**EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Industry and Science

*Industry Research and Development Act 1986*

*Industry Research and Development (AI Adopt Program) Instrument 2024*

**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 (AI Adopt Program) Instrument 2024* (the Legislative Instrument) is to prescribe the AI Adopt Program (the Program). The funding for the Program has been secured through the Department of Industry, Science and Resources (the Department) 2023-24 Budget. The Program provides up to $17 million across 2023-24 to 2026-27 as part of the Australian Government’s commitment to supporting Australia’s economic growth, productivity, and jobs creation.

The Program provides funding to establish, develop and deliver AI Adopt Centres (the Centres) that will support Australian small to medium enterprises (SMEs) that engage in international or interstate trade to adopt AI technologies safely and responsibly to increase their productivity. The Program will also support a broad uplift in AI capabilities across SMEs in the economy, the Safe and Responsible AI in Australia agenda, and the Government’s priority sectors as identified in the National Reconstruction Fund.

Funding authorised by this Legislative Instrument comes from the Growing Australia’s Critical Technologies Industries measure, as set out in the *Budget Paper No. 2, Industry, Science and Resources Portfolio (*[*https://budget.gov.au/content/bp2/download/bp2\_2023-24.pdf*](https://budget.gov.au/content/bp2/download/bp2_2023-24.pdf)*)* at page 164.

The Program will be delivered by Business Grants Hub and Integrity Division, which is a specialised design, management and delivery body within the Department 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*](https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf)). Eligibility and merit criteria are outlined in the Program guidelines, available on the GrantConnect website (<https://www.grants.gov.au/Go/Show?GoUuid=655fc725-cdb7-49bf-bc88-3d14940fc0c2>).

Spending decisions will be made by the Minister for Industry and Science, taking into account the recommendations of the Department, and an independent assessment committee.

The Program provides grant funding of up to $17 million across 2023-24 to 2026-27. The grant amounts may be up to half of eligible project costs and will be a minimum of $3 million and a maximum of $5 million. No more than 50 per cent of eligible project costs can be funded from Commonwealth government Grants.

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>. 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.

Applications will be assessed against the eligibility criteria and merit criteria set out in the Program guidelines in two stages. At first instance, applications will be assessed by the Department against the eligibility criteria. An independent assessment committee will then consider eligible applications against the merit criteria. This will include comparing the applications and scoring each application out of 100, and a consideration of the value for money of each project proposal. The committee may comprise representatives from the Australian Government, selected state and territory governments, and other independent technical experts. The independent assessment committee may seek input from independent experts to inform their assessments.

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 each merit criterion.

After considering the applications, the independent assessment 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 independent assessment committee’s recommendations, the Department’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 have an opportunity to discuss the outcome with the Department.

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.

**Statement of the Relevance and Operation of Constitutional Heads of Power**

For the purposes of subsection 33(3) of the IR&D Act, the Legislative Instrument specifies that the legislative power in respect of which the Instrument is made is the following:

**Trade and commerce power**

Section 51(i) of the Constitution empowers the Parliament to make laws with respect to ‘trade and commerce with other countries, and among the states’.

The Program will assist SMEs to responsibly adopt and implement AI technologies for products available for sale in interstate and overseas markets. The Program provides funding to establish, develop and deliver the Centres which will provide advice and support to SMEs to integrate AI into their business so as to improve their competitiveness in interstate and overseas markets.

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.

To inform the Program, the Department consulted the public through a virtual town hall. Market information was gathered from recent industry consultation to inform the development of the Program guidelines.

**Regulatory Impact**

It is estimated that the regulatory burden is likely to be minor regulatory impact (Office of Impact Analysis reference number: OIA23-04486).

**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**

**Attachment A**

**Details of the *Industry Research and Development (AI Adopt Program) Instrument 2024***

**Section 1 – Name of Instrument**

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (AI Adopt Program) Instrument 2024.*

**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 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.

**Section 5 –AI Adopt Program**

This section prescribes the Program for the purposes of section 33 of the IR&D Act.

The Program provides funding to establish, develop and deliver the Centres to support Australian SME’s that engage in international or interstate trade to adopt artificial intelligence (AI) technologies to increase productivity by supporting the safe and responsible adoption and implementation of AI technologies.

**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 the trade and commerce with other countries, and among the States (within the meaning of paragraph 51(i) of the Constitution).

**Attachment B**

**Statement of Compatibility with Human Rights**

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

*Industry Research and Development (AI Adopt Program) Instrument 2024*

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 *Industry Research and Development (AI Adopt Program) Instrument 2024* (the Legislative Instrument) provides legislative authority to commit Commonwealth funds for the AI Adopt Program (the Program). The Program provides up to $17 million of funding across 2023-24 to 2026-27 to establish, develop and deliver AI Adopt Centres that will support small and medium enterprises (SMEs) that engage in international or interstate trade to adopt AI technologies.

The purpose of the Program is to increase productivity by supporting the safe and responsible adoption and implementation of AI technologies by SMEs to enhance their overall productivity, and increase their opportunities to access interstate and overseas markets. The Program will also support a broad uplift in capability across SMEs in the economy, and support the Government’s priority sectors as identified in the National Reconstruction Fund.

**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 Ed Husic MP**

**Minister for Industry and Science**