



Western Australia

Industry and Technology Development Act 1998

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Contents

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
3.	Objects	2
4.	Interpretation	2
Part 2 — The Minister		
5.	Minister continued in existence as a body corporate	5
6.	Functions of Minister	5
7.	Powers of Minister	6
8.	Delegation	7
Part 3 — Financial support		
9.	Financial support	9
10.	Guidelines	9
11.	Provision of financial support	9
Part 4 — Staff		
12.	Chief executive officer	11
13.	Other staff	11
14.	Use of other government staff etc.	12
Part 5 — Financial provisions		
15.	Western Australian Industry and Technology Development Account	13
16.	Borrowing from Treasurer	13
17.	Guarantee by Treasurer	14

Contents

18.	Effect of guarantee	14
19.	Application of <i>Financial Management Act 2006</i> and <i>Auditor General Act 2006</i>	14

Part 7 — Miscellaneous

27.	Technology parks	16
28.	Protection from liability	16
29.	Confidentiality	17
30.	Execution of documents	18
31.	Regulations	19
32.	Review of Act	19

**Part 8 — Repeals, transitional
provisions and consequential
amendments**

33.	Repeals and transitional provisions	21
-----	-------------------------------------	----

Schedule 2 — Transitional provisions

1.	Interpretation	22
2.	Technology parks declared under the repealed Act	22
3.	Secrecy	22
4.	Staff	22
5.	Money to be credited to Account	22
6.	Applications under repealed Acts	23
7.	Transfer of assets, liabilities and records under the Industry Act or the Inventions Act	23
8.	Agreements, instruments and proceedings under the Industry Act or the Inventions Act	24
9.	Officials to take cognizance of clauses 5, 7 and 8	25
10.	Evidence	25
11.	<i>Interpretation Act 1984</i> not affected	25

Notes

	Compilation table	26
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Defined terms

Western Australia

Industry and Technology Development Act 1998

An Act to encourage, promote, facilitate and assist the development of industry, trade, science, technology and research in the State, to repeal —

- **the *Technology and Industry Development Act 1983*;**
 - **the *Industry (Advances) Act 1947*; and**
 - **the *Inventions Act 1975*,**
- and for related purposes.**

[Long title amended: No. 24 of 2021 s. 4.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Industry and Technology Development Act 1998*.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation.

3. Objects

The objects of this Act are —

- (a) to promote and foster the growth and development of industry, trade, science, technology and research in the State;
- (b) to improve the efficiency of State industry and its ability to compete internationally;
- (c) to encourage the establishment of new industry in the State;
- (d) to encourage the broadening of the industrial base of the State; and
- (e) to promote an environment which supports the development of industry, science and technology and the emergence of internationally competitive industries in the State.

4. Interpretation

In this Act, unless the contrary intention appears —

Account means the Western Australian Industry and Technology Development Account provided for by section 15;

department means the department of the Public Service principally assisting the Minister in the administration of this Act;

financial support means financial support within the meaning of section 9;

function does not include power;

government trading enterprise means any of the following —

- (a) a body established by the *Electricity Corporations Act 2005* section 4(1);
- (b) a port authority established by the *Port Authorities Act 1999* section 4(1);
- (c) a body established by or under the *Water Corporations Act 1995* section 4;
- (d) the body established by the *Western Australian Land Authority Act 1992* section 5(1);
- (e) a body prescribed for the purposes of this definition;
- (f) a subsidiary of a body referred to in any of paragraphs (a) to (e);

guidelines means any industry support guidelines approved by the Minister under section 10 and includes any revision of a guideline;

industry means any organized activity undertaken by one or more persons (whether or not a legal or economic entity or a government trading enterprise) for a lawful commercial purpose and includes —

- (a) an activity in any branch of trade, commerce or manufacturing;
- (b) researching or developing a commercially focused —
 - (i) innovative idea;
 - (ii) technology, process or product;

repealed Act means the *Technology and Industry Development Act 1983* repealed by section 33;

technology includes the application of scientific knowledge and practical experience to economic activity and to humanity and the environment;

s. 4

technology park means an area of land declared to be a technology park under section 27;

Treasurer means the Treasurer of the State.

[Section 4 amended: No. 24 of 2021 s. 5.]

Part 2 — The Minister

5. Minister continued in existence as a body corporate

- (1) The body corporate constituted by the Minister and referred to in section 5 of the repealed Act is preserved and continued in existence and is to be known by such designation as is, from time to time, conferred on the Minister by the Governor under the *Constitution Acts Amendment Act 1899*.
- (2) The corporate identity and the rights, obligations and assets of the body corporate are not affected by the repeal of the repealed Act.
- (3) The body corporate —
 - (a) has perpetual succession;
 - (b) may sue and be sued in its corporate name; and
 - (c) is capable of doing and suffering all that bodies corporate may do and suffer.

6. Functions of Minister

The functions of the Minister are —

- (a) to promote the objects of this Act;
- (b) to encourage the development of industry policy for the benefit of the State;
- (c) to facilitate the planning and development of the infrastructure necessary to secure projects of significance to the State;
- [(d) *deleted*]
- (e) to establish and manage technology parks;
- (f) to promote State industry overseas through the establishment and maintenance of activities, relationships, representations and offices in selected countries;

s. 7

- (g) to encourage and facilitate the commercialization of the intellectual property and other resources of departments of the Public Service or of State agencies or instrumentalities;
- (h) to use the expertise and resources of the department to provide consultative, advisory or other services for profit;
- (i) to turn to account any intellectual property that is vested in the Minister;
- (j) to apply for, hold, exploit and dispose of any patent, patent right, design right, copyright or similar right; and
- (k) to further the objects of this Act by providing financial support, in accordance with Part 3.

[Section 6 amended: No. 24 of 2021 s. 6.]

7. Powers of Minister

- (1) The Minister has the power to do all things necessary or convenient to be done for or in connection with the performance of the Minister's functions.
- (2) Without limiting subsection (1), the Minister may for the purposes of performing any function —
 - (a) acquire, hold, manage, improve, develop and dispose of any real or personal property;
 - (b) enter into contracts or arrangements;
 - (c) borrow money by way of loan, advance or overdraft;
 - (d) obtain or provide credit;
 - (e) provide, take or arrange security;
 - (f) fix and collect fees, charges or other payments for, or in respect of, the provision of services or the performance of work by the department;
 - (g) act in conjunction with —

- (i) any person or firm, or a public authority or local government; or
 - (ii) any department of the Public Service or any agency or instrumentality of the State or Commonwealth;
 - (h) with the approval of the Treasurer, invest any money (including holding shares, units and other interests) standing to the credit of the Account;
 - (i) appoint agents and attorneys, and act as agent for other persons; and
 - (j) do anything incidental to any of the Minister's powers.
- (3) Money borrowed by the Minister in the exercise of a power under this section —
- (a) may only be borrowed with the prior written approval of the Treasurer and on such terms and conditions as the Treasurer approves; and
 - (b) is not to exceed in any one financial year, in total, such amount as the Treasurer approves.
- (4) In this section —
- acquire* includes taking on lease or licence or in any other manner in which an interest in property may be acquired;
- dispose* includes dispose by way of lease, licence or bailment or in any other manner in which an interest in property may be disposed of.
- (5) For the purposes of the *State Trading Concerns Act 1916*, the activities of the Minister under this Act are to be taken to have been expressly authorised by Parliament.

8. Delegation

- (1) The Minister may delegate the performance of any of the Minister's functions or powers under this Act, other than this power of delegation, to the chief executive officer of the department.

- (2) A delegation of a function or power to the chief executive officer of the department may authorise the chief executive officer to subdelegate the function or power to any other officer of the department in accordance with any conditions specified in the delegation.
- (3) A function performed, or a power exercised, by a delegate or subdelegate is to be taken to be performed or exercised by the Minister.
- (4) A delegate or subdelegate performing a function or exercising a power under this section is to be taken to do so in accordance with the terms of the delegation or subdelegation unless the contrary is shown.
- (5) Sections 58 and 59 of the *Interpretation Act 1984* apply to a subdelegation under subsection (2) as though it were a delegation.
- (6) A delegation or subdelegation must be in writing.

Part 3 — Financial support

9. Financial support

For the purpose of furthering the objects of this Act, the Minister may provide financial support, in accordance with this Part, in the form of any, or a combination, of the following —

- (a) grants;
- (b) loans;
- (c) subsidies;
- (d) guarantees;
- (e) indemnities;
- (f) concessions on any tax, duty or charge due to the State;
- (g) any other direct or indirect financial support or assistance.

10. Guidelines

- (1) The Minister is to approve industry support guidelines with respect to the provision of financial support.
- (2) The Minister may approve any revision of the whole or any part of a guideline or revoke the approval of a guideline.
- (3) The guidelines are not to be inconsistent with this Act or the regulations.

11. Provision of financial support

- (1) Subject to this section, financial support is to be provided in accordance with the guidelines.
- (2) Subject to subsection (3), financial support in respect of which there are no relevant guidelines may be provided if the value of the support in each case does not exceed the maximum amount prescribed by the regulations for the purpose of this subsection.

s. 11

- (3) Financial support in the form of a guarantee, indemnity or concession (whether or not in accordance with the guidelines) may be provided only if the prior written approval of the Treasurer is obtained in each case.
- (4) Financial support which could not otherwise be provided under this section may be provided if the prior written approval of the Treasurer is obtained in each case.
- (5) Despite anything else in this section, financial support in the form of a concession is subject to any written law imposing, or relating to, the tax, duty or charge to which the concession applies and may be provided only with the agreement of the Minister responsible for the administration of the written law.

Part 4 — Staff

12. Chief executive officer

- (1) A chief executive officer of the department is to be appointed under Part 3 of the *Public Sector Management Act 1994*.
- (2) Subject to the control of the Minister, the chief executive officer is to administer the day to day operations of the department.

13. Other staff

- (1) Public service officers may be appointed or made available under Part 3 of the *Public Sector Management Act 1994* as is necessary for the administration of this Act.
- (2) Subject to subsection (3), the chief executive officer may engage a person under —
 - (a) a contract for services; or
 - (b) a contract of service,otherwise than under the *Public Sector Management Act 1994*.
- (3) Subsection (2) does not empower the chief executive officer to engage a person if —
 - (a) the principal place of residence of that person is in this State; or
 - (b) the services the person is engaged to provide, or is to carry out, are to be provided or carried out entirely or predominantly in this State.
- (4) Subsections (2) and (3) do not affect the operation of section 100 of the *Public Sector Management Act 1994*.

14. Use of other government staff etc.

- (1) The chief executive officer may by arrangement make use, either full-time or part-time, of the services of any officer or employee —
 - (a) in the Public Service;
 - (b) in a State agency or instrumentality; or
 - (c) otherwise in the service of the Crown in right of the State.
- (2) The chief executive officer may by arrangement with —
 - (a) a department of the Public Service; or
 - (b) a State agency or instrumentality,make use of the facilities of the department, agency or instrumentality.
- (3) An arrangement under subsection (1) or (2) is to be made on such terms as are agreed to by the parties.

Part 5 — Financial provisions

15. Western Australian Industry and Technology Development Account

- (1) An agency special purpose account called the Western Australian Industry and Technology Development Account is established under section 16 of the *Financial Management Act 2006*.
- (2) The Account is to be credited with —
 - (a) moneys from time to time appropriated by Parliament for the purpose of giving effect to this Act; and
 - (b) all moneys borrowed by the Minister; and
 - (c) all other moneys received under the authority of this Act.
- (3) The Account is to be charged with such expenditure as is necessary —
 - (a) for the purposes of giving effect to this Act; and
 - (b) for the repayment of money borrowed by the Minister and interest on that money; and
 - (c) to provide financial support in accordance with this Act,and any other expenditure authorised under this Act.

[(4) *deleted*]

[Section 15 amended: No. 77 of 2006 s. 17; No. 24 of 2021 s. 7.]

16. Borrowing from Treasurer

The Minister may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.

s. 17

17. Guarantee by Treasurer

- (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee the payment of any money payable by the Minister in respect of money borrowed by the Minister other than from the Treasurer under section 16.
- (2) A guarantee is to be in such form and contain such terms and conditions as the Treasurer determines.
- (3) Before a guarantee is given —
 - (a) the Treasurer is to be given such security as the Treasurer requires; and
 - (b) all instruments that are necessary for the purpose are to be executed.

18. Effect of guarantee

- (1) The due payment of moneys payable by the Treasurer under a guarantee given under section 17 is guaranteed by the State.
- (2) Any such payment is to be made by the Treasurer and charged to the Consolidated Account, and this subsection appropriates that Account accordingly.
- (3) The Treasurer is to cause to be credited to the Consolidated Account any amount received or recovered in respect of any payment made by the Treasurer under a guarantee given under section 17.

[Section 18 amended: No. 77 of 2006 s. 4 and 5(1).]

19. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial

administration, audit and reporting of departments apply to and in respect of the department and the Account.

[Section 19 amended: No. 77 of 2006 s. 17.]

[Part 6 (s. 20-26) deleted: No. 24 of 2021 s. 8.]

Part 7 — Miscellaneous

27. Technology parks

- (1) The Minister may, from time to time, by notice published in the *Gazette* declare as a technology park any area of land which provides a physical environment in which —
 - (a) research into, and the development and use of, industry, science and technology; or
 - (b) the production or assembly of products,may be carried on.
- (2) The Minister may amend or revoke a notice under subsection (1) by subsequent notice published in the *Gazette*.
- (3) A notice under subsection (1) —
 - (a) is to contain a description of the area of land sufficient to identify its location; and
 - (b) may assign a name to the technology park.

28. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done in the performance or purported performance of a function, or the exercise or purported exercise of a power, under this Act.
- (2) The protection given by this section applies even though the thing done in the performance or purported performance of a function, or the exercise or purported exercise of a power, under this Act may have been capable of being done whether or not this Act had been enacted.
- (3) This section does not relieve the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

29. Confidentiality

- (1) This section applies to a person who performs any function, or exercises any power, under this Act.
- (2) Any person to whom this section applies must not, directly or indirectly, record, disclose or make use of any information obtained in the course of performing a function or exercising a power under this Act except —
 - (a) for the purpose of performing a function or exercising a power under this Act;
 - (b) as required or allowed by this Act or under another written law;
 - (c) with the written consent of the person, or persons, who provided the information;
 - (d) for the purpose of the investigation of any suspected offence or the conduct of proceedings for any offence; or
 - (e) at the written direction of the Minister, for the purpose of providing information to the general public concerning any conduct or operation of the department or the Minister under this Act.
- (3) Despite subsection (2), a person to whom this section applies must not, in respect of information that would reveal a trade secret or information that has commercial value to the person, or persons, who provided the information —
 - (a) disclose such information publicly; or
 - (b) make any reference to such information, or any characteristic of the information, in a manner likely to reveal the information in any report or statement prepared for the purposes of this Act under the *Financial Management Act 2006*,without the written consent of the person, or persons, who provided the information.

- (4) Sections 81 and 82 of the *Financial Management Act 2006* are not affected by the operation of this section.

Penalty: \$25 000 or 2 years imprisonment, or both.

[Section 29 amended: No. 77 of 2006 s. 17.]

30. Execution of documents

- (1) The Minister is to have a common seal.
- (2) A document is duly executed by the Minister if —
- (a) the common seal of the Minister is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the Minister by an officer or officers of the department authorised to do so under subsection (5).
- (3) The common seal of the Minister is not to be affixed to any document except as authorised by the Minister.
- (4) The common seal of the Minister is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.
- (5) The Minister may, by writing under the Minister's seal, authorise an officer or officers of the department to sign documents on behalf of the Minister, either generally or subject to such conditions or restrictions as are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is proved.
- (7) Where a document is produced bearing a seal purporting to be the common seal of the Minister it is to be presumed that the seal is the common seal of the Minister until the contrary is proved.

31. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made, in relation to a technology park —
 - (a) prohibiting or regulating the construction of buildings;
 - (b) prescribing the materials for, and the design and siting of, buildings;
 - (c) prescribing requirements for the maintenance of buildings;
 - (d) regulating the use of land and prohibiting activities on the land;
 - (e) prohibiting changes in the use of land or prescribing conditions on which the use of land may be changed;
 - (f) prescribing requirements for landscaping;
 - (g) prohibiting or regulating any activity that may impair the amenity of the park or interfere with other activities in the park; and
 - (h) prohibiting or regulating any activity that may endanger life or property.
- (3) Regulations made under subsection (2) are to apply in addition to any other law.
- (4) The regulations may create offences and may provide for a penalty not exceeding \$5 000.

32. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after every fifth anniversary of its commencement.

s. 32

- (2) In the course of that review the Minister is to consider and have regard to —
- (a) the attainment of the objects of this Act; and
 - (b) the effectiveness of operations of, and the need for the continuation of, the department; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister is to prepare a report on the review and cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared.

[Section 32 amended: No. 24 of 2021 s. 9.]

Part 8 — Repeals, transitional provisions and consequential amendments

33. Repeals and transitional provisions

- (1) The following Acts are repealed —
 - (a) the *Technology and Industry Development Act 1983*;
 - (b) the *Industry (Advances) Act 1947*; and
 - (c) the *Inventions Act 1975*.
- (2) The transitional provisions set out in Schedule 2 have effect.

[34. Omitted under the Reprints Act 1984 s. 7(4)(e).]

[Schedule 1 deleted: No. 24 of 2021 s. 10.]

Schedule 2 — Transitional provisions

[Section 33(2)]

1. Interpretation

In this Schedule —

commencement day means the day on which this Act comes into operation;

Industry Act means the *Industry (Advances) Act 1947*;

Inventions Act means the *Inventions Act 1975*.

2. Technology parks declared under the repealed Act

A notice declaring a technology park under section 4 of the repealed Act in effect immediately before the commencement day continues to have effect as if it had been made under section 27 of this Act.

3. Secrecy

(1) Section 20 of the repealed Act continues to have effect on and after the commencement day in respect of every person referred to in subsection (2) of that section as if the repealed Act had not been repealed.

(2) Section 16 of the Inventions Act continues to have effect on and after the commencement day in respect of every person referred to in subsection (1) of that section as if the Inventions Act had not been repealed.

4. Staff

A contract for services under section 16(2) of the repealed Act in existence immediately before the commencement day is to continue to have effect, subject to the operation of this Act, according to its terms and conditions.

5. Money to be credited to Account

(1) Any money standing to the credit of the Inventions Assistance Trust Fund, established under the Inventions Act, immediately before the commencement day is to be placed to the credit of the Account.

- (2) A reference in any agreement, instrument or other document to —
- (a) the “Western Australian Technology and Industry Development Account” provided for under the repealed Act; or
 - (b) the “Inventions Assistance Trust Fund” established under the Inventions Act,

has effect on and after the commencement day as if it were a reference to the Account.

6. Applications under repealed Acts

An application for assistance under the repealed Act, the Inventions Act or the Industry Act in respect of which a final decision is not made before the commencement day is to be considered and determined by the Minister as if it were an application for financial support under this Act.

7. Transfer of assets, liabilities and records under the Industry Act or the Inventions Act

- (1) On the commencement day all assets that were, immediately before the commencement day vested in or under the control of or standing to the credit of —
- (a) the Minister, within the meaning of the Inventions Act, for the purposes of that Act; or
 - (b) the Treasurer for the purposes of the Industry Act,
- are, subject to subclause (4), vested in the Minister.
- (2) On the commencement day the Minister becomes liable to pay, bear or discharge all of the liabilities of —
- (a) the Minister, within the meaning of the Inventions Act, that have been incurred for the purposes of that Act; or
 - (b) the Treasurer that have been incurred for the purposes of the Industry Act,
- and that existed immediately before the commencement day.
- (3) On and after the commencement day the Minister is to have control of all registers, papers, documents, minutes, receipts, books of account

and other records (however compiled, recorded or stored) relating to —

- (a) the operations of the Minister, within the meaning of the Inventions Act, under that Act; or
 - (b) the operations of the Treasurer under the Industry Act.
- (4) Any trust, condition or stipulation to which an asset vested in the Minister by subclause (1) is subject is to be given effect to by the Minister.

8. Agreements, instruments and proceedings under the Industry Act or the Inventions Act

- (1) Any agreement, instrument, guarantee or indemnity made or given —
- (a) by the Minister, within the meaning of the Inventions Act, under that Act; or
 - (b) by the Treasurer under the Industry Act,

and subsisting immediately before the commencement day has effect on and after the commencement day as if —

- (c) that agreement, instrument, guarantee or indemnity had been made or given by the Minister; and
 - (d) unless the context otherwise requires, any reference in that agreement, instrument, guarantee or indemnity to the Treasurer, or the Minister within the meaning of the Inventions Act, were a reference to the Minister.
- (2) If anything has been lawfully commenced by or under the authority of —
- (a) the Minister within the meaning of the Inventions Act; or
 - (b) the Treasurer under the Industry Act,

before the commencement day that thing may be carried on and completed by or under the authority of the Minister under this Act.

- (3) Without limiting the generality of subclause (2), any legal or other proceedings or any remedies that might, but for —
- (a) the repeal of the Inventions Act, have been commenced or continued or available by or against or to the Minister within the meaning of that Act; or

- (b) the repeal of the Industry Act, have been commenced or continued or available by or against or to the Treasurer under that Act,

may be commenced or continued, or are available, by or against or to the Minister.

9. Officials to take cognizance of clauses 5, 7 and 8

Any relevant official who records and registers documents under a written law is to take cognizance of clauses 5, 7 and 8 and is authorised to make any entry or memorial or register any document necessary to show the effect of those clauses.

10. Evidence

A statement in an agreement, instrument or other document —

- (a) that any asset has become vested in the Minister; or
- (b) that the Minister has become responsible for any liability,

under clause 7 is presumed to be true until the contrary is proved.

11. *Interpretation Act 1984* not affected

Nothing in this Schedule limits the operation of the *Interpretation Act 1984*.

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Notes

This is a compilation of the *Industry and Technology Development Act 1998* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Industry and Technology Development Act 1998</i>	13 of 1998	20 May 1998	1 Jul 1998 (see s. 2 and <i>Gazette</i> 26 Jun 1998 p. 3369)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285)
Reprint 1: The <i>Industry and Technology Development Act 1998</i> as at 5 Dec 2003 (includes amendments listed above)			
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1) and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Industry and Technology Development Amendment Act 2021</i> Pt. 2	24 of 2021	3 Dec 2021	4 Dec 2021 (see s. 2(b))

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Account	4
acquire	7(4)
commencement day	Sch. 2 cl. 1
department	4
dispose	7(4)
financial support	4
function	4
government trading enterprise	4
guidelines	4
industry	4
Industry Act	Sch. 2 cl. 1
Inventions Act	Sch. 2 cl. 1
repealed Act	4
technology	4
technology park	4
Treasurer	4