

Mr President

I move that the Bill be now read a second time.

The purpose of the Limited Partnerships Bill 2016 (the Bill) is to repeal and replace the *Limited Partnerships Act 1909* (the Act). The State Government's purpose in introducing the Bill is to rewrite existing legislative provisions which govern the formation of limited partnerships to provide a new and more modern legislative framework, as well as to introduce a new form of limited partnership, the incorporated limited partnership.

The Act is over 100 years old and has not been the subject of significant reform during that time. The State Government believes that the time has come to modernise the law to enable Western Australian investors to invest venture capital into innovative businesses.

This sentiment is echoed in the recently tabled Economics and Industry Standing Committee Report, *Growing WA through Innovation: The Western Australian Government's role in fostering innovation to expand and diversify the economy*, which recommended that the State Government, as a priority, complete the review of the Act and introduce legislation to amend the Act to allow the formation of venture capital limited partnerships in Western Australia.

Mr President, limited partnerships are a special statutory form of partnership designed to facilitate business investment. The special feature of a limited partnership is that at least one of the partners in the partnership is a limited partner whose liability under the partnership is limited to the amount of their capital contribution to the partnership. As a result of this benefit of limited liability, limited partners are prohibited from taking part in the management of the partnership, and if they do so, they lose their limited liability status.

Because of their unique structure, limited partnerships provide an attractive investment vehicle for investors. In particular, the structure has come to be favoured by the venture capital investment industry, in part because of taxation treatment of investments into limited partnerships.

The reforms to limited partnership law in Western Australia have a long history, originating in 1992, when reform of the Act was first proposed with the introduction of the Limited Partnerships Bill 1992 into Parliament. The 1992 Bill did not, however, progress further due to the prorogation of Parliament in January 1993.

Limited Partnerships reform did not receive any further attention until 2002 when the Commonwealth Government introduced a package of taxation reform measures designed to stimulate venture capital investment in Australian innovation. In order to take advantage of the taxation benefit however, venture capital investors must invest through a limited partnership structure registered under State legislation.

As the Act has not been amended in over 100 years, the primary purpose of the Bill is to provide investors in this day and age with the certainty they require in regards to their limited liability. In addition, and as part of the modernisation of the regulatory framework, the Bill will also provide for the registration of incorporated limited partnerships, a new modern limited partnerships structure developed specifically for

use with the *Venture Capital Act 2002* (Cth) (Venture Capital Act). By allowing incorporated limited partnerships to register in Western Australia, a barrier to venture capital investment in Western Australia will be removed.

Mr President, I will now summarise the key features of the Bill.

Most importantly, the Bill clarifies and expands the limitation of liability provisions which protect the liability of limited partners. In particular, concerns about the scope of the term “debts and obligations” in the Act will be addressed by the use of a new term “liabilities” which will be defined to include all types of liabilities.

The formation, membership and registration provisions of the Act will also be updated so that the requirements reflect a best practice regulatory approach and are appropriate and relevant for the protection of third parties dealing with limited partnerships, as well limiting red tape and expense for business.

As a further measure to protect third parties in their dealings with limited partnerships, provisions will be inserted that will require the identification of limited partnerships to the public when conducting business activities.

The Bill will also provide for the registration in Western Australia of a new type of limited partnership, the incorporated limited partnership. This type of limited partnership is restricted to investors registering limited partnerships under the Venture Capital Act and engaged in certain venture capital projects in Australia.

Unlike common law partnerships and ordinary limited partnerships, an incorporated limited partnership is a separate legal entity from its partners. This encourages creditors to pursue the limited partnership in the first instance and clarifies that no agency arrangement exists between the general partners and limited partners. Partnerships with this structure are typically used for international venture capital investment.

One of the concerns of investors in limited partnerships relates to the “safe harbour provisions” of the Act. These provisions recognise that limited partners will often play an active role in overseeing their investment in the partnership, and that such activities should not fall under the ambit of “management” such that the prohibition against a limited partner taking part in management be invoked and their limited liability status be lost.

The Bill addresses these concerns by expanding the activities which a limited partner may be involved in and still retain limited liability status. In regards to limited partners of incorporated limited partnerships, these safe harbour provisions are expanded even further due to the special nature of these investments, in order to recognise the active role that limited partners in these partnerships may play in overseeing the investments of the partnership and in advising and assisting the investees.

The Bill also introduces disqualification provisions in regards to the persons who are able to manage limited partnerships and incorporated limited partnerships. In particular, the Bill proposes that the following persons will be disqualified from being a general partner of a limited partnership or an incorporated limited partnership, or manage a limited partnership or incorporated limited partnership:

- insolvents;
- a person convicted of an offence involving fraud or dishonesty punishable on conviction by three months or more imprisonment;
- a person convicted of an offence and in prison serving a sentence of imprisonment;
- a person who has been convicted of an offence against the Act prescribed by the regulations; and
- a person who is disqualified from managing a corporation under the *Corporations Act 2001* (Cth) or is disqualified by the regulations.

An insolvent will be disqualified for the period of its insolvency. Where the disqualification is as a result of conviction, the person will be disqualified for a period of five years from conviction, except where the conviction results in imprisonment, in which case the period of five years will run from the time of the person's release from custody.

The Bill also provides for a disqualified person to apply to the Commissioner for Consumer Protection for leave to be a general partner or take part in the promotion or management of a limited partnership or incorporated limited partnership.

The Bill will also include powers for the Commissioner to investigate potential breaches of the legislation. Currently, there is not a clear range of investigation and enforcement powers in the Act. The Bill will incorporate the investigation and enforcement provisions of the *Fair Trading Act 2010* to enable the Commissioner to investigate potential breaches of the legislation.

Finally, the Bill will clarify the winding up and dissolution provisions for limited partnerships and incorporated limited partnerships.

Pursuant to standing order 126(1), I advise that this Bill is not a uniform legislation bill. Specifically, the Bill does not fall within any of the five categories of uniform legislation as described in the Standing Committee on Uniform Legislation and Statutes Review Report 64 Appendix 1.

The Bill does not give effect to an intergovernmental agreement to which the State of Western Australia is a party, nor is there a memorandum of understanding or a record of agreement from the Council of Australian Governments regarding the introduction of uniform legislation on limited partnerships.

This Bill, by reason of its subject matter, does not introduce a uniform scheme or uniform laws throughout the Commonwealth. While one aspect of the Bill relates to the registration of a particular partnership entity anticipated under Commonwealth legislation since 2007 (i.e. the Venture Capital Act), each jurisdiction has acted independently to enact its own limited partnerships legislation and provide its own regulatory framework for the registration of incorporated limited partnerships.

Mr President, the reforms in this Bill are long overdue. The time has now come for Western Australia to complete the past attempts made to modernise the Act and enable Western Australian investors to invest venture capital into innovative businesses with the security of knowing that there is a best practice regulatory structure in place.

The State Government is a strong supporter of innovation and these reforms are in line with the State Government's commitment to foster a culture of innovation in Western Australia.

I commend the Bill to the house and table the explanatory memorandum.