

EXPLANATORY STATEMENT

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

Industry Research and Development Act 1986

*Industry Research and Development (Growing Australia's Cyber Skills Program) Instrument
2021*

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 (Growing Australia's Cyber Skills Program) Instrument 2021* (the Legislative Instrument) is to prescribe the Growing Australia's Cyber Skills Program (the Program). The Program consists of two elements, the Cyber Security Skills Partnership Innovation Fund and the Questacon Cyber Ready Stream.

The Cyber Security Skills Partnership Innovation Fund provides \$26.5 million over four financial years (2020-21 to 2023-24). The Questacon Cyber Ready Stream provides \$8.7 million over four financial years (2020-21 to 2023-24).

Funding authorised by the Legislative Instrument comes from Program 1.2: Growing Business Investment and Improving Business Capability, Outcome 1, as set out in the *Portfolio Budget Statements 2020-21, Budget Related Paper No.1.9, Industry, Science, Energy and Resources Portfolio* (<https://www.industry.gov.au/sites/default/files/2020-10/2020-21-department-of-industry-science-energy-and-resources-pbs.pdf>) at page 35.

1. Cyber Security Skills Partnership Innovation Fund

The Cyber Security Skills Partnerships Innovation Fund (Innovation Fund) is a \$26.5 million grants program forming part of the Australian Government's commitment to increase the quality and quantity of cyber security professionals in Australia, including increasing the participation of women in cyber security. The Innovation Fund will fund innovative industry-led projects which meet the needs of local communities and areas, and are designed in partnership with industry, education providers and government, to remove barriers to cyber security education and employment.

Eligible activities under the Innovation Fund could include:

- developing and delivering specialist cyber security courses for professionals
- retraining initiatives, to help existing professionals in other disciplines transition to cyber security roles
- establishing cyber labs, training facilities, cyber simulators
- training or professional development for teachers and board executives, including through practical partnerships or exchanges with industry
- establishing student delivered cyber security services
- establishing new scholarships (where at least 50 per cent of the scholarships will be reserved for women)
- establishing new apprenticeships, or apprenticeship-style courses in higher education
- establishing new internships, cadetships, work experience and staff exchanges
- any other innovative ideas to meet the cyber security needs of businesses.

The Innovation Fund is a competitive, merits based grants program which will be delivered by the Department of Industry, Science, Energy and Resources (Department) Business Grants Hub, which is a specialised grant program design, management and delivery body with extensive expertise and capability in delivering similar programs. The Innovation Fund will be 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>). Eligibility and merit criteria for the Innovation Fund are outlined in the grant opportunity guidelines, which are available on [business.gov.au](https://business.gov.au/grants-and-programs/cyber-security-skills-partnership-innovation-fund) (<https://business.gov.au/grants-and-programs/cyber-security-skills-partnership-innovation-fund>).

Spending decisions will be made by the Program Delegate who is a manager within the Department responsible for administering the Program, taking into account the recommendations of a committee of Australian Government representatives. The committee may also include independent experts and seek additional advice from independent technical experts as required. A total of \$25.3 million is available for grant funding. Grants will be a minimum of \$250,000 up to a maximum of \$3 million. The grant amount will be up to 50 per cent of eligible project costs. No more than 50 per cent of eligible project costs can be funded from Commonwealth Grants.

Both successful and unsuccessful applicants will be informed in writing. Unsuccessful applicants have an opportunity to discuss the outcome with the Department. The Innovation Fund 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. Therefore, external merits review does not apply to decisions about the provision of grants under this grant opportunity.

Persons who are otherwise affected by decisions or who have complaints about the Innovation Fund will have recourse to the Department. The Department investigates any complaints about the Innovation Fund 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.

2. Questacon Cyber Ready Stream

Questacon - The National Science and Technology Centre (Questacon) will deliver a number of programs under the Questacon Cyber Ready Stream. The funding for the stream is \$8.7 million over four financial years (2020-21 to 2023-24) to deliver the following programs:

- Questacon Cyber Learning Master Academy: a pilot program for in-field STEM teachers;
- Questacon Cyber Squad: a pilot program for non-STEM and out-of-field teachers;
- Cyber Program Support: portable resources for family and student engagement, based on existing Questacon assets including exhibits and maths puzzles;
- Questacon Cyber STEM Leaders: a national leaders forum and minds in residence program;
- National Cyber Design Challenge: a national cyber design challenge for young people aged 8-13.

The funding is internal covering Questacon activities related to delivery of these programs.

Questacon Cyber Ready Stream programs will focus on the integration of key cross-disciplinary skills including problem solving, design thinking and teamwork to help build our future workforce, reflecting the fact that a cyber security career is not dependent on ICT qualification.

Questacon's programs will reach out nationally and across remote and regional Australia to engage young people and educators with accessible, high quality cyber science, technology, engineering and mathematics (STEM) programs. The national reach reflects the growth in the cyber security sector across Australia, with cyber security careers being geographically unbound, and as accessible for regional and remote workers as for those in metropolitan Australia.

Programs and activities initiated through the Questacon Cyber Ready Stream will be delivered in conjunction with other well established and nationally delivered Questacon programs. This

includes the Engineering is Elementary program, which is a related initiative that has similar objectives. The Engineering is Elementary program delivers teacher professional learning and uses engineering topics to enhance the capacity and capability of teachers to deliver cross-disciplinary STEM project based learning.

Legislative Powers

The Legislative Instrument specifies that the legislative powers in respect of which the Instrument is made are the following:

Communications Power

Section 51(v) of the Constitution empowers the Parliament to make laws with respect to 'postal, telegraphic, telephonic and other like services'.

In that regard, funding provided under this Legislative Instrument will promote resilience and security in Australia's electronic communications by building knowledge and skills in the area of cyber security.

Territories power

Section 122 of the Constitution empowers the Parliament to 'make laws for the government of any territory'.

In that regard, funding for the Questacon Cyber Ready Stream, provided under this Legislative Instrument, will be applied by Questacon to activities within the Australian Capital Territory, where Questacon is headquartered.

Executive power and express incidental power, including the nationhood aspect

The express incidental power in section 51(xxxix) of the Constitution 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. That paragraph, together with 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 Questacon (and its activities) is a national initiative in science and related fields. The Questacon Cyber Ready Stream is one aspect of that broader national initiative.

External affairs power

Section 51(xxix) of the Constitution empowers the Parliament to make laws with respect to 'external affairs'. The external affairs power supports Commonwealth legislation which gives effect to Australia's obligations under international treaties. Australia has relevant obligations under the following international treaties:

- the Convention on the Elimination of All Forms of Discrimination Against Women [1983] ATS 9 (CEDAW);
- the Convention on the Rights of the Child [1991] ATS 4 (the CRC);
- the Convention concerning Employment Policy [1970] ATS 17 (ILO Convention 122);
- the Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources [1986] ATS 2 (ILO Convention 142); and
- the International Covenant on Economic, Social and Cultural Rights [1976] ATS 5 (ICESCR).

Articles 1, 2, 3, 10 and 11 of CEDAW relevantly provide that signatories agree to pursue a policy of eliminating discrimination against women, to take all appropriate measures to ensure the full development and advancement of women, and to take all appropriate measures to eliminate discrimination against women in the fields of education and employment. In that regard, the Innovation Fund has, as an objective, increasing the participation of women in cyber security, and is intended to support scholarship programs where at least fifty per cent of the scholarship offered are reserved for women.

Article 29(1)(a) of the CRC provides that signatories agree that the education of the child shall be directed to ‘[t]he development of the child’s personality, talents and mental and physical abilities to their fullest potential’. In that regard, the Qwestacon Cyber Ready Stream will improve the knowledge of school students about cyber security.

Article 1(1) of ILO Convention 122 requires signatories to pursue ‘an active policy designed to promote full, productive and freely chosen employment’ with a view to ‘meeting manpower requirements’. ILO Convention 142 require signatories to adopt a comprehensive program of vocational guidance and training (Article 1(1)), to develop open, flexible and complementary system of vocational education (Article 2), and to adapt and harmonise the vocational training system to meet the needs of people in all sectors of the economy (Article 4). Article 6(2) of the ICESCR requires signatories to take steps to implement vocational guidance and training programs in order to achieve full and productive employment. In this regard, the Innovation Fund will promote full and productive employment by providing vocational guidance and training programs to assist persons to become trained in cyber security.

Student benefits

Section 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’.

In that regard, grant funding provided under the Innovation Fund is intended to contribute to establishing new scholarships for students which are aimed at improving the quantity, quality or pipeline of skilled cyber security professionals by enhancing partnerships between industry, employers, schools and tertiary providers.

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 Attorney-General's Department has been consulted on this Legislative Instrument.

In the development of Cyber Security Skills Partnership Innovation Fund, consultation was undertaken with the Cyber Security Growth Centre (AustCyber) who represent Australia's cyber security industry, the Department of Home Affairs, the Department of Defence, the Department of Education, Skills and Employment, the Department of Finance, The Treasury and the Department of the Prime Minister and Cabinet.

Regulatory Impact

It is estimated that the regulatory burden is likely to be low. The initiatives in this measure are all voluntary (OBPR reference number: 23883).

Details of the *Industry Research and Development (Growing Australia's Cyber Skills Program) Instrument 2021*

PART 1 – PRELIMINARY

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Growing Australia's Cyber Skills Program) Instrument 2021*.

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 Growing Australia's Cyber Skills Program for the purposes of section 33 of the Act.

The Program consists of the Cyber Security Skills Partnerships Innovation Fund and a number of programs run by Questacon - The National Science and Technology Centre (Questacon) designed to prepare primary, secondary and tertiary students for a career in cyber security (Questacon Cyber Ready Stream).

The Cyber Security Skills Partnership Innovation Fund provides funding to organisations for the purposes of:

- improving the quality or quantity of cyber security professionals in Australia, including increasing the participation of women in cyber security
- improving collaboration between industry and the education sector to build the quality and availability of cyber security professionals in Australia
- supporting industry and academia to build Australia's future pipeline of skilled cyber security professionals.

Questacon will deliver a number of programs under the Questacon Cyber Ready Stream which are designed to prepare primary, secondary and tertiary students for a career in cyber security. These programs will focus on the integration of key cross-disciplinary skills

including problem solving, design thinking and teamwork to help build our future workforce, reflecting the fact that a cyber security career is not dependent on ICT qualification.

Section 6 – Specified Legislative Power

This section specifies that the legislative powers in respect of which the Legislative Instrument is made are:

- postal, telegraphic, telephonic and other like services (within the meaning of section 51(v) of the Constitution);
- the provision of benefits to students (within the meaning of section s 51(xxiiiA) of the Constitution);
- external affairs (within the meaning of section 51(xxix) of the Constitution);
- the government of a Territory (within the meaning of section 122 of the Constitution);
and
- measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation other than by the Commonwealth (section 61 and section 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 (Growing Australia's Cyber Skills Program) Instrument
2021*

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 Growing Australia's Cyber Skills Program (the Program) consists of two elements:

1. Cyber Security Skills Partnership Innovation Fund (Innovation Fund)
2. Questacon Cyber Ready Stream

The Innovation Fund provides \$25.3 million of grant funding as part of Australia's commitment to improve the quality and availability of cyber security professionals in Australia, including increasing the participation of women in cyber security.

The Innovation Fund will fund innovative industry-led projects which meet the needs of local communities and areas, and are designed in partnership with industry, education providers and government, to remove barriers to cyber security education and employment.

Questacon - The National Science and Technology Centre (Questacon) will deliver a number of programs designed to prepare primary, secondary and tertiary students for a career in cyber security under the Questacon Cyber Ready Stream. These programs will focus on the integration of key cross-disciplinary skills including problem solving, design thinking and teamwork to help build our future workforce, reflecting the fact that a cyber security career is not dependent on ICT qualification.

Questacon's programs will reach out nationally and across remote and regional Australia to engage young people and educators with accessible, high quality cyber STEM programs. The national reach reflects the growth in the cyber security sector across Australia, with cyber security careers being geographically unbound, and as accessible for regional and remote workers as for those in metropolitan Australia.

Human rights implications

This Legislative Instrument engages the following rights:

- The right to education – article 28 of the Convention on the Rights of the Child [1991] ATS 4 (the CRC);

- The right to work - article 6(2) of the International Covenant on Economic, Social and Cultural Rights [1976] ATS 5 (ICESCR).
- The right to equality and non-discrimination – article 10 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

The right to education

Article 28 of the CRC recognises the right of the child to education.

The Questacon Cyber Ready Stream element of the Program directly engages this right by providing additional opportunities for STEM engagement, which will provide educational benefits, directed at students and youth.

The right to work

Article Article 6(2) of the ICESCR requires State Parties to take steps to achieve the full realisation of the right to work, including technical and vocational guidance and training programmes.

The Innovation Fund directly engages this right by providing vocational guidance and training programs to assist persons to become trained in cyber security.

The right to equality

Article 10 of the CEDAW requires State Parties to take appropriate measures to ensure women equal rights in the field of education.

The Innovation Fund directly engages this right by supporting projects which are designed to increase the participation of women in cyber security professions.

Conclusion

This Legislative Instrument is compatible with human rights because, to the extent it engages human rights, it promotes the protection of those rights.

The Hon Christian Porter MP

Minister for Industry, Science and Technology