

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Science and Technology

Industry Research and Development Act 1986

Industry Research and Development (Catalysing the Artificial Intelligence Opportunity in Our Regions Program) Instrument 2022

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 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 purpose of the *Industry Research and Development (Catalysing the Artificial Intelligence Opportunity in Our Regions Program) Instrument 2022* (the Legislative Instrument) is to prescribe the Catalysing the Artificial Intelligence Opportunity in Our Regions program (the Program). Funding for the Program has been secured through the 2021-2022 Budget for the Department of Industry, Science, Energy and Resources (the Department).

The Program provides \$9 million in administered funding over five years, across 2021-22 to 2025-26, to fund collaborative projects which support regional industries, businesses and communities to realise the benefits from the development, adoption and use of artificial intelligence technologies. The Program is one of several measures announced as part of Australia's Artificial Intelligence (AI) Action Plan (<https://www.industry.gov.au/data-and-publications/australias-artificial-intelligence-action-plan>) in June 2021, and forms a part of the Digital Economy Strategy (<https://digitaleconomy.pmc.gov.au/>) announced by the Prime Minister on 6 May 2021.

The Program will be delivered through co-funded grants to companies that partner with regional industries, businesses and communities to use artificial intelligence to address regional challenges. The purpose of this Program is to build artificial intelligence capabilities in the regions, give communities across Australia access to the potential economic, productivity, social and environmental benefits of artificial intelligence and support job creation.

The Program will support a range of activities to develop, implement or demonstrate real-world applications of artificial intelligence technologies that address challenges in regional areas in Australia.

Funding authorised by the Legislative Instrument comes from Program 1.2: Growing innovative and competitive businesses, industries and regions, Outcome 1, as set out in the *Portfolio Budget Statements 2021-22, Budget Related Paper No. 1.9, Industry, Science, Energy and Resources Portfolio* (<https://www.industry.gov.au/sites/default/files/2021-05/2021-22-department-of-industry-science-energy-and-resources-pbs.pdf>) at page 38.

The Program will be delivered by the Department's Business Grants Hub, which is a specialised 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* (<https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf>) and other relevant documents. Eligibility and merit criteria are outlined in the Program guidelines, available at <https://business.gov.au/grants-and-programs/catalysing-the-artificial-intelligence-opportunity-in-our-regions-round-1>. The eligibility criteria include that the lead applicant is a regional-AI-focused corporation as defined in the Legislative Instrument.

Spending decisions will be made by the Minister for Science and Technology taking into account the advice from an independent assessment committee (the Committee) with artificial intelligence expertise. The Minister will also take into account the availability of grant funds when making spending decisions.

Grants will be a minimum of \$250,000 up to a maximum of \$500,000. The grant amount will be up to 50 per cent of eligible project expenditure. Applicants to the program must contribute 50 per cent of the total project expenditure in cash contributions from their own resources. Applicants may also provide in-kind contributions which will not be counted towards their cash contribution to the total project expenditure.

The Program involves the allocation of finite resources between competing applicants and therefore falls within the category of decisions that would not usually be subject to merits review according to paragraph 4.11 of the Administrative Review Council guide, *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](https://www.industry.gov.au/system/administrative-law/administrative-review-council-publications/what-decisions-should-be-subject-merit-review-1999). In addition, there is a robust and extensive assessment process, an enquiry and feedback process, and an existing complaints mechanism for affected applicants. Therefore, external merits review does not apply to decisions about the provision of grants under the Program.

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.

Applications will be assessed against the eligibility criteria and assessment criteria set out in the Program guidelines in two stages. At the first instance, applications will be assessed by AusIndustry against the eligibility criteria. The Committee will then consider the eligible applications and score each application out of 100 against the assessment criteria. The Committee may comprise representatives from the Australian Government, Australian academic institutions, private industry and other independent technical experts.

After considering the applications, the Committee will make recommendations to the Minister for Science and Technology regarding those applications suitable for funding. The Minister will make the final decision about which grants to approve, taking into consideration the Committee's recommendations, the geographic distribution of projects 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 have an opportunity to discuss the outcome with the Department, and can submit a new application for the same or similar project in any future funding rounds.

The Legislative Instrument specifies that the legislative power in respect of which the instrument is made is the following:

Corporations power

Section 51(xx) of the Constitution empowers the Parliament to make laws with respect to 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth' (together, constitutional corporations).

In *Williams v Commonwealth* (2014) 252 CLR 416 (*Williams No 2*), the High Court, considering section 32B of the *Financial Management and Accountability Act 1997* (the FMA Act), held (at [50]) that:

A law which gives the Commonwealth the authority to make an agreement or payment of that kind is not a law with respect to trading or financial corporations. The

law makes no provision regulating or permitting any act by or on behalf of any corporation.

However, the relevant provisions of the IR&D Act are substantially different to the provisions considered by the High Court in *Williams No 2*. Section 34 of the IR&D Act corresponds to section 32B of the FMA Act considered by the High Court in *Williams No 2*. However, the FMA Act contained no provision in terms equivalent to those of section 35 of the IR&D Act.

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

Further, subsection 35(3) provides that the agreement must provide for circumstances in which the corporation must repay amounts to the Commonwealth.

Only constitutional corporations will be eligible to receive benefits under the Program prescribed by the Legislative Instrument. The benefits conferred by the Program will be directed to assisting those corporations in the conduct of their ordinary activities (building artificial intelligence capabilities for business and communities, and/or developing businesses and communities in regional areas). The Program will impose terms and conditions on those corporations under a grant agreement in accordance with section 35 of the IR&D Act, in relation to receipt of benefits under the Program. The terms and conditions will set out what the funding may be used for, and the circumstances in which it must be repaid.

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

In accordance with section 17 of the *Legislation Act 2003*, the Attorney-General's Department has been consulted on this Legislative Instrument.

The Department of the Prime Minister and Cabinet, the Department of Agriculture, Water and the Environment and the Department of Infrastructure, Transport, Regional Development and Communications were consulted on the development of the Program.

The development of the AI Action Plan involved wide-ranging industry and stakeholder consultation. This Action Plan underpins the policy design for the Program and informed the Program's guidelines.

Regulatory Impact

Regulatory impacts for the Catalysing the Artificial Intelligence Opportunity in our Regions Program were evaluated by the Office of Best Practice Regulation (OBPR reference number 43589). The regulatory impact was assessed as likely to be minor.

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 (Catalysing the Artificial Intelligence Opportunity in Our Regions Program) Instrument 2022*

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Catalysing the Artificial Intelligence Opportunity in Our Regions Program) Instrument 2022*.

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.

‘Regional-AI-focused corporations’ is defined as constitutional corporations (that is, trading or financial corporations, or foreign corporations) that engage in activities to build artificial intelligence capabilities for businesses and communities and/or activities to develop businesses and communities in regional areas. The definition includes corporations that are already engaging in these activities, or where they have plans to engage in them in the future.

Section 5 – Prescribed Program

This section prescribes the Catalysing the Artificial Intelligence Opportunity in Our Regions Program (the Program) for the purposes of section 33 of the IR&D Act.

Subsection 5(2) describes the Program as providing funding for grants to regional-AI-focused corporations to deliver projects that build artificial intelligence capabilities for businesses and communities in regional areas. As detailed in section 4, corporations can be eligible to apply either where they are already building AI capabilities, or alternatively where they are supporting businesses and communities in regional areas. Corporations may already be engaged in these activities or have plans to engage in them in the future.

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 foreign corporations, and

trading or financial corporations formed within the limits of the Commonwealth (paragraph 51(xx) 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 (Catalysing the Artificial Intelligence Opportunity in Our Regions Program) Instrument 2022

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 (Catalysing the Artificial Intelligence Opportunity in Our Regions Program) Instrument 2022* (the Legislative Instrument) is to prescribe the Catalysing the Artificial Intelligence Opportunity in Our Regions Program (the Program).

The purpose of the Program is to fund collaborative projects which support regional industries, businesses and communities to realise the benefits from the development, adoption and use of artificial intelligence technologies.

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 Melissa Price MP
Minister for Science and Technology