology has delegated the Minister's power under subsection 33(1) to the Minister for Agriculture, Drought and Emergency Management, under subsection 33(6) of the IR&D Act to prescribe the Supporting Agricultural Shows and Field Days Program.

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 entity, or by their delegate (under section 36).

The purpose of the Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 (the Legislative Instrument) is to prescribe the Supporting Agricultural Shows and Field Days Program (the program). The funding for the program has been secured from the COVID-19 Relief and Recovery Fund. The program provides \$39.025 million in the 2020-21 financial year as part of the Australian Government's response to the significant challenges posed by COVID-19. The program will provide agricultural show societies and organisers of field days with the assistance they need to meet the challenges posed by COVID-19 because they will play a critical role in supporting regional communities to recover from COVID-19. The program will provide

reimbursements to agricultural show societies and organisers of field days that cancel their 2020 show because of COVID-19, a \$100,000 grant to the national peak body Agricultural Shows Australia, and a \$100,000 grant to the national peak body the Association of Agricultural Field Days of Australasia.

Funding authorised by this Legislative Instrument comes from Program 3.10: Agricultural Resources, Outcome 3. Details will be set out in the *Portfolio Budget Statements 2020-21 (Agriculture, Water and the Environment Portfolio)*, *Budget 2020-21 – Budget Paper No. 2*, and the *Economic and Fiscal Update – July 2020*.

The program will be delivered by the Department of Social Services' Community Grants Hub, which is a specialised design, management and delivery body with extensive expertise and capability in delivering similar programs.

The program is an ad hoc grants program. The program is administered by the Department of Agriculture, Water and the Environment (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>).

Spending decisions will be made by the program delegate who is the department's First Assistant Secretary, Agricultural Policy Division, responsible for administering the program, taking into account the recommendations of the department.

The program has five components:

1. Assistance for agricultural field days - \$2.59 million component to reimburse eligible costs of agricultural field days up to \$70,000;
2. Assistance for non-capital city shows - \$10.235 million component to reimburse eligible costs of non-capital city (local) shows up to \$70,000;
3. Assistance for capital city shows - \$26 million component to reimburse eligible costs to a prescribed cap agreed by Government;
4. Assistance to Agricultural Shows Australia (ASA) - \$100,000 one-off grant to peak body ASA to support its National Rural Ambassador competition in 2020 and 2021;
5. Assistance to the Association of Agricultural Field Days of Australasia (AAFDA) - \$100,000 one-off grant to peak body AAFDA to support its annual conference scheduled for 2020 and 2021 and training and assistance for members on recovery management planning.

The total value of grants awarded under the program cannot exceed the amount of available funds. Should the value of eligible expenditure claimed exceed the amount of available funds, then each applicant's claim will be reduced to ensure that claims do not exceed the amount of available funds.

Eligibility criteria for applying for a grant are set out in the program guidelines. These Guidelines may be viewed by the public on the Community Grants Hub website at www.communitygrants.gov.au/grants/supporting-agricultural-shows-field-days-program.

Eligible applicants for components 1,2, and 3 of the program are:

- Indigenous Corporations
- Companies
- Cooperatives
- Incorporated Associations and
- Trustees on behalf of a Trust.

The following are not eligible to apply for a grant:

- Corporate Commonwealth Entities
- Non-Corporate Commonwealth Entities
- Non-Corporate Commonwealth Statutory Authorities
- Commonwealth Companies
- Corporate State or Territory Entities
- Non-corporate State and Territory Entities
- Non-corporate State or Territory Statutory Authorities
- Local Governments
- International Entities
- Sole Traders
- Statutory Entities
- Partnerships
- Unincorporated Associations and
- Persons.

Applications will only be accepted from entities that:

- Have cancelled their scheduled agricultural show or field day in 2020 because of COVID-19 and
- Are members of Agricultural Shows Australia or
- Are members of a state and territory agricultural show society that is a member of Agricultural Shows Australia or
- Run Australian agricultural field day events that market principally to the rural sector with at least 70% of the total exhibit area being agricultural exhibitors (those that have products and services focused at the agricultural and horticultural sectors). The focus of these events must be on commercial agricultural enterprises, investment and innovation.

For components 1, 2, and 3 of the program, the eligible grant activity will be limited to eligible expenditure paid by the applicant for the organisation of an agricultural show or field day that was scheduled to be held in 2020 and cancelled because of COVID-19.

Eligible expenditure items include fixed or unrecoverable costs such as:

- Rent
- Rates
- Utilities, including electricity, gas and water
- Insurance
- Telecommunications
- IT system maintenance and licensing costs
- Website costs
- Bank fees
- Fire alarms and equipment
- Cleaning supplies and services
- National and state show body affiliation costs
- Audit fees
- Marketing
- Ticketing
- Hire of equipment
- Contractors
- Set-up costs, and
- Security.

The decision-maker will have the authority to waive the eligibility criteria. This is intended to enable the delegate to apply the principles of proportionality, in line with *Commonwealth Grant Rules and Guidelines 2017*. Proportionality in grants administration involves striking an appropriate balance between complexity, risks, outcomes, and transparency. Officials are obligated to ensure that grants administration appropriately reflects the capabilities of potential and successful grantees and accommodates the Australian Government's need for robust and accountable processes, consistent with the risks involved.

This program is a demand-driven, eligibility-based program. The decision-maker's assessment of eligibility and the grant amount is final. Merits review is not appropriate because the program involves the allocation of finite resources between competing applicants, and any decision to overturn an allocation that has already been made to another party would be affected by overturning the original decision.

Applications will be verified against the eligibility criteria set out in the program guidelines in two stages. At first instance, applications will be assessed by the Community Grants Hub against the eligibility criteria. Applications must address the eligibility criteria and provide relevant supporting information. The amount of detail and supporting evidence should be

relative to the funding amount requested. Larger and more complex projects should include more detailed evidence.

After considering the applications, the Community Grants Hub will make recommendations to the program delegate regarding those applications suitable for funding. The program delegate will make the final decision about which grants to approve, taking into consideration the Community Grants Hub's recommendations, and the availability of grant funds. The program delegate will not approve funding if there are insufficient program funds available for the program.

Both successful and unsuccessful applicants will be informed in writing. Unsuccessful applicants will be advised of what aspect of their application has rendered them ineligible.

The two grants to the national peak bodies; ASA and AAFDA, will be administered through an ad hoc grant to each entity. These grant amounts and grantees have been selected for their roles and expertise in coordinating show societies and field days organisers. There will not be any planned selection processes for these grants, they are not available to a range of grantees or on an ongoing basis and are a result of a specific ministerial decision. The ad hoc Grant Opportunity Guidelines (GOG) for these grants will waive the need for a selection process. Due to the absence of a selection process, there will be no assessment of providers. Therefore, any fraud checks and the program risk assessment will be conducted by the department.

Spending decisions for the two ad hoc grants will be made by the program delegate who is the department's First Assistant Secretary, Agricultural Policy Division.

Persons who are otherwise affected by decisions or who have complaints about any aspect of the program will have the standard recourse to the department. Furthermore, if a person is not satisfied with the way the department handles the complaint, they may lodge a complaint with the Commonwealth Ombudsman.

Executive power and express incidental power (s 61 and s 51(xxxix))

The express incidental power 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. In that regard, funding provided under the Legislative Instrument will be directed towards alleviating and mitigating the short-term economic consequences of COVID-19, an unforeseen crisis of immediate national significance, on agricultural show societies and organisers of field days.

Authority

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

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the Office of Constitutional Law (in conjunction with Australian Government Solicitor), the Attorney-General's Department and the Department of Industry, Science, Energy and Resources have been consulted on this Legislative Instrument.

Regulatory Impact

It is estimated that the regulatory burden is likely to be minor (OBPR reference number ID 42529).

Details of the Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020*.

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 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 Supporting Agricultural Shows and Field Days Program (the program) for the purposes of s 33 of the Act.

The program provides \$39.025 million as part of the Australian Government's response to the significant challenges posed by COVID-19. The program will provide agricultural show societies and organisers of field days with the assistance they need to meet the challenges posed by COVID-19 because they will play a critical role in supporting regional communities to recover from COVID-19. The program will provide reimbursements to agricultural show societies and organisers of field days that cancel their 2020 show because of COVID-19, and a \$100,000 grant to the national peak body Agricultural Shows Australia. The program will also provide the peak body for field days, the Association of Agricultural Field Days of Australasia, a one-off \$100,000 grant to support its annual conference scheduled for 2020 and 2021 and training and assistance for members on recovery management planning.

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 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 (s 61 and s 51(xxxix)) 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 (Supporting Agricultural Shows and Field Days Program) Instrument 2020

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 (Supporting Agricultural Shows and Field Days Program) Instrument 2020 (the Legislative Instrument) is to prescribe the Supporting Agricultural Shows and Field Days Program (the program).

The program provides \$39.025 million as part of the Australian Government's response to the significant challenges posed by COVID-19. The funding for the program has been secured from the COVID-19 Relief and Recovery Fund.

The program will provide agricultural show societies with the assistance they need to meet the challenges posed by COVID-19 because they will play a critical role in supporting regional communities to recover from COVID-19.

The program will provide reimbursements to agricultural show societies that cancel their 2020 show because of COVID-19, and a \$100,000 grant to the national peak body Agricultural Shows Australia to fund its National Rural Ambassador and Young Judges & Paraders competitions for 2020 and 2021. The program will also provide the peak body for field days, the Association of Agricultural Field Days of Australasia (AAFDA), a one-off \$100,000 grant to support its annual conference scheduled for 2020 and 2021 and training and assistance for members on recovery management planning.

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. David Littleproud MP

Minister for Agriculture, Drought and Emergency Management



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25 February 2021

The Hon David Littleproud MP
Minister for Agriculture, Drought and Emergency Management
Parliament House
CANBERRA ACT 2600

Via email: minister.littleproud@agriculture.gov.au

CC: DLO-MO@agriculture.gov.au

Dear Minister,

**Industry Research and Development (Supporting Agricultural Shows and Field Days Program)
Instrument 2020 [F2020L01401]**

Thank you for your response of 17 February 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 24 February 2021. On the basis of your undertaking to register an amended explanatory statement to provide further detail on eligibility criteria, the committee has concluded its examination of the instrument.

In light of this, the committee has resolved to withdraw the disallowance notice in place on the instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation