



Government of Western Australia
Department of Commerce

EXPLANATORY MEMORANDUM

Limited Partnerships Bill 2016

Signed:

Hon. Michael Mischin MLC
MINISTER FOR COMMERCE

___ / ___ / ___

LIMITED PARTNERSHIPS BILL 2016

Overview of Bill

The Limited Partnerships Bill 2016 (the Bill) repeals and replaces the *Limited Partnerships Act 1909*.

Its purpose is to provide a more modern regulatory approach to limited partnerships and increase certainty for investors relying on the limited liability protection provided under the legislation. The Bill will also introduce a new limited partnership structure, the incorporated limited partnership, exclusively for use with the Commonwealth *Venture Capital Act 2002* (Venture Capital Act (Cth)) which offers taxation benefits, including flow-through taxation treatment and capital gains tax exemption, for eligible venture capital investments.

The Bill's reforms include:

- Modernisation of the formation, membership and registration provisions so that the legislative requirements reflect a best practice approach to the registration of limited partnerships and are appropriate and relevant for the protection of third parties dealing with such partnerships.
- Clarification and expansion of the provisions which establish a limitation of liability for limited partners.
- Introduction of a new statutory form of limited partnership, the incorporated limited partnership, developed solely for limited partnerships registered or intending to be registered under the Venture Capital Act (Cth) to obtain taxation concessions for eligible venture capital investments.
- Expansion of the safe harbour provisions for the involvement of limited partners in the “management” of a limited partnership or incorporated limited partnership (with more allowances being made in the case of incorporated limited partnerships due to the special nature of their investments).
- Introduction of disqualification provisions regarding persons involved in the management of limited partnerships and incorporated limited partnerships.
- The requirement to identify limited partnerships and incorporated limited partnerships in public dealings.
- Modernisation of the investigatory and inspection powers of the Commissioner to be used in enforcing the legislation.

PART ONE - PRELIMINARY

Clause 1 Short Title

This clause provides the short title of the *Limited Partnerships Act 2016* (the Act).

Clause 2 Commencement

This clause provides that sections 1 and 2 of the Act will commence on Royal Assent and the remainder of the Act on a day fixed by proclamation. Different days can be fixed for different provisions.

Clause 3 Terms used

Clause 3 sets out definitions for the purposes of the Bill. Key definitions are explained below.

The term “**AFOF**” refers to the term “AFOF” as defined in *the Income Tax Assessment Act 1997* (Cth) section 995-1, being an Australian venture capital fund or funds registered under the *Venture Capital Act 2002* (Cth). This represents one of the categories of limited partnerships which can be registered as an incorporated limited partnership under the Act.

The term “**agreed contribution**” defines the amount of any capital or property that a limited partner has agreed to contribute to the partnership. This replaces the current reference to “the sum contributed by any limited partner” by extending the reference to agreed contributions and includes both capital and property.

The term “**assets**” is used specifically in regards to the winding up of an incorporated limited partnership and is intended to cover the assets available for distribution to the partners after a winding up of the partnership.

The term “**associate**” is defined in section 4 of the Act.

The term “**corresponding law**” is used to refer to laws of other jurisdictions which have been declared by the Governor to be a corresponding law or, in the relation to incorporated limited partnerships, substantially correspond to the provisions of the Act. This term is used in the provisions which recognise the limitation of liability of limited partners of partnerships formed under the law of another jurisdiction for liabilities incurred in the State.

The term “**ESVCLP**” refers to the term “ESVCLP” as defined in the *Income Tax Assessment Act 1997* (Cth) section 995-1, being an Early Stage Venture Capital Limited Partnership registered under the *Venture Capital Act 2002* (Cth). This represents one of the categories of limited partnerships which can be registered as an incorporated limited partnership under the Act.

The term “**external partnership**” is intended to capture all forms of partnerships formed in other jurisdictions and ensures that these partnerships are included in references made to partnerships.

The term “**firm name**” refers to the name of a limited partnership or incorporated limited partnership which is recorded in the register, or in the case of an external partnership, the name under which that partnership carries on business, or of any other partnership, a firm-name as defined in the *Partnership Act 1895* section 10. This name identifies the partnership and is required to be on all business documentation.

The term “**general partner**” refers to the partner who is recorded on the register as being a general partner. This links the status of a partner to the details on the register. General partners of limited partnerships and incorporated limited partnerships are liable for the debts of those partnerships subject to the provisions of the new Act.

The term “**incorporated limited partnership**” refers to an incorporated limited partnership formed under the Act. This is a new form of limited partnership introduced solely for the purposes of venture capital investments.

The term “**liability**” replaces the previous reference to “debts and obligations of the firm” and is intended to include all liabilities of a firm. This addresses concerns raised by investors that the existing definition may not adequately encompass all liabilities of the firm.

The term “**limited partner**” is defined as the person who is recorded on the register as being the limited partner. This links the status of the partners to the details on the register. The liability of limited partners’ for the liabilities of the partnership is limited in accordance with the provisions of the Act.

The term “**limited partnership**” refers to a limited partnership formed by registration under section 10 of the Act.

The term “**partnership**” is defined in section 5 of the Act.

The term “**register**” refers to the register of limited partnerships and incorporated limited partnerships kept under section 78(1).

The term “**registered office**” in regards to a limited partnership and an Incorporated limited partnership refers to the place recorded in the register as the principal office in Western Australia.

The term “**registered particulars**” refers to the particulars which are recorded in the register in regards to the limited partnership or incorporated limited partnership. Such particulars are also recorded on the certificate of registration issued to the general partners.

The term “**show cause notice**” refers to a notice given by the Commissioner to an incorporated limited partnership under section 56 of the Act, requiring the incorporated limited partnership to show cause as to why the partnership should not be wound up by the Commissioner.

The term “**VCLP**” refers to the term “VCLP” as defined in the *Income Tax Assessment Act 1997* (Cth) section 995-1 which defines this as a Venture Capital Limited Partnership registered under the *Venture Capital Act 2002* (Cth). This represents one of the categories of limited partnerships which can be registered as an incorporated limited partnership under the Act.

The term “**VCMP**” refers to a Venture Capital Management Partnership as defined in subsection 94D(3) of the *Income Tax Assessment Act 1997* (Cth). Subsection 94D(3) currently provides that a VCMP is a limited partnership that is a general partner of one or more VCLPs, ESVCLPs, or AFOFs *and* only carries on activities that are related to being such a general partner.

The term “**winding up notice**” refers to a notice given by the Commissioner to an incorporated limited partnership under section 58 of the Act requiring the partnership to be wound up following the giving of a show cause notice.

Clause 4 **Term used: associate**

Clause 4 defines an associate in relation to a general partner, a limited partner and an incorporated limited partnership. It includes, where the partner is a partnership, other partners in that partnership, persons holding an interest in the partner, in the case of a general partner, persons to whom the general partner has delegated their power or obligations, and where the partner is a body corporate, related body corporates as well as directors and employees of a partner. An associate in relation to an incorporated limited partnership includes any person or partnership in which the incorporated limited partnership has an interest and where an interest is held in a body corporate, related body corporates. These definitions are used in the context of the safe harbour provisions, to extend the permitted activities a limited partner may participate in, to associates of the various entities.

Clause 5 **Term used: partnership**

Clause 5 links the definition of a partnership under the Act to the definition of partnership in the *Partnership Act 1895*. This is required because in Western Australia the limited partnership provisions are contained in separate legislation to the *Partnership Act 1895*. Part 7 of the Act amends the *Partnership Act 1895* to provide that notwithstanding the exclusion of companies and associations registered under the *Corporations Act 2001* (Cth) or formed under any other act, the Partnership Act applies to limited partnerships and incorporated limited partnerships to the extent set out in the Act.

Sub clause (2) provides that acts done merely in connection with the making of an application for registration as a limited partnership or incorporated limited partnership, will not of itself create a partnership between those persons. The purpose of this provision is to ensure that limited partners will not be liable as general partners merely as a result of acts preparatory to the registration process.

Part 2 – Application of laws of partnership

Clause 6 Application of laws of partnership to limited partnership

Clause 6 applies the provisions of the *Partnership Act 1895* to limited partnerships, subject to the modifications specified in that clause and in the Act. These modifications take into account the limited role and liability of limited partners. For example, section 22(1) of the *Partnership Act 1895* does not apply to admissions and representations by limited partners in recognition of a limited partner's exclusion from management responsibilities in the firm. Under sub clause (4), the provisions in the Act are to prevail in the event of any inconsistency between the Act and the *Partnership Act 1895* in regards to limited partnerships. This clause provides limited partnerships with specific details about how the *Partnership Act 1895* is to apply to those partnerships.

Clause 7 Application of general law to incorporated limited partnership

Clause 7 excludes an incorporated limited partnership, the relationship between the partners in an incorporated limited partnership and the relationship between an incorporated limited partnership and its partners, from being a partnership at common law. This preserves the corporate nature and separate legal status of an incorporated limited partnership and ensures that partners of such partnerships will not be deemed partnerships under the general law.

Clause 8 Application of Partnership Act to incorporated limited partnership

Sub clauses 8(1) and 8(2) provide for the specific clauses of the *Partnership Act 1895* which will apply to incorporated limited partnerships.

Sub clause 8(3) provides that the provisions in the Act are to prevail in the event of any inconsistency between the Act and the *Partnership Act 1895* in regards to incorporated limited partnership.

Clause 9 Application of Partnership Act to incorporated limited partnership: modifications

Clause 9 provides the modifications which will apply to the *Partnership Act 1895* provisions to take into account the limited role and liability of limited partners as well as the corporate status of incorporated limited partnerships.

For example, sub clause 9(a) modifies the *Partnership Act 1895* to provide that a reference in that Act to a partnership or firm is to be read as if it were a reference to an incorporated limited partnership as a separate legal entity and not to the partners in that partnership. As such, the incorporated limited partnership has rights and liabilities that are distinct from those of the partners in it, whether limited or general.

Clauses 8 and 9 provide incorporated limited partnerships with specific details about how the *Partnership Act 1895* is to apply to those partnerships.

Part 3 – Limited partnerships

Division 1 – Nature, formation and membership

Clause 10 Formation of limited partnership

Clause 10 of the Bill provides that a limited partnership is formed on registration under the Act as a limited partnership. This clarifies the point in time at which a registered limited partnership can be taken to have been formed.

Clause 11 Composition of limited partnership

Clause 11 of the Bill specifies the number and types of partners which are required to constitute a limited partnership.

Sub clause (3) retains the current limit of 20 general partners. This mirrors the approach taken in the *Corporations Act 2001* (Cth) in regards to outsized partnerships and ensures that all partners with unlimited liability have the ability to take an active part in the management and control of the partnership business.

Sub clause (4) provides that persons (which includes a body corporate and a partnership) can be a general or a limited partner. This clarifies the current position in the Act which does not specify whether such entities may be general partners. This also mirrors the approach in the *Partnership Act 1895* which allows body corporates to act as a partner.

The purpose of sub clause (5) is to ensure that the general partners of any partnership which is a general partner of a limited partnership, are included in the restriction on the number of general partners. This is to prevent the potential circumvention of sub clause (3) by the registration of a number of ordinary partnerships as general partners.

Clause 12 Change in membership of limited partnership

Sub clause (1) modifies the general partnership rule that no new partners can be admitted without the agreement of all the partners and recognises a limited partner's limited role by providing that new partners can join a limited partnership without the need to obtain the consent of a limited partner.

Sub clauses (2) and (3) provide that limited partners may assign their shares with the consent of the general partners and that the assignee steps into the position of a limited partner. This modifies the general partnership rule that the assignment of a partner's share can only provide the assignee with a right to profits.

Sub clause (4) provides that the application of this section can be varied by the partners.

Clause 13 Differences between partners

Clause 13 modifies the general partnership rule that general business decisions may be decided by a majority of partners, to provide that such decisions may be decided by a majority of the general partners. This reflects the position that it is only the general partners of a limited partnership who are involved in the management of the business.

Sub clause 2 provides that the application of this section may be varied by the partnership agreement or with the consent of the partners.

Division 2 - Management

Clause 14 Limited partner must not take part in management of limited partnership

Clause 14 prohibits limited partners of limited partnerships from taking part in the management of the business of the partnership.

Sub clause (3) provides that a limited partner who takes part in the management of a limited partnership loses their limitation of liability. As such, they become liable as if they are a general partner, for the liabilities incurred by the partnership during the time they have taken part in the management of the business. This restriction recognises the crucial difference between limited and general partners, being that limited partners are solely liable for the liabilities of the partnership to the extent of their capital contributions but have no right to participate in its management.

Sub clause (4) provides that the partners cannot contract out of the application of this section.

Clause 15 When does limited partner take part in management?

Clause 15 introduces new “safe harbour” provisions whereby certain activities by the limited partner are deemed not to constitute the taking part in the management of the business. This enables limited partners to take reasonable steps to protect their investment in the limited partnership without risking losing the limitation of their liability.

Sub clause (3) provides that the partners cannot contract out of the application of this section.

Division 3 – Registration

Clause 16 Application for registration

Sub clause (1) provides that an application for registration as a limited partnership may be made by a partnership or a proposed partner in the proposed limited partnership.

Sub clause (2) provides that an application for registration may be made by lodging a statement in the approved form with the Commissioner.

Sub clause (3) lists the requirements that an application for registration must address or include, such as:

- The proposed firm name (this enables the Commissioner to verify that the proposed name of the firm is not undesirable or likely to be confused with another business name).
- The address of the proposed registered office (which must be in Western Australia).
- The name of each proposed partner.
- The address of each proposed partner (a person's personal details may be withheld from public inspection of the register in circumstances prescribed by the regulations).
- Identification of the general and limited partners and whether they are individuals, bodies corporate or partnerships.
- A statement in relation to each proposed limited partner containing details of their agreed contribution to which their liability is limited and the amount actually contributed by the partner.

Clause 17 Registration

Sub clause (1) requires the Commissioner to register a limited partnership if an application for registration is made under the Act.

Sub clause (2) provides that, despite sub clause (1), the Commissioner must not register a limited partnership if the composition requirements are not satisfied; if the firm name contravenes the requirements in sub clause 13(2)(b); the proposed name would not be eligible for registration under the *Business Names Registration Act 2011* (Cth) (BNRA); or is satisfied that the proposed name is undesirable. It is intended that the register of limited partnerships and incorporated limited partnerships will be a notified register under the BNRA. This means that registration under the Act will automatically constitute registration of a business name under the BNRA ensuring that limited partnerships will not be required to also register their business names under the BNRA.

Sub clause (3) provides that if the Commissioner does not register the limited partnership, notice must be given of that decision, and of the reasons for the refusal.

Sub clause (4) provides that registration under the Act is carried out by recording the particulars in the statement lodged with the Commissioner.

Division 4 – Liability of partner

Clause 18 Limitation of liability of limited partner

Clause 18 provides for the limitation of the limited partner's liability.

Sub clause (1) provides that the limited partner's liability is not to exceed the amount shown in the register as the partner's agreed contribution.

Sub clause (2) provides that contributions made by the limited partner towards the agreed contribution will reduce the limited partner's liability as recorded in the register to the amount shown as unpaid.

Sub clause (3) provides that if any part of a contribution made by a limited partner is received back by the partner, the liability of that partner is increased to the amount shown in the register as being unpaid.

Sub clause (4) clarifies that if a partnership is a limited partner, a partner in that partnership will not be liable separately for the liabilities of the limited partnership. However, sub clause (5) provides that the partnership which is a limited partner will still be liable for the contributions it is required to make as its investment.

Clause 19 Change in liability of limited partner

Sub clause (1) protects liabilities of the partnership from reductions in the limited partner's investment, where those liabilities were incurred prior to the reduction.

Sub clause (2) provides that where a limited partner increases their investment on the register, that increase will apply to all liabilities of the limited partnership (including those which arose prior to the recording of the increase of the agreed contribution on the register).

Clause 20 Effect on liability of change in status of partner

Clause 20 clarifies the effect on the liability of a partner where the status of that partner has changed.

Under sub clause (1), a general partner which becomes a limited partner, remains liable as a *general* partner for any liabilities which arose *before* that change in status.

Under sub clause (2), a limited partner which becomes a general partner, has limited liability for any liability which arose *before* that change in status.

Clause 21 Liability for business conducted outside State

Clause 21 provides that the limitation on the liability of a limited partner in a limited partnership conferred under the Act, extends to liability incurred in connection with the conduct of the partnership's business outside this State.

Clause 22 Liability under corresponding law

Clause 22 provides for the recognition of the limitation of liability of partners in limited partnerships formed under the law of another jurisdiction, for liabilities incurred in the State, provided that law has been declared to be a corresponding law by the Governor under clause 113.

Clause 23 Effect of sections 21 and 22

Clause 23 provides that sections 21 and 22 cannot be taken to imply that a limited partner in a limited partnership can have liability for conduct or acts or omissions outside this State that would not attract liability if done within this State.

Clause 24 Limitation of liability provisions cannot be varied

Clause 24 provides that the provisions of the Act which relate to the limited partners' limitation of liability cannot be varied with the consent of the partners or by a partnership agreement.

Division 5 – Dissolution, cessation and winding up

Clause 25 Dissolution generally

Clause 25 essentially replicates the dissolution provisions in the *Limited Partnerships Act 1909*, and is a change in form rather than substance, save for the addition of the retirement of a limited partner as an event which does not dissolve a limited partnership.

Clause 26 Dissolution on grounds of mental disability

Sub clauses (1) and (2) modernise the ground of “lunacy” by replacing the term with the current term “mental disability” as it is defined in the *Guardianship and Administration Act 1990*.

Mental disability of a partner is not a ground for dissolution of the partnership unless the share or interest of the partner cannot otherwise be ascertained or realised.

Clause 27 Cessation

Clause 27 introduces cessation provisions for limited partnerships and specifies the following circumstances in which a partnership will cease to be a limited partnership:

- where the partnership no longer satisfies the composition requirements;
- where the partners have ceased to carry on a business in common with a view of profit;
- where the business of the partnership becomes unlawful.

Sub clause 2 provides that where a partnership ceases to be a limited partnership, it will be taken to have not been formed under the Act from the time it ceased to be a limited partnership.

Clause 28 Notice of dissolution or cessation

Clause 28 requires the general partners of a limited partnership which has dissolved or ceased to be a limited partnership, to notify the Commissioner by lodging a notice of the dissolution or cessation with the Commissioner. This ensures that the accuracy of the register of limited partnerships maintained by the Commissioner is preserved.

Sub clause (2) provides for the requirements of the notice of dissolution or cessation.

Sub clause (3) requires the Commissioner to record the dissolution or cessation and the date of the dissolution or cessation of the limited partnership, in the register as soon as practicable after receiving the notice.

Sub clause (4) imposes a penalty of \$1 500 on each of the general partners of the limited partnership for failure to comply with subsection (1).

Clause 29 No notice of dissolution or cessation

Clause 29 provides a mechanism by which, in the event that a notice has not been provided by the general partners under section 28(1) but the Commissioner is satisfied that a limited partnership has dissolved or ceased to be a limited partnership, the Commissioner may record the dissolution or cessation of the limited partnership in the register.

If the Commissioner wishes to activate this mechanism, sub clause (2) provides that the Commissioner may give the limited partnership a notice informing the limited partnership that if the partnership does not satisfy the Commissioner within 28 days that the partnership has not been dissolved or ceased to be a limited partnership, the dissolution or cessation will be recorded in the register.

Sub clause (3) requires the giving of notice by the Commissioner to be recorded in the register.

Sub clause (4) provides that if, after the expiry of 28 days after the giving of the notice to the limited partnership, the Commissioner is still satisfied that the limited partnership has dissolved or ceased to be a limited partnership, the Commissioner may record the dissolution or cessation in the register. This clause will provide the Commissioner with a process to remove no longer functioning limited partnerships from the register.

Clause 30 Winding up

Clause 30 provides that the winding up of a limited partnership is to be carried out by the general partners unless otherwise ordered by the court.

Division 6 – Cancellation of registration

Clause 31 Cancellation of registration on dissolution or cessation

Clause 31 provides that if the Commissioner records the dissolution or cessation of a limited partnership under section 28(3) or 29(4), the Commissioner must at the same time cancel the registration of the limited partnership by recording the cancellation and the date on which it takes effect in the register.

Clause 32 Cancellation of registration on incorporation

Sub clause (1) provides that if a limited partnership is registered as an incorporated limited partnership, the Commissioner must at the same time; cancel the registration of the limited partnership by recording in the register the cancellation and the day on which the cancellation took effect.

Sub clause (2) provides that any liability which arose prior to the registration as an incorporated limited partnership is to be dealt with as if the partnership were still a limited partnership.

Clause 33 Notice of cancellation

Clause 33 requires the Commissioner to notify the partners of a limited partnership of a cancellation of registration under this division and the reasons for the cancellation.

Clause 34 Effect of cancellation

Clause 34 provides that a limited partnership ceases to exist on the cancellation of its registration as a limited partnership.

Part 4 – Incorporated limited partnerships

Division 1 – Nature, formation and membership

Clause 35 Nature of incorporated limited partnerships

Clause 35 describes the nature and powers of an incorporated limited partnership. In particular, an incorporated limited partnership is a body corporate with legal personality separate from the partners in it and with perpetual succession and may sue and be sued in its firm name. It has all the legal power and capacity of an individual and also of a body corporate to carry on the business of the partnership, whether within or outside Western Australia or outside Australia.

As the incorporated limited partnership provides a limitation of liability for the limited partners by way of the corporate structure, rather than under the legislation. This structure was developed for the specific policy purpose of encouraging venture capital investment into Australia and, use of this structure is restricted to incorporated limited partnerships registering under the *Venture Capital Act 2002* (Cth).

Sub clause (6) provides that the powers of an incorporated limited partnership may be limited by the partnership agreement.

Sub clause (7) emphasises the different nature of this form of partnership by making it clear that references in the Act to an incorporated limited partnership are references to the incorporated limited partnership as a separate legal entity that is distinct from the persons or partnerships that constitute it.

Clause 36 Formation of incorporated limited partnerships

Clause 36 provides that an incorporated limited partnership is formed by and on registration under the Act.

Clause 37 Composition of incorporated limited partnerships

Clause 37 provides that an incorporated limited partnership must have at least one general partner and at least one limited partner.

Sub clauses (2) and (3) provide that an incorporated limited partnership may have any number of limited partners but as with limited partnerships, retains the limit of 20 general partners.

Sub clause (4) provides that a *person* may be a general partner or limited partner in a limited partnership. A *person* is defined to include an individual, body corporate or partnership (including an external partnership).

Sub clause (5) removes any uncertainty that may arise with respect to calculating the number of general partners in an incorporated limited partnership where a general partner is itself a partnership.

Clause 38 Change in membership

Clause 38 clarifies the process of changes in membership within an incorporated limited partnership. In particular, as with limited partnerships, the consent of the limited partner is not required for the admission of a new partner to the incorporated limited partnership and a limited partner must first obtain the consent of the general partners and the consent of the transferee before transferring the whole or part of the limited partner's interest in the incorporated limited partnership. The application of this provision may be varied by the partnership agreement or with the consent of the partners.

Clause 39 Differences between partners

This clause provides for the resolution of differences between the partners in an incorporated limited partnership to be by the majority of general partners, unless the application of the section is varied by the partnership agreement or with the consent of the partners.

Clause 40 Agents

Clause 40 describes the relationship of the partners in an incorporated limited partnership to each other and to the partnership.

Sub clauses (1) and (2) provide that, except as provided by the partnership agreement or as otherwise agreed by the partners, in general neither a general partner, the incorporated limited partnership, nor an officer, employee, agent or representative of the partnership, can bind a limited partner and a limited partner is not an agent of a general partner, another limited partner or the partnership.

Sub clause (3) provides that the application of subsections (1) and (2) may be varied by the partnership agreement or with the consent of the partners.

Sub clause (4) provides that the partners in an incorporated limited partnership may agree to be each other's agents.

Clause 41 Partnership Agreement

Clause 41 requires partners in an incorporated limited partnership to have a written partnership agreement which, subject to the Act, determines the partners' interests and their rights and duties in relation to the partnership.

Subclause (3) provides that the partnership agreement has the effect of a contract between the incorporated limited partnership and each partner.

Division 2 – Management

Clause 42 Limited partner must not take part in management of incorporated limited partnership

Clause 42 provides that a limited partner must not take part in the management of an incorporated limited partnership. A limited partner who takes part in the management of an incorporated limited partnership loses their limitation of liability to the extent set out in sub clauses (2) and (3).

As such, their acts bind the partnership and the limited partner becomes liable as if they are a general partner, for acts taken by the partner that cause loss or injury to a third party (if the third party reasonably believed the limited partner was a general partner). However, the limited partner's liability is limited to that which would be incurred if the partner were in fact a general partner, i.e. incurred as a direct result of such acts and which cannot be satisfied by the incorporated limited partnership.

Sub clause (4) provides that the application of this section cannot be varied in relation to an incorporated limited partnership by the partnership agreement or with the consent of the partners.

Clause 43 When does limited partner take part in management?

Clause 43 provides for certain “safe harbour” provisions to apply to limited partners of incorporated limited partnerships. As such, for the purposes of section 42, a limited partner is not to be regarded as taking part in the management of the business of the incorporated limited partnership merely because the partner engages in certain specified acts. As in the case of limited partnerships, safe harbour provisions enable limited partners to take reasonable steps to protect their investment in the incorporated limited partnership, without risking losing the limitation of their liability.

In the case of incorporated limited partnerships, the safe harbour provisions are expanded and enhanced to recognise the active role that limited partners in incorporated limited partnerships may play in overseeing the investments of the partnership and in advising and assisting the investees. For example, a limited partner may give advice to, or on behalf of the incorporated limited partnership in a professional capacity (sub clause 43(1)(c)(i)), or may take any action for the purpose of enforcing the rights of the limited partner (sub clause 43(1)(e)).

Sub clause (2) emphasises that the actions described in sub clause (1) are not an exhaustive list of actions that do not amount to taking part in the management of a business.

Sub clause (4) provides that the application of this section cannot be varied in relation to an incorporated limited partnership by the partnership agreement or with the consent of the partners.

Clause 44 Proposals to which section 43(1)(k)(i) applies

Clause 44 sets out the types of proposals referred to in clause 43(1)(k)(i), which have implications for the interests of investors and might be considered by a committee on which a limited partner participates.

Division 3 - Registration

Clause 45 Application for registration

Sub clause 45(1) provides that an application for registration may be made by an existing partnership (including an external partnership) or by any persons proposing to be partners in the proposed partnership, only in the circumstances specified in sub clause (2).

Sub clause (2) provides that these circumstances are that the partnership is registered; or the proposed partnership intends to apply for registration as a venture capital limited partnership (a VCLP), an early stage venture capital limited partnership (an ESVCLP), or an Australian venture capital fund of funds (an AFOF) under the *Venture Capital Act 2002* (Cth); or is recognised or intends to meet the requirements for recognition as a venture capital management partnership (VCMP) within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* (Cth). Additional circumstances may also be prescribed by the regulations.

Sub clause (3) specifies the requirements of the application for registration as an incorporated limited partnership, and subclause (4) sets out the particulars to be included in the application. These particulars are then recorded in the register as the registered particulars of the incorporated limited partnership.

Clause 46 Registration

Clause 46 requires the Commissioner to register an incorporated limited partnership upon an application being made in accordance with the Act, unless:

- the partnership does not satisfy the composition requirements; or
- the proposed name of the partnership is identical to or likely to be confused with existing registered names, would not be eligible for registration as a business name under the *Business Names Registration Act 2011* (Cth) or is undesirable.

Sub clause (3) provides that if the Commissioner does not register the incorporated limited partnership, notice must be given of that decision, and of the reasons for the refusal.

Sub clause (4) provides that registration is carried out by the recording of the particulars in the application in the register by the Commissioner.

Division 4 – Lodgment of documents relating to registration

Clause 47 Evidence of status: on registration

Clause 47 provides that where an application has been made by a partnership registered as an AFOF, ESVCLP, VCLP or VCMP, the application must be accompanied by a document evidencing its status.

Clause 48 Evidence of status: after registration

Clause 48 provides that where an incorporated limited partnership has been registered on the basis of an intention to apply for registration as an AFOF, ESVCLP, VCLP or to meet the requirements for recognition as a VCMP, the incorporated limited partnership must lodge a copy of a document evidencing its status within one month after being registered.

Under sub clause (1)(b), if the incorporated limited partnership does not achieve registration or meet the requirements within 2 years after incorporation, it must lodge with the Commissioner a notice of that fact as soon as practicable after the end of the 2 year period.

Where the registration of an incorporated limited partnership as an AFOF, ESVCLP or VCLP is revoked, or the incorporated limited partnership ceases to be a VCMP, subclause (4) provides that the incorporated limited partnership must lodge a notice of revocation or cessation with the Commissioner within 7 days after the day on which the revocation takes effect or it ceases to be a VCMP.

Sub clause (5) provides that a failure to comply with the requirement to lodge a notice is an offence committed by each general partner. A penalty of \$1 500 applies.

Division 5 – Liability of partner

Clause 49 Limitation of liability of limited partner

Clause 49 provides that, subject to section 42 and subsection (2), a limited partner in an incorporated limited partnership has no liability for the liabilities of the incorporated limited partnership or of a general partner in the partnership.

Sub clause (2) provides that this clause does not prevent contributions of capital or property, or obligations to contribute capital or property made by limited partners, being used in satisfaction of a liability of the partnership.

Clause 50 Effect on liability of change in status of partner

Clause 50 deals with the effect on the liability of a limited partner of an incorporated limited partnership where the status of that partner has changed.

Sub clause (1) provides that where a general partner becomes a limited partner, that partner remains liable as a *general* partner for any liabilities which arose before that change in status to the extent that the partnership is unable to satisfy the liability or the greater extent provided by the partnership agreement.

Sub clause (2) provides that where a limited partner becomes a general partner, the limitation on liabilities applies to any liability which arose before that change in status.

Clause 51 Liability for business conducted outside State

As for limited partnerships, clause 51 provides that the limitation on the liability of a limited partner in an incorporated limited partnership conferred under the Act extends to liability incurred in connection with the conduct of the partnership's business outside this State or as a result of an act or omission outside this State.

Clause 52 Liability under corresponding law

Clause 52 provides for the recognition of the limitation of liability of partners in incorporated limited partnerships formed under a corresponding law (recognised incorporated limited partnerships), for a liability incurred by the partnership in this State as a result of the conduct of the recognised incorporated limited partnership's business in this State or the acts or omissions in this State of a partner, the partnership or any officer, employee, agent or representative of the partnership or a general partner.

A "corresponding law" in relation to an incorporated limited partnership, is defined in clause 3 as a law which has been declared to be a corresponding law by the Governor, or which substantially corresponds to the provisions of the Principal Act relating to incorporated limited partnerships.

Clause 53 Effect of sections 51 and 52

Clause 53 provides that sections 51 and 52 cannot be taken to imply that a limited partner in an incorporated limited partnership can have liability for conduct or acts or omissions outside this State that would not attract liability if done within this State.

Division 6 – Winding up

Subdivision 1 – Voluntary winding up

Clause 54 Voluntary winding up

Clause 54 provides for incorporated limited partnerships to be wound up voluntarily, either under the partnership agreement, or if the partnership agreement permits, by a special resolution of the limited partners. Assets are to be distributed either in accordance with the partnership agreement, or in shares proportionate to the partners' respective contributions of capital or property.

An application to the court may be made by any persons aggrieved under the section and upon such application the court may make orders relating to the disposal of the assets.

Subdivision 2 – Winding up required by Commissioner

Clause 55 Grounds for winding up required by Commissioner

Clause 55 sets out a number of grounds on which it may be determined that an incorporated limited partnership is no longer eligible to hold that incorporation. These are the grounds upon which the Commissioner may issue a show cause notice to an incorporated limited partnership under section 56, and, if established these grounds justify the compulsory winding up of an incorporated limited partnership.

Clause 56 Commissioner may require incorporated limited partnership to show cause

If the Commissioner is satisfied that any of the grounds specified in section 55 exist, the Commissioner may give the incorporated limited partnership a show cause notice, requiring the incorporated limited partnership to show cause within 28 days, failing which the incorporated limited partnership will be required to be wound up.

Clause 57 How incorporated limited partnership may show cause

Clause 57 provides that an incorporated limited partnership will show cause if it satisfies the Commissioner that the ground or grounds specified in the notice does or do not apply.

Clause 58 Commissioner may give winding up notice where cause not shown

Where an incorporated limited partnership issued with a show cause notice does not show cause within 28 days, clause 58 provides that the Commissioner may give the incorporated limited partnership a notice requiring the incorporated limited partnership to be wound up.

Clause 59 Commissioner must record in register where cause shown

If a show cause notice has been given to an incorporated limited partnership by the Commissioner under section 58, and the incorporated limited partnership shows cause within 28 days, the Commissioner must record this fact in the register and give notice to the incorporated limited partnership.

Clause 60 Power to cancel winding up notice given in error

Where a winding up notice given to an incorporated limited partnership has been given in error or the Commissioner determines that the incorporated limited partnership issued with the notice should not be wound up, clause 60 allows the Commissioner to cancel the notice by notice to the incorporated limited partnership.

Clause 61 Notices must be recorded in register

Clause 61 requires the Commissioner to record the giving of a show cause notice, a winding up notice, or a notice cancelling a winding up notice in the register. The Commissioner may also publish the notice in a manner the Commissioner considers appropriate.

Clause 62 Commencement and completion of winding up

Where the Commissioner has given a winding up notice to an incorporated limited partnership and the notice has not been cancelled, clause 62 requires that the incorporated limited partnership be wound up within 28 days after the notice is given or, where an application for review has been made, 28 days after a decision to affirm the giving of the notice. The winding up must be carried out either by the incorporated limited partnership itself, or the person appointed to be the liquidator. Winding up must be completed within the period specified by the Commissioner which must allow at least 60 days.

Clause 63 Costs of winding up

Clause 63 provides that the costs of winding up are payable out of the property of the partnership.

Clause 64 Appointment of liquidator

Clause 64 provides that the Commissioner may appoint a liquidator on the commencement of the winding up of an incorporated limited partnership. The liquidator need not be a registered liquidator and may be a general partner or associate of the incorporated limited partnership.

If an appointment is made by the Commissioner, the appointment must be recorded in the register. The liquidator must give any security prescribed under the Act and is entitled to receive the remuneration fixed by the Commissioner from the property of the incorporated limited partnership.

Clause 65 Distribution of assets on winding up

Clause 65 provides that the assets of an incorporated limited partnership which is wound up on a Commissioner's certificate are to be either dealt with under the partnership agreement (if the agreement so provides) or distributed among the partners in accordance with their respective shares.

Sub clause (2) allows persons aggrieved by the operation of this section to apply to the court.

Subdivision 3 – Winding up under Corporations Act

Clause 66 Application of Corporations Act to winding up

Clause 66 provides that a winding up by the Supreme Court is an applied Corporations legislation matter in relation to Part 5.7 of the Corporations Act, subject to the modifications set out in sub clause (3).

Sub clause (4) provides that this provision does not apply to a voluntary winding up or a winding up on a Commissioner's certificate. This means that Part 5.7 of the Corporations Act will apply to the winding up of an incorporated limited partnership which is not a voluntary winding up or a winding up by the Commissioner.

Sub clauses (5) and (6) allow ASIC to perform functions conferred on it under Part 5.7 of the Corporations Act. Where a function is not conferred on ASIC under Part 5.7, the Commissioner is to perform that function.

Subdivision 4 – Winding up generally

Clause 67 Notice of winding up

Where an incorporated limited partnership is wound up, clause 67 requires the partnership to lodge a notice of the commencement and the completion of the winding up. Upon receipt of this notice, the Commissioner is to record the details in the notice in the register.

A penalty of \$1 500 is imposed on each general partner in the incorporated limited partnership for a failure to provide notice of the commencement of a winding up. A fine of \$1 500 is imposed on each partner for a failure to provide notice of the completion of a winding up.

Clause 68 No notice of winding up

Clause 68 provides that in circumstances where a notice of winding up has not been lodged with the Commissioner, and the Commissioner is satisfied that an incorporated limited partnership has been wound up, the Commissioner may give a notice to the incorporated limited partnership providing the incorporated limited partnership with 28 days in which to satisfy the Commissioner that the partnership has not been wound up. The giving of this notice must be recorded in the register.

If the incorporated limited partnership does not satisfy the Commissioner within 28 days, the Commissioner may record the fact of winding up of the incorporated limited partnership in the register. If the incorporated limited partnership does satisfy the Commissioner that it has not been wound up within 28 days after the giving of the notice, the Commissioner must record that fact in the register.

Division 7 – Cancellation of registration

Clause 69 Cancellation of registration on winding up

Clause 69 requires the Commissioner to cancel the registration of an incorporated limited partnership by recording the cancellation in the register at the same time a winding up has been recorded in the register under section 67(4) or 68(4).

Clause 70 Notice of cancellation

If the registration of an incorporated limited partnership is cancelled under this Division, the Commissioner must notify the partners of the cancellation and the reasons for the cancellation.

Clause 71 Effect of cancellation

Clause 71 provides that an incorporated limited partnership ceases to exist on the cancellation of its registration under this Division.

Division 8 - Miscellaneous

Clause 72 Entitlement to make assumptions

Clause 72 entitles a person dealing with an incorporated limited partnership to make the statutory assumptions set out in clause 73, unless that person knew or suspected that the assumption was incorrect. An incorporated limited partnership is not entitled to assert that any of the assumptions are incorrect. As with the statutory assumptions in the Corporations Act, clauses 72 and 73 provide protection to outsiders who deal with incorporated limited partnerships from the incorporated limited partnership claiming that persons purporting to act for it lacked authority.

Clause 73 Assumptions that can be made

Clause 73 sets out the assumptions that can be made by outsiders dealing with an incorporated limited partnership, including the assumption that the partnership agreement has been complied with, that documents appearing to be executed in accordance with the requirements of the Act have been effectively executed, that the details in the register in regards to the general partner are correct and that a person held out to be a general partner or an agent by an incorporated limited partner is a general partner or an agent and that they have properly performed their duties to the incorporated limited partnership.

Clause 74 Common Seal

Clause 74 provides for the use of the common seal and for judicial notice to be taken of the common seal.

Clause 75 Execution

Clause 75 provides for the execution of documents as a deed or otherwise by an incorporated limited partnership with or without a common seal.

Clause 76 Enforcing judgments

Clause 76 ensures that the property of an incorporated limited partnership cannot be subject to an enforcement order under the *Civil Judgments Enforcement Act 2004* unless it is for the purpose of enforcing a judgment against the partnership itself.

Clause 77 Proper party to proceeding

Clause 77 provides that a limited partner is not to be a party to any court or tribunal proceeding commenced by or against the incorporated limited partnership, other than a proceeding commenced by the incorporated limited partnership against the limited partner, or vice versa.

Part 5 – General requirements

Division 1 – Register and registration

Clause 78 Register

Clause 78 requires the Commissioner to keep a register of limited partnerships and incorporated limited partnerships registered under the Act. The register must contain a division for each type of partnership.

The register contains the registered particulars of limited partnerships and incorporated limited partnerships and as such contains relevant information for outside parties dealing with such partnerships. This information must be available for public inspection, except in the case where personal information has been withheld by the Commissioner under the Act. This is intended to protect details such as a partner's personal address from being accessed if the circumstances require.

Sub clause (5) allows the Commissioner to make the register available on a website.

Clause 79 Power to make or correct certain entries in register

Clause 79 allows the Commissioner to correct errors or omissions in the register and provides for the manner in which such corrections may be effected.

Sub clause (2) provides that an entry may only be deleted where the whole entry was included in error.

Sub clause (4) provides that the Commissioner may insert an entry in the register if proceedings are pending against a person under the disqualification provisions in sections 88, 89 or 90. Notice must be given to the partnership.

Clause 80 Reinstatement of registration

Clause 80 enables the Commissioner to reinstate the registration of a limited partnership or incorporated limited partnership, where the Commissioner is satisfied that the registration should not have been cancelled. Any reinstatement under this provision must be recorded in the register and limited partnerships or incorporated limited partnerships so reinstated are taken to have continued in existence as if the cancellation had not occurred.

Clause 81 Entry in register constitutes notice

Clause 81 provides that entries in the register of particular facts which concern a limited partnership or an incorporated limited partnership are sufficient notice of those facts to persons dealing with the partnership. An entry in the register in regards to a limited partnership is also sufficient notice under section 47(2) of the *Partnership Act 1895* to persons dealing with the firm, as if it were an advertisement in the *Government Gazette*.

Division 2 – Certificates of registration

Clause 82 Certificate of registration to be issued

Clause 82 provides for the issue of a certificate of registration to the general partners of a limited partnership or incorporated limited partnership upon registration and subsequent changes to the register being made in relation to the partnership's registered particulars. A certificate as to the formation and registered particulars of a partnership may be issued to another person on application. Sub clause (4) provides for the evidentiary effect of such certificates, which are conclusive evidence of the particulars as at the date of the certificate unless the contrary is established.

Clause 83 Certificate of registration to be displayed

Clause 83 requires limited partnerships and incorporated limited partnerships to display their certificate of registration in a conspicuous position in the registered office of the partnership.

Where a partnership does not comply with this requirement, each general partner will commit an offence under the Act, and a penalty of \$3 000 will apply.

Clause 84 Notice of change in registered particulars

Sub clause (1) requires the general partners of limited partnerships or incorporated limited partnerships to lodge a notice with the Commissioner within 7 days of a change in the partnership's registered particulars.

Sub clause (2) provides that a fine of \$1 500 is imposed upon each general partner if subsection (1) is not complied with.

Sub clause (4) provides that the notice must be signed by all the general partners or by a general partner authorised by all the general partners.

Sub clause (5) provides that in the case of a limited partnership, if the change relates to the admission of a limited partner or the agreed contribution of a limited partner, the notice must also be signed by the limited partner.

Clause 85 Change in agreed contribution of limited partner

Clause 85 clarifies that the making of, or the receiving back of the whole or any part of the agreed contribution by a limited partner, constitutes a change in the registered particulars of a limited partnership.

Clause 86 Register to record change in registered particulars

Clause 86 requires the Commissioner to record any changes in registered particulars in the register. This ensures that the public record of a partnership's details is kept accurate.

Division 4 – Restrictions on members

Division 4 relates to restrictions imposed on certain persons from being a general partner in or managing a limited partnership or incorporated limited partnership. The purpose of this division is to minimise the risk to limited partners and outside persons who deal with the limited partnership or incorporated limited partnership.

Clause 87 Terms used

Clause 87 defines the phrase “manage a limited partnership” or “manage an incorporated limited partnership” to include making, or participate in making, decisions that affect the whole, or a substantial part of the business of the partnership; exercising the capacity to significantly affect the partnership’s financial standing; or communicating instructions or wishes knowing that the partners are accustomed to act in accordance with the instructions or wishes or intending that the partners will act in accordance with the instructions or wishes.

This definition is consistent with the principles embodied in section 206A of the *Corporations Act 2001* (Cth) which relates to the disqualification of a person from managing a corporation.

Clause 88 Restrictions on insolvents

Clause 88 provides that an insolvent is prohibited from being a general partner in, or managing a limited partnership or an incorporated limited partnership without the leave of the Commissioner.

An insolvent is an individual who is an insolvent under administration, or a body corporate which is an externally-administered body corporate, as those terms are defined in section 9 of the Corporations Act. A partnership that has an insolvent general partner is also included in the definition of an insolvent.

A fine of \$10 000 and imprisonment for 1 year applies for a breach of this subsection.

Clause 89 Restrictions on convicted persons

Clause 89 prohibits persons who have been previously convicted of an offence of fraud or dishonesty, from being a general partner of, or managing, a limited partnership or an incorporated limited partnership, without the leave of the Commissioner, for five years after the person’s conviction, or release from prison.

A fine of \$10 000 and imprisonment for 1 year applies for a breach of this subsection.

Clause 90 Restrictions on disqualified persons

Clause 90 prohibits persons who are currently serving a sentence of imprisonment, been convicted of a prescribed offence, disqualified from managing corporations under the Corporations Act, or disqualified in prescribed circumstances, from being a general partner in, or managing a limited partnership or an incorporated limited partnership without the leave of the Commissioner.

A fine of \$10 000 and imprisonment for 1 year applies for a breach of this subsection.

Clause 91 Contravention does not affect liability

Clause 91 ensures that a person's liability under the Act is not affected by a contravention of sections 88, 89 or 90.

Clause 92 Leave of Commissioner

Clause 92 provides for a person to be able to apply to the Commissioner in writing for leave under clauses 88, 89 or 90 and enables the Commissioner to grant leave subject to any condition or limitation. A contravention of such conditions is an offence under the Act.

A penalty of \$10 000 applies for a breach of any condition or limitation imposed by the Commissioner under subsection (4).

Clause 93 Revoking leave of Commissioner

Clause 93 provides that the Commissioner may at any time revoke leave granted under section 92(4) by notice to the person granted leave.

Division 5 – Reviews

Clause 94 Terms Used

Clause 94 defines 'affected person' and 'reviewable decision' for the purposes of entitlement to apply to the State Administrative Tribunal for a review of decisions of the Commissioner. These are persons and decisions identified in the table at clause 95.

Clause 95 Reviewable decisions

Clause 95 sets out in table form those decisions of the Commissioner that are defined as 'reviewable decisions' and also provides for who is the 'affected person' in relation to each reviewable decision. For example, the Commissioner's refusal to register a limited partnership under section 17(2) is a reviewable decision for the purposes of clause 94, and the affected person is the applicant for registration as a limited partnership.

Sub clause (2) provides that regulations may provide for decisions made under regulations to be reviewable decisions for the purposes of Division 5 and that specified persons are affected persons in relation to those decisions.

Clause 96 Review of reviewable decisions

Clause 96 provides that an affected person may apply to the State Administrative Tribunal for a review of a reviewable decision.

Division 6 - Offences

Clause 97 Giving false or misleading information

Clause 97 provides that a person who lodges a document which they know is false or misleading in a material particular commits an offence.

The penalty for this offence is a fine of \$10 000.

Clause 98 Offences by partnership

Clause 98 provides that where a general partner is a partnership, all the general partners of that partnership will be liable for offences committed by the general partner. This does not apply to a partner that has limited liability for the liabilities of the partnership in the place in which the partnership is formed.

It is a defence if the general partner can show that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

This section clarifies the responsibilities of partners of a partnership which is acting as a general partner in a limited partnership.

Clause 99 Time for bringing proceedings for offences

Clause 99 limits the time for commencing proceedings under the Act to three years after the day on which the offence is alleged to have been committed. This is consistent with other legislation conferring registration functions on the Commissioner.

Division 7 - Miscellaneous

Clause 100 How notices may be given

Clause 100 provides that notices under the Act must be in writing and may be left at or sent by pre-paid post to the partnership's registered office; or published in a manner the Commissioner considers appropriate.

Clause 101 How consent may be given

Clause 101 clarifies the ways in which consent or authority may be given under the Act, including that it may be express or inferred from a course of dealing, be given in relation to all cases, subject to specified exceptions or in relation to any specified case or class of cases, and may be given by a general partner in the partnership on behalf of the partnership. The examples in this clause do not limit the ways in which consent or authority may be given.

Clause 102 Registered Office

Clause 102 requires a limited partnership and an incorporated limited partnership to keep a registered office in the State which can receive communications to the partnership.

A failure to keep a registered office is an offence under the Act committed by each general partner. A fine of \$3 000 applies to this offence.

Clause 103 Service

Clause 103 provides that a document (other than court documents) may be served on a limited partnership or an incorporated limited partnership by posting it to or leaving the document at the registered office.

Court or SAT documents must be served in accordance with ordinary court procedural rules.

Clause 104 Lodgment of documents

Clause 104 provides that a document is not lodged unless all required information is provided and the fee (if any) is paid. The Commissioner may refuse the lodgment of a document on certain grounds set out in sub clause (2). For example, the Commissioner may consider that the document contains false or misleading material, errors or that the document does not comply with the requirements of the Act.

Where the Commissioner refuses lodgment of a document, clause 104 permits the Commissioner to request the limited partnership or incorporated limited partnership to do a number of things to effect lodgement. For example, the Commissioner can request that the document be amended or re-lodged.

Clause 105 Signing of documents

Clause 105 contains provisions to facilitate the process of registration of documentation for limited partnerships and incorporated limited partnerships.

Sub clauses (1) and (2) provide for the authorisations required in order for a document to be deemed to have been signed by a person required to sign the document. This clause enables persons with the primary obligation to sign documents to be lodged with the Commissioner, to delegate that authority.

Sub clause (3) provides the Commissioner with discretion to accept unsigned documents where it is not practicable for the document to be signed by a person.

Sub clause (4) requires only original documents to be signed.

Clause 106 Business documents

Clause 106 requires limited partnerships and incorporated limited partnerships to identify their limited partnership or incorporated limited partnership status on all business documents. The term “business documents” is defined in sub clause (1).

Sub clause (6) provides that it is an offence punishable by a fine of \$3 000 for a person to issue a business document if they know that it does not include the name of the entity and identify it as a limited partnership or incorporated limited partnership by use of the appropriate abbreviation. Where such an offence occurs, a general partner of the partnership will also be liable for an offence punishable by a fine of \$3 000 if the general partner knows that the business document contravenes subsection (2) or (4).

Clause 107 Inspection of accounts and financial records

Clause 107 enables a partner or person authorised by a partner to inspect the partnership accounts and consult with the partners in respect to those accounts. This provision reflects a partner's general right to have access to the accounts of the partnership. However, sub clause (2) provides that this right may be varied by a partnership agreement or with the consent of the partners.

Division 8 – Application of other written laws

Clause 108 Application of Fair Trading Act

Clause 108 applies certain sections of the *Fair Trading Act 2010* regarding the administration of the Act subject to various modifications. The sections of the Fair Trading Act that apply include:

- the investigation and enforcement provisions under Part 6. However, it is not necessary to apply Division 4A ('Specific powers for enforcement of licensing and regulatory provisions') as it relates to licensing and regulatory provisions which do not concern limited partnerships or incorporated limited partnerships);
- sections 60 ('Delegation powers of the Commissioner');
- section 61('Judicial notice of the Commissioner's signature etc.');
- section 112 ('Personal information obtained officially, when may be divulged etc.');
- section 113 ('Information obtained officially may be used for certain other purposes and legislation');
- section 114 ('Protection from liability for wrongdoing'); and
- section 115 ('Protection from liability for publishing official statements').

Clause 109 Application of *Criminal Procedure Act 2004*

Clause 109 provides that the service of an infringement notice under Part 2 of the *Criminal Procedure Act 2004* must be served within 21 days after the authorised officer forms the opinion that there is sufficient evidence to support the allegation of the offence, and 6 months after the alleged offence is believed to have been committed.

Division 9 – Regulations and orders

Clause 110 Regulations

Clause 110 confers a general regulation making power on the Governor. Sub clause (2) provides that regulations may be made in regards to various specific matters under the Act including the conduct and regulation of registration, the manner in which accounts may be kept, the fees which may be charged, the required opening hours of the registered office and the lodgment of annual returns by a limited partnership or incorporated limited partnership.

Clause 111 Regulations prescribing model limited partnership agreement

Clause 111 provides that regulations may prescribe a model limited partnership agreement.

Clause 112 Regulations relating to Corporations Act

Clause 112 provides that the regulations may declare a matter dealt with by the Act to be an excluded matter for the purposes of section 5F of the Corporations Act.

Notification of this provision has been given to the Legislative and Governance Forum for Corporations in accordance with the requirements of the *Corporations Agreement 2002*.

Clause 113 Orders declaring corresponding law

Clause 113 provides for the Governor to be able to declare a law from another country or jurisdiction to be a corresponding law under this Act.

Under sub clause (2), a law of another country or jurisdiction can only be declared to be a corresponding law if the Minister has certified to the Governor that the law provides for the limitation of liability for certain partners in certain partnerships.

Under sub clause (3), a law of another State or Territory can only be declared to be a corresponding law if the Minister has certified to the Governor that the provisions of the law are similar to the provisions of this Act and under that law, the limitation of liability of limited partners under this Act will extend to any liability incurred in connection with business conducted by the partnership in that State or Territory.

Part 6 – Repeals and transitional matters

Clause 114 Terms used

Clause 114 defines terms used in this Part, specifically “commencement day” which is the day on which the *Limited Partnerships Act 1909* is repealed and this Act comes into effect, and “existing limited partnership” which is a partnership which was registered under the repealed act on the repeal of that legislation. An “existing limited partnership” includes a partnership which has sent or delivered a registration statement to the Commissioner under the repealed act. This ensures that such partnerships will be included in the provisions which transfer the registration of limited partnerships to this Act.

Clause 115 Written laws repealed

Clause 115 repeals the *Limited Partnerships Act 1909* and the *Limited Partnerships Rules 1909*.

Clause 116 Existing limited partnerships

Clause 116 provides for the way in which existing limited partnerships are to continue under the Act.

Sub clause (1) ensures that all existing limited partnerships are taken to be limited partnerships under the Act.

Sub clause (2) requires existing limited partnerships to lodge a statement of particulars with the Commissioner within 90 days of transferring to the new regime. This ensures that the registered particulars of such limited partnerships comply with the new legislation.

Upon lodgment of the new particulars, the particulars will be recorded in the register and existing limited partnerships will receive a new registration certificate.

Clause 117 Existing register

Clause 117 defines “existing register” as the register of limited partnerships kept under the repealed act and provides that this register will form part of the new register under the Act. The Commissioner may however make any necessary changes to the form of the existing register for the purposes of the Act.

Clause 118 Existing statements

Clause 118 provides for statements which have been sent or delivered under the repealed act to be received by the Commissioner as if they have been made under the Act. Upon receipt, the Commissioner must record the particulars in the register and issue a new certificate of registration to the general partners.

Sub clause (4) provides that any changes made to a limited partnership’s registered particulars by an existing statement will not trigger the obligation under section 84(1) to lodge a further notice of change in registered particulars.

Clause 119 Time limit under section 99

Clause 119 provides that the time limit of 3 years under clause 99 for commencement of proceedings under the Act does not apply to offences committed under the repealed Act.

Clause 120 Leave taken to have been granted under section 92(4)

Clause 120 provides for a grace period of 6 months for general partners or persons who manage an existing limited partnership, who may breach the disqualification provisions of the Act in sections 88, 89 or 90. This enables such a person time to apply to the Commissioner for leave under section 92(4).

Clause 121 Transitional regulations

Clause 121 provides for the making of regulations which may derogate from the operation of provisions of the Act and may therefore be considered to be a “Henry VIII” clause.

The provision is necessary to ensure effective implementation of the Act. The current legislation dealing with the registration of limited partnerships is very dated, and records of existing limited partnerships may not be accurate. This has made effective consultation with the sector difficult, and unanticipated issues may arise in the transition of currently registered limited partnerships to the Act which will require some flexibility in saving existing provisions or applying the requirements.

It is noted that the provision allows for the making of transitional provisions only. Furthermore, the regulations must come into operation within two years of the commencement day and only where no sufficient provision has been made in the Act.

Sub clause (2) provides that regulations may make provision for a transitional matter if there is no sufficient provision made in this Part for the matter.

Sub clause (3) provides that any such regulation must come into effect within 2 years of commencement day.

Sub clause (4) provides that any such regulation may provide that a provision of the Act is not to apply or is to apply with modifications.

Sub clause (5) provides that any such regulation may provide that a state of affairs existed or did not exist earlier than the day on which the regulations are published, but not earlier than commencement day.

Sub clause (6) provides that sub clause (5) does not operate to prejudice the rights of, or impose liabilities on, any person in respect of any state of affairs existing or anything done before the day of publication.

Part 7 – Consequential amendments

Clause 122 *Partnership Act 1895* amended

Clause 122 provides for an amendment to the *Partnership Act 1895* to clarify that the Partnership Act will only apply to limited partnerships and incorporated limited partnerships in so far as is specified in the Act.

Sub clause (6) also amends the Partnership Act to provide that the term “Partnership” does not include the relationship which subsists between the partners in an incorporated limited partnership; or an incorporated limited partnership and its partners.