**EXPLANATORY STATEMENT**

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

*Industry Research and Development Act 1986*

##### *Industry Research and Development (Artificial Intelligence Capability 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 s33 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 s33, 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 s36).

The purpose of the *Industry Research and Development (Artificial Intelligence Capability Program) Instrument 2018* (the Legislative Instrument) is to prescribe the Artificial Intelligence Capability Program (the Program). The funding for the Program has been secured through the Department of Industry, Innovation and Science (the Department) 2018‑19 Budget.

The Program will meet a need for national leadership and coordination in relation to the development of standards on artificial intelligence (AI) Funding will be provided to Standards Australia to develop a strategic framework for developing AI standards, including by identifying Australian strategic priorities, current domestic and international standardisation activities and opportunities for Australian stakeholders to engage with the broader global digital economy and standards fora.

$0.1 million is provided in administered funding to the Department for an AI standards roadmap to be delivered by Standards Australia. Standards Australia is an independent not-for-profit organisation, recognised through a Memorandum of Understanding as Australia’s peak non‑government standards development body. It represents Australia at the International Organization for Standardization and International Electrotechnical Commission. It is uniquely placed to develop an AI standards roadmap, having an extensive history of contributing to standards development and adoption in Australia and internationally.

Funding authorised by this Legislative Instrument comes from Department of Industry, Innovation and Science, Program 2: Growing Business Investment and Improving Business Capability, Outcome 1: Enabling growth and productivity for globally competitive industries through supporting science and commercialisation, growing business investment and improving business capability and streaming regulation. Details are set out in Portfolio Budget Statements 2018-19, Budget Related Paper No. 1.13A, Jobs and Innovation Portfolio (Industry, Innovation and Science) at page 32 (<https://www.industry.gov.au/sites/g/files/net3906/f/2018-19-department-of-industry-innovation-and-science-pbs.pdf>)*.*

The Program is administered by the Department of Industry, Innovation and Science*.* Spending decisions will be made by a s34 IR&D Act delegate, who is the Digital Economy and Business Simplification Branch General Manager. The program is administered in accordance with the Commonwealth Procurement Rules (<https://www.finance.gov.au/sites/default/files/commonwealth-procurement-rules-1-jan-18.pdf>).

The Program will not be subject to merits review as it involves the allocation of finite resources and supports the implementation of policy decisions made by government about the delivery of the Program.

Persons who have complaints about the Program will have recourse to the Department. The Department will investigate 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 it is made is the implied nationhood power, which encompasses the Commonwealth’s ability 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 (s61 and para 51(xxxix) of the Constitution).

In that regard, funding provided to Standards Australia under the Legislative Instrument will drive national leadership in AI standards.

**Authority**

Section 33 of the IR&D Act provides authority for the Legislative Instrument.

**Consultation**

In accordance with s17 of the *Legislation Act 2003*, the Attorney-General’s Department and Australian Government Solicitor 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 23085).

**Details of the Industry Research and Development (Artificial Intelligence Capability Program) Instrument 2018**

**PART 1 – PRELIMINARY**

**Section 1 – Name of Instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Artificial Intelligence Capability 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 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 – Artificial Intelligence Capability Program**

This section prescribes the Artificial Intelligence Capability Program (the Program) for the purposes of s 33 of the Act.

**Section 6 – Specified legislative powers**

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 measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation.

The Program has a national application that requires a degree of coordination and integration in respect of a need that affects Australia as a whole. Specifically, the Program will provide funding to Standards Australia for the development of a strategic framework for AI standards development. It will encourage industry-research collaboration on AI, and drive Australian leadership in AI standards at a global level.

**Statement of Compatibility with Human Rights**

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

*Industry Research and Development (Artificial Intelligence Capability 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**

This Legislative Instrument provides legislative authority to commit Commonwealth funds for the Artificial Intelligence Capability Program (the Program). The Program will address gaps in Australia’s artificial intelligence capability by providing funding to Standards Australia to develop a strategic framework for developing AI standards. The Program will identify Australian strategic priorities, current domestic and international standardisation activities and identify opportunities for Australian stakeholders to engage with the broader global digital economy and standards fora.

**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 MP**

**Minister for Industry, Science and Technology**