



Australian Capital Territory

Partnership (Venture Capital Funds) Amendment Act 2004

A2004-62

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Australian Capital Territory

Partnership (Venture Capital Funds) Amendment Act 2004

A2004-62

An Act to amend the *Partnership Act 1963*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Partnership (Venture Capital Funds) Amendment Act 2004*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Partnership Act 1963*.

4 Section 2

substitute

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*incorporated limited partnership*—see section 51.’ means that the term ‘incorporated limited partnership’ is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act,

provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

5 Section 5

substitute

5 Application of certain laws and rules of equity

- (1) The rules of equity and the common law applying to partnership continue in force except as far as they are inconsistent with this Act.

- (2) However, except as provided (expressly or by necessary implication) under this or another Act, the law relating to partnership does not apply in relation to an incorporated limited partnership, the partners in an incorporated limited partnership or the relationship between an incorporated limited partnership and its partners.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

6 Section 6

substitute

6 Meaning of *partnership*

- (1) ***Partnership*** is the relation between people carrying on a business in common with a view of profit, and includes an incorporated limited partnership.

Note Partnership includes an ***external partnership*** in some stated provisions in part 6 (Incorporated limited partnerships).

- (2) The relation between members of a corporation (other than an incorporated limited partnership), whether formed or incorporated in or outside the ACT, is not a ***partnership*** under this Act.

7 Rules for determining existence of partnership New section 7 (5)

insert

- (5) This section does not apply in relation to an incorporated limited partnership.

8 Firms and firm names Section 8

omit

9 Sections 9 to 13*substitute***9 Power of certain partners to bind firm**

- (1) A partner in a firm other than an incorporated limited partnership is the agent of the firm, and of the other partners in the firm, for the purposes of the firm's business.
- (2) An act done by a partner in a firm other than an incorporated limited partnership, for carrying on in the usual way business of the kind carried on by the firm, binds the firm and the other partners in the firm unless—
 - (a) the partner who does the act has in fact no authority to act for the firm in the particular matter; and
 - (b) the person with whom the partner is dealing either knows that the partner has no authority or does not know or believe the partner to be a partner in the firm.
- (3) A general partner in an incorporated limited partnership is the agent of the partnership, and of the other general partners in the partnership, for the purposes of the partnership's business.
- (4) An act done by a general partner in an incorporated limited partnership, for carrying on in the usual way business of the kind carried on by the partnership, binds the partnership and the other general partners in the partnership unless—
 - (a) the general partner who does the act has in fact no authority to act for the partnership in the particular matter; and
 - (b) the person with whom the general partner is dealing either knows that the general partner has no authority or does not know or believe the general partner to be a general partner in the partnership.

10 Partners bound by acts on behalf of firm

- (1) An act or instrument relating to the business of a firm other than an incorporated limited partnership is binding on the firm and all the partners in the firm if it is done or executed by a person authorised to do the act or execute the instrument (whether or not a partner in the firm)—
 - (a) in the firm name; or
 - (b) in any other way showing an intention to bind the firm.
- (2) An act or instrument relating to the business of an incorporated limited partnership is (subject to section 13 (5) (Liability of partner)) binding on the partnership and all the general partners in the partnership if it is done or executed by a person authorised to do the act or execute the instrument (whether or not a general partner in the partnership)—
 - (a) in the firm name; or
 - (b) in any other way showing an intention to bind the partnership.
- (3) This section does not affect a rule of law about the execution of deeds or negotiable instruments.

11 Partner using credit of firm for private purpose

- (1) If a partner in a firm other than an incorporated limited partnership pledges the credit of the firm for a purpose apparently not connected with the ordinary course of the firm's business, the firm is not bound unless the partner is in fact specially authorised by the other partners in the firm.
- (2) Subsection (1) does not affect a personal liability incurred by an individual partner.
- (3) If a general partner in an incorporated limited partnership pledges the credit of the partnership for a purpose apparently not connected with the ordinary course of the partnership's business, the

partnership is not bound unless the general partner is in fact specially authorised by the partnership.

- (4) Subsection (3) does not affect a personal liability incurred by an individual general partner.

12 Effect of notice that firm will not be bound by acts of partner

- (1) If it has been agreed by the partners in a firm other than an incorporated limited partnership that restrictions are to be placed on the power of 1 or more of the partners to bind the firm, an act contravening the agreement is not binding on the firm in relation to a person with notice of the agreement.
- (2) If it has been agreed by the partners in an incorporated limited partnership that restrictions are to be placed on the power (if any) of 1 or more of the partners to bind the partnership, an act contravening the agreement is not binding on the partnership in relation to a person with notice of the agreement.

13 Liability of partner

- (1) Each partner in a firm other than an incorporated limited partnership is liable jointly with the other partners in the firm for the debts and obligations of the firm incurred while the partner is a partner.
- (2) If the partner is an individual, after the partner's death the dead partner's estate is severally liable in the due course of administration for the debts and obligations of the firm incurred while the dead partner was a partner that remain unsatisfied, but subject to the earlier payment of the dead partner's separate debts.
- (3) Each general partner in an incorporated limited partnership is liable jointly with the incorporated limited partnership for the debts and obligations of the partnership incurred while the general partner is a general partner.

- (4) If the general partner is an individual, after the general partner's death the dead partner's estate is severally liable in the due course of administration for the debts and obligations of the partnership incurred while the dead partner was a partner that remain unsatisfied, but subject to the earlier payment of the dead partner's separate debts.
- (5) However, a general partner in an incorporated limited partnership is only liable for the debts and obligations of the partnership—
 - (a) to the extent the partnership cannot satisfy the debts and obligations; or
 - (b) to a greater extent provided by the partnership agreement.

10 Section 14 heading

substitute

14 Liability of firm not incorporated limited partnership for wrongs

11 Section 14 (1)

omit

in a firm

substitute

in a firm other than an incorporated limited partnership

12 Section 14 (3)*omit*

a partner who commits a wrongful act or omission as a director of a body corporate

substitute

a partner in a firm other than an incorporated limited partnership who commits a wrongful act or omission as a director of a company or other body

13 Section 14 (3) (c)*omit*

corporate

14 New section 14A*insert***14A Liability of incorporated limited partnership for wrongs**

- (1) This section applies if, by any wrongful act or omission of a general partner (the ***relevant partner***) in an incorporated limited partnership, acting in the ordinary course of the partnership's business, or with its authority—
 - (a) loss or injury is caused to someone who is not a partner in the partnership; or
 - (b) a penalty is incurred.
- (2) The incorporated limited partnership is liable in relation to the loss, injury or penalty to the same extent as the relevant partner.
- (3) For this section, a general partner in an incorporated limited partnership who commits a wrongful act or omission as a director of a company or other body (within the meaning of the Corporations Act), as a member of a Territory authority, or as a member of the

board (however described) of a Territory authority, is not to be taken to be acting in the ordinary course of the partnership's business, or with its authority, only because of 1 or more of the following:

- (a) the general partner obtained the agreement or authority of the partnership to be appointed or to act as director or member;
- (b) the remuneration that the general partner receives as director or member forms part of the income of the partnership;
- (c) any other general partner in the partnership is also a director of a company or other body (within the meaning of the Corporations Act), member of a Territory authority, or member of the board (however described) of a Territory authority, whether of the same or a different body, Territory authority or board.

15 Sections 15 to 21

substitute

15 Misapplication of money or property received for, or in custody of, firm

- (1) If either or both of the following happens, a firm that is not an incorporated limited partnership is liable to make good the loss:
 - (a) a partner in the firm, acting within the scope of the partner's apparent authority, receives someone else's money or property and misapplies it;
 - (b) in the course of the firm's business, the firm receives someone else's money or property, and the money or property is misapplied by 1 or more of the partners while in the firm's custody.

- (2) If either or both of the following happens, an incorporated limited partnership is liable to make good the loss:
- (b) a general partner in the partnership, acting within the scope of the general partner's apparent authority, receives someone else's money or property and misapplies it;
 - (b) in the course of the partnership's business, the partnership receives someone else's money or property, and the money or property is misapplied by 1 or more of the general partners while in the partnership's custody.
- (3) In this section:
- someone else*, in relation to a firm that is not an incorporated limited partnership or an incorporated limited partnership, does not include a partner in the partnership.

16 Liability for wrongs joint and several

- (1) Each partner in a firm other than an incorporated limited partnership is liable jointly with the other partners in the firm, and severally, for everything for which the firm becomes liable under section 14 (Liability of firm not incorporated limited partnership for wrongs) or section 15 while the partner is a partner in the firm.
- (2) Each general partner in an incorporated limited partnership is liable jointly with the other general partners in the partnership, and severally, for everything for which the partnership becomes liable under section 14A (Liability of incorporated limited partnership for wrongs) or section 15 while the general partner is a general partner in the partnership.
- (3) However, a general partner in an incorporated limited partnership is only liable for any liability of the partnership mentioned in subsection (2)—
- (a) to the extent the partnership cannot satisfy the liability; or
 - (b) to a greater extent provided by the partnership agreement.

17 Improper use of trust property for partnership other than incorporated limited partnership

- (1) If a partner in a firm other than an incorporated limited partnership who is a trustee improperly uses trust property in the firm's business, or for the firm, another partner in the firm is not liable for the trust property to the people beneficially interested in the property.
- (2) Subsection (1) does not—
 - (a) affect any liability incurred by a partner because the partner knew about a breach of trust; and
 - (b) prevent trust money from being followed and recovered from the firm if still in the possession, or under the control, of the firm.

17A Improper use of trust property for incorporated limited partnership

- (1) If a general partner in an incorporated limited partnership who is a trustee improperly uses trust property in the partnership's business, or for the partnership, the partnership and any other general partner is not liable for the trust property to the people beneficially interested in the property.
- (2) Subsection (1) does not—
 - (a) affect any liability incurred by any general partner because the partner knew about a breach of trust; and
 - (b) prevent trust money from being followed and recovered from the partnership if still in the possession, or under the control, of the partnership.

18 People liable by holding out

- (1) Subsection (2) applies if a person (the *apparent partner*)—

- (a) represents himself or herself as a partner in a firm other than an incorporated limited partnership by words (whether spoken or written) or conduct; or
 - (b) knowingly allows himself or herself to be represented as a partner in a firm other than an incorporated limited partnership.
- (2) The apparent partner is liable as a partner in the firm to anyone who has, because of the representation, given credit to the firm, whether the representation has or has not been made or communicated to the person giving credit by or with the knowledge of the apparent partner.
- (3) Subsection (4) applies if a person (the *apparent general partner*)—
 - (a) represents himself or herself as a general partner in an incorporated limited partnership by words (whether spoken or written) or conduct; or
 - (b) knowingly allows himself or herself to be represented as a general partner in an incorporated limited partnership.
- (4) The apparent general partner is liable as a general partner in the partnership to anyone who has, because of the representation, given credit to the partnership, whether the representation has or has not been made or communicated to the person giving credit by or with the knowledge of the apparent general partner.
- (5) If, after the death of a partner in a firm, the firm's business is continued in the old firm name, the continued use of that name or the name of the dead partner as part of that name does not, of itself, make the partner's legal personal representatives or the partner's estate or effects liable for the firm's debts contracted after the partner's death.

19 Admissions and representations of partners

- (1) An admission or representation made by a partner in a firm other than an incorporated limited partnership about the firm's affairs, and

in the ordinary course of the firm's business, is evidence against the firm.

- (2) An admission or representation made by a general partner in an incorporated limited partnership about the partnership's affairs, and in the ordinary course of the partnership's business, is evidence against the partnership.

20 Notice to acting partners is notice to firm

- (1) Notice to a partner in a firm other than an incorporated limited partnership who habitually acts in the firm's business, of a matter relating to the firm's affairs, operates as notice to the firm, except for fraud on the firm committed by or with the consent of that partner.
- (2) Notice to a general partner in an incorporated limited partnership who habitually acts in the partnership's business, of a matter relating to the partnership's affairs, operates as notice to the partnership, except for fraud on the partnership committed by or with the consent of that partner.

21 Liabilities of incoming and outgoing partners

- (1) A person who is admitted as a partner in an existing firm other than an incorporated limited partnership does not by that admission alone become liable for anything done before the person became a partner.
- (2) A person who is admitted as a general partner in an existing incorporated limited partnership does not by that admission alone become liable for anything done before the person became a general partner.
- (3) A partner who retires from a firm other than an incorporated limited partnership does not by that retirement alone stop being liable for the firm's debts and obligations incurred before the partner's retirement.

- (4) A partner who retires from an incorporated limited partnership does not by that retirement alone stop being liable for the partnership's liabilities incurred before the partner's retirement for which the partner was liable.
- (5) A retiring partner in a firm other than an incorporated limited partnership may be discharged from any existing liabilities by agreement between the partner, the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.
- (6) A retiring partner in an incorporated limited partnership may be discharged from any existing liabilities by agreement between the partner, the partnership and the creditors, and this agreement may be either express or inferred as a fact from the course of dealing between the creditors and the partnership.
- (7) In subsection (4) and (6):
liabilities—see section 51.

16 Revocation of continuing guaranty by change of firm Section 22

omit

A continuing

substitute

- (1) A continuing

17 New section 22 (2)

insert

- (2) This section does not apply in relation to an incorporated limited partnership.

18 Section 24 heading

substitute

24 Partnership property of firms other than incorporated limited partnerships

19 New section 24 (4)

insert

- (4) This section does not apply in relation to an incorporated limited partnership.

20 New section 24A

insert

24A Partnership property of incorporated limited partnership

- (1) All property, and rights and interests in property, acquired, whether by purchase or in another way, on account of an incorporated limited partnership, or for and in the course of the partnership's business, are for this Act ***partnership property***.
- (2) The partnership property of an incorporated limited partnership must be applied by the partnership exclusively for the partnership.
- (3) A partner in an incorporated limited partnership does not have any legal or beneficial interest in its partnership property only because the partner is a partner in the partnership.

21 Section 25 heading

substitute

**25 Land bought by co-owners out of profits from land—
other than incorporated limited partnerships**

22 Section 25

omit

Where

substitute

(1) If

23 New section 25 (2)

insert

(2) This section does not apply in relation to an incorporated limited partnership.

**24 Conversion into personalty of land held by firm
Section 27**

omit

Where

substitute

(1) If

25 New section 27 (2)

insert

(2) This section does not apply in relation to an incorporated limited partnership.

**26 Procedure against partnership property for partner's separate judgment debt
New section 28 (4)**

insert

- (4) Subsections (2) and (3) do not apply in relation to an incorporated limited partnership.

27 Section 29 heading

substitute

29 Rules about interests and duties of partners other than in incorporated limited partnership

28 New section 29 (11)

insert

- (11) This section does not apply in relation to an incorporated limited partnership.

**29 Retirement from partnership at will
Section 31**

omit

Where

substitute

- (1) If

30 New section 31 (2)

insert

- (2) This section does not apply in relation to an incorporated limited partnership.

**31 Partnership for term continued over
New section 32 (3)**

insert

- (3) This section does not apply in relation to an incorporated limited partnership.

32 Section 33

substitute

33 Duty of partner to give accounts

- (1) A partner in a firm other than an incorporated limited partnership must give true accounts and full information about everything affecting the firm to another partner or another partner's legal personal representatives.
- (2) An incorporated limited partnership must, subject to the partnership agreement, give true accounts and full information about everything affecting the partnership to any partner or any partner's legal personal representatives.

**33 Accountability of partners for private profits
New section 34 (3)**

insert

- (3) This section does not apply in relation to an incorporated limited partnership.

34 Duty of partner not to compete with firm
Section 35

omit

If a partner

substitute

- (1) If a partner

35 New section 35 (2)

insert

- (2) This section does not apply in relation to an incorporated limited partnership.

36 Rights of assignee of share in partnership
New section 36 (4)

insert

- (4) This section does not apply in relation to an incorporated limited partnership.

37 New section 36A

in part 5, insert

36A Application of pt 5

This part does not apply in relation to an incorporated limited partnership.

38 New parts 6 and 7*insert***Part 6 Incorporated limited partnerships****Division 6.1 Preliminary****51 Definitions for pt 6**

In this part:

external partnership means a partnership (or legal entity, however described, in the nature of a partnership) formed under the law of a State, another Territory, foreign country or another jurisdiction, whether or not under the law—

- (a) the liability of any partner for the liabilities of the partnership (or entity) is limited; and
- (b) the partnership (or entity) is incorporated or is otherwise a separate legal entity.

firm name means—

- (a) for an incorporated limited partnership—the name of the partnership recorded in the register; and
- (b) for an external partnership—the name under which the partnership's business is carried on under the law of the place where it is formed.

general partner, for an incorporated limited partnership, means a person or partnership (including an external partnership) admitted as a partner in the incorporated limited partnership in accordance with the partnership agreement and who is not a limited partner.

incorporated limited partnership means a partnership formed under this part, and a reference to the partnership is a reference to the

partnership as a separate legal entity and not the partners in the partnership.

liability includes any debt, obligation or liability of any kind, wherever and however incurred.

limited partner, for an incorporated limited partnership, means a person or partnership (including an external partnership) admitted and designated as a limited partner in the incorporated limited partnership in accordance with the partnership agreement.

partner, for an incorporated limited partnership, means a general partner or limited partner.

register—see section 60 (Register of incorporated limited partnerships).

registered information—see section 59 (4) (Registration of incorporated limited partnership).

special resolution, of limited partners in an incorporated limited partnership, means a resolution that has been passed by at least 75% of the limited partners.

52 Application of other provisions of this Act

- (1) Parts 1 to 4 apply to incorporated limited partnerships, except as provided under those parts or this part.
- (2) If a provision made under this part is inconsistent with a provision made under any other part that applies to incorporated limited partnerships—
 - (a) the provision made under this part prevails; and
 - (b) the other provision does not, to the extent of the inconsistency, have effect in relation to incorporated limited partnerships.

Division 6.2 Nature and formation of incorporated limited partnerships

53 Incorporated limited partnership formed on registration

An incorporated limited partnership is formed on registration under this part.

54 Incorporated limited partnership is separate legal entity

- (1) An incorporated limited partnership—
 - (a) is a corporation with legal personality separate from its partners and with perpetual succession; and
 - (b) may have a common seal; and
 - (c) may sue and be sued in its firm name.
- (2) The common seal of an incorporated limited partnership—
 - (a) must be kept as the partnership directs; and
 - (b) may only be used if the use is authorised by the partnership.

55 Partners in incorporated limited partnership

- (1) An incorporated limited partnership must have—
 - (a) at least 1 general partner but no more than 20 general partners; and
 - (b) at least 1 limited partner.
- (2) A corporation may be a general partner or limited partner.
- (3) A partnership (including an external partnership) may be a general partner or limited partner in an incorporated limited partnership.
- (4) For subsection (1) (a)—
 - (a) if a general partner is a partnership or external partnership and no partner in that partnership has, under the law of the place

where the partnership is formed, limited liability for the liabilities of the partnership—the number of partners in that partnership is counted; and

- (b) if a general partner is a partnership or external partnership and any partner in that partnership has, under the law of the place where the partnership is formed, limited liability for the liabilities of the partnership—only the number of partners in that partnership whose liability is not limited is counted.

56 Partnership agreement

- (1) There must at all times be a written partnership agreement between the partners in an incorporated limited partnership.
- (2) The interests of the partners in an incorporated limited partnership and their rights and duties in relation to the partnership are, subject to this Act, to be decided in accordance with the partnership agreement.
- (3) A partnership agreement also has effect as a contract between the incorporated limited partnership and each partner under which the partnership and each partner agree to comply with and perform the agreement so far as it applies to them.
- (4) Subsection (3) does not prevent an incorporated limited partnership itself signing a partnership agreement.

Division 6.3 Registration of incorporated limited partnerships

57 Who may apply for registration

- (1) An application for registration as an incorporated limited partnership may be made, in the circumstances mentioned in subsection (2), by—
 - (a) a partnership (including an external partnership); or

- (b) any people or partnerships (including external partnerships), or both, proposing to be the partners in the proposed incorporated limited partnership.
- (2) The circumstances are—
 - (a) that the partnership is registered under the *Venture Capital Act 2002* (Cwlth), part 2 (Registration of venture capital limited partnerships and Australian venture capital funds of funds) as a VCLP or AFOF; or
 - Note* VCLP is a venture capital limited partnership and an AFOF is an Australian venture capital fund of funds.
 - (b) that a general partner in the partnership, or a proposed general partner in the proposed incorporated limited partnership, intends to apply for registration of the incorporated limited partnership, or proposed partnership, under the *Venture Capital Act 2002* (Cwlth), part 2 as a VCLP or AFOF; or
 - (c) that the partnership is a venture capital management partnership under the *Income Tax Assessment Act 1936* (Cwlth), section 94D (3) (Corporate limited partnerships); or
 - (d) that the partners in the partnership, or the proposed partners in the proposed incorporated limited partnership, intend that the partnership, or proposed partnership, intends to meet the requirements set out in *Income Tax Assessment Act 1936* (Cwlth), section 94D (3) for recognition as a venture capital management partnership; or
 - (e) any other circumstances prescribed under the regulations.

58 Application for registration

- (1) An application for registration as an incorporated limited partnership must be made to the commissioner for fair trading.

Note 1 A fee may be determined under s 99 for this provision.

Note 2 If a form is approved under s 100 for this provision, the form must be used.

- (2) The application must be signed—
- (a) if the application is made by a partnership (including an external partnership)—by each partner in the partnership or by a person authorised to make the application on behalf of the partnership and the partners in it; or
 - (b) if the application is made by any people or partnerships (including external partnerships), or both, proposing to be the partners in the proposed incorporated limited partnership—by each proposed partner.
- (3) The application must—
- (a) for an application by a partnership (including an external partnership), include—
 - (i) the firm name of the partnership; and
 - (ii) the full address of the office or principal office in the ACT of the partnership (the **registered office** of the proposed partnership); and
 - (b) for an application by people or partnerships (including external partnerships) proposing to be the partners in the proposed incorporated limited partnership, include—
 - (i) the proposed firm name of the proposed partnership; and
 - (ii) the full address of the proposed office or principal office in the ACT of the proposed partnership (the **registered office** of the proposed partnership); and

-
- (c) include the full name of each partner or proposed partner or, if the partner or proposed partner is a partnership (including an external partnership), the name of the firm or, if the firm does not have a name, the full name of each partner in the firm; and
 - (d) include the full address of each partner or proposed partner as follows:
 - (i) for an individual—the person’s home address;
 - (ii) for a corporation—the corporation’s registered office or principal place of business;
 - (iii) for a partnership (including an external partnership)—the partnership’s registered office or principal office; and
 - (e) state whether each partner or proposed partner is, or is proposed to be, a general partner or limited partner; and
 - (f) for each partner or proposed partner that is a partnership (including an external partnership)—state that the partner or proposed partner is a partnership; and
 - (g) for an application by a partnership that is registered under the *Venture Capital Act 2002* (Cwlth), part 2 (Registration of venture capital limited partnerships and Australian venture capital funds of funds) as a VCLP or AFOF—be accompanied by a copy of a document proving its status as a VCLP or AFOF; and
 - (h) for an application by people or partnerships (including external partnerships) proposing to be partners in a partnership that intends to apply for registration under the *Venture Capital Act 2002* (Cwlth), part 2 as a VCLP or AFOF—state that it intends to apply; and
 - (i) for an application by a partnership that is a venture capital management partnership under the *Income Tax Assessment Act 1936* (Cwlth), section 94D (3) (Corporate limited partnerships)—state that it is that partnership; and
-

- (j) for an application by people or partnerships (including external partnerships) proposing to be a partnership that intends to meet the requirements for recognition as a venture capital management partnership under the *Income Tax Assessment Act 1936* (Cwlth), section 94D (3)—state that it intends to meet the requirements; and
- (k) include any other information prescribed under the regulations.

59 Registration of incorporated limited partnership

- (1) If an application for registration of an incorporated limited partnership is properly made under this division, the commissioner must register the incorporated limited partnership.

Note The firm name of an incorporated limited partnership is the name of the partnership recorded in the register (see s 51, def ***firm name***).

- (2) Before recording the name of an incorporated limited partnership in the register, the commissioner for fair trading must ask the registrar-general whether the name would be eligible for registration as a business name under the *Business Names Act 1963*.
- (3) The commissioner for fair trading must not record a name in the register as the firm name of an incorporated limited partnership if the registrar-general is of the opinion that the name would not be eligible for registration as a business name under the *Business Names Act 1963*.
- (4) An incorporated limited partnership is registered by recording in the register the information in the application under section 58 for its registration (the ***registered information***).

60 Register of incorporated limited partnerships

- (1) The commissioner for fair trading must keep a register (the ***register***) of incorporated limited partnerships registered under this part.
- (2) The register may be kept in any form, including electronically, that the commissioner decides.

- (3) The register must be available for public inspection at reasonable times.

Note A fee may be determined under s 99 for this provision.

- (4) The commissioner may correct any mistake or omission in the register by—

- (a) inserting an entry; or
- (b) amending an entry; or
- (c) omitting an entry.

- (5) The commissioner may omit an entry in the register only if satisfied that the whole of the entry was included in error.

61 Changes in registered information

- (1) If any of the registered information changes, a statement setting out the changes must be given to the commissioner for fair trading within 7 days after the day the change happens.

Note 1 A fee may be determined under s 99 for this provision.

Note 2 If a form is approved under s 100 for this provision, the form must be used.

- (2) The statement must be signed by all the general partners in the incorporated limited partnership, or by a general partner authorised by all the general partners for this section.
- (3) The statement must contain the information required under the regulations.
- (4) If the statement is properly lodged, the commissioner for fair trading must make the change in the register as soon as possible.

- (5) Each general partner in the incorporated limited partnership commits an offence if subsection (1) is not complied with.

Maximum penalty: 10 penalty units.

- (6) It is a defence to a prosecution for an offence for failing to comply with subsection (5) if the general partner proves that—
- (a) the general partner did not know about the failure; and
 - (b) reasonable precautions were taken and appropriate diligence was exercised to avoid the failure.
- (7) An offence against subsection (5) is a strict liability offence.

62 Certificates of registration etc

- (1) The commissioner for fair trading must give the general partners in an incorporated limited partnership a certificate about its formation and the registered information when—
- (a) registering the incorporated limited partnership; or
 - (b) making a change in its registered information; or
 - (c) correcting a mistake or omission in the register about the incorporated limited partnership.

Note A fee may be determined under s 99 for this provision.

- (2) The commissioner for fair trading may, on application, give the applicant a certificate for an incorporated limited partnership about its formation and the registered information as at the time of the application.
- (3) A certificate under this section may be in the form that the commissioner for fair trading considers appropriate.
- (4) A certificate under this section—
- (a) about the formation of an incorporated limited partnership is conclusive evidence that the incorporated limited partnership

was formed on the date of registration mentioned in the certificate; and

- (b) about the registered information for an incorporated limited partnership as at a stated time is (unless the contrary is proven) conclusive evidence that the partnership existed at that time; and
- (c) about the general partners and limited partners in an incorporated limited partnership as at a stated time is (unless the contrary is proven) conclusive evidence of the general partners and limited partners as at that time; and
- (d) about any other information in the register about an incorporated limited partnership as at a stated time is (unless the contrary is proven) conclusive evidence of that information as at that time.

63 Business Names Act not to apply

An incorporated limited partnership need not register a business name under the *Business Names Act 1963* if the name is the firm name of the partnership registered under this part.

64 Acts preparatory to registration do not create partnership

Anything done in relation to the making of an application for registration under this part by or on behalf of people or partnerships (including external partnerships) proposing to be the partners in a proposed incorporated limited partnership does not of itself create a partnership between the people or partnerships.

Division 6.4 Powers of incorporated limited partnerships

65 Powers of partnership

- (1) An incorporated limited partnership has the legal capacity and powers of an individual and also all the powers of a corporation, including, for example, power (whether within or outside the ACT or outside Australia) to—
- (a) carry on the partnership's business; and
 - (b) enter into contracts or otherwise acquire rights or liabilities; and
 - (c) create, confer, vary or cancel interests in the partnership; and
 - (d) acquire, hold and dispose of property; and
 - (e) appoint agents and attorneys, and act as agent for other people; and
 - (f) form, and participate in the formation of, companies or incorporated limited partnerships; and
 - (g) participate in partnerships (including external partnerships), trusts, joint ventures, other associations and other arrangements for the sharing of profits; and
 - (h) do anything else it is authorised to do under this part or the partnership agreement.
- Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).
- (2) The powers of an incorporated limited partnership may be limited by the partnership agreement.

66 Relationship of partners to others and between themselves

- (1) Except as otherwise provided by the partnership agreement or agreed between the partners in an incorporated limited partnership—
 - (a) a general partner, the partnership, or an officer, employee, agent or representative of a general partner or the partnership, is not an agent of a limited partner, and the acts of a general partner, the partnership, or the officer, employee, agent or representative, do not bind a limited partner; and
 - (b) a limited partner is not an agent of, or fiduciary for, a general partner, another limited partner or the partnership, and the acts of a limited partner do not bind a general partner, another limited partner or the partnership itself.
- (2) Subsection (1) does not prevent the making of, or limit or restrict, an agreement between a partner (the *first person*) and either another partner or the incorporated limited partnership (the *second person*) under which—
 - (a) the first person acts as an agent of the second person and, by acting as an agent, binds the second person; or
 - (b) the partnership acts as an agent of a partner and, by acting as an agent, binds the first person.
- (3) Any consent or authority that under this Act is required or permitted to be given by a partner, 2 or more partners or all the partners may, for an incorporated limited partnership and without limiting any other way that it might be given, be given by that partner or those partners under the partnership agreement either in relation to all cases, or in relation to all cases subject to stated exceptions, or in relation to any stated case or class of case.
- (4) Any consent or authority that under this Act is required or permitted to be given by an incorporated limited partnership may, without

limiting any other way that it might be given, be given by a general partner or 2 or more general partners acting in accordance with the partnership agreement.

- (5) A limited partner, as limited partner, is not a proper party to any proceeding begun in a court or tribunal by or against the incorporated limited partnership, other than a proceeding begun by the partnership against the limited partner or by the limited partner against the partnership.
- (6) This section is subject to section 68 (Limited partner not to take part in incorporated limited partnership's management).
- (7) In subsection (1):

general partner includes, if the general partner is a partnership or an external partnership, a partner in that partnership.

Division 6.5 Liability and powers of limited partners

67 Limitation of liability of limited partners

- (1) A limited partner has no liability for the liabilities of the incorporated limited partnership or a general partner.
- (2) Subsection (1), section 73 (Liability for conduct, acts or omissions outside the ACT) or section 74 (Incorporated limited partnerships formed under corresponding laws) does not prevent—
 - (a) a contribution of capital or property made by a limited partner to the incorporated limited partnership being used in satisfaction of a liability of an incorporated limited partnership or a general partner; or
 - (b) an obligation of a limited partner to contribute capital or property to the incorporated limited partnership being enforced by anyone to whom the obligation is owed in satisfaction of a liability of the partnership or a general partner.

- (3) This section is subject to section 68.

68 Limited partner not to take part in incorporated limited partnership's management

- (1) A limited partner in an incorporated limited partnership must not take part in the management of the incorporated limited partnership's business.
- (2) Subsection (3) applies if—
- (a) as a direct result of any wrongful act or omission of a limited partner in an incorporated limited partnership in taking part in the management of the partnership's business, the limited partner causes any loss or injury to someone who is not a partner in the partnership (a *third party*); and
 - (b) at the time of the act or omission the third party had reasonable grounds to believe that the limited partner was a general partner in the partnership.
- (3) The limited partner is liable for the loss or injury to the same extent that the limited partner would have been liable if the limited partner were a general partner in the partnership.

Note A limited partner is not an agent of the incorporated limited partnership, and the acts of a limited partner do not bind a general partner, another limited partner or the partnership itself (see s 66 (1)).

- (4) A limited partner in an incorporated limited partnership is not to be regarded as taking part in the management of the partnership's business only because the limited partner or a person acting on behalf of the limited partner—
- (a) is an employee of, or an independent contractor engaged by, the partnership, a general partner in the partnership or an associate of the general partner, or is an officer of a general partner that is a corporation or of an associate of a general partner that is a corporation; or

- (b) gives advice to, or on behalf of, the partnership, a general partner in the partnership or an associate of a general partner in the proper exercise of functions arising from the engagement of the limited partner, or a person acting on behalf of the limited partner, in a professional capacity or arising from business dealings between the limited partner, or a person acting on behalf of the limited partner, and the partnership or a general partner or an associate of the general partner; or
- (c) gives a guarantee or indemnity in relation to any liability of the partnership, a general partner in the partnership or an associate of the general partner; or
- (d) takes any action, or participates in any action taken by any other limited partner in the partnership, for the purpose of enforcing the rights, or safeguarding the interests, of the limited partner as a limited partner; or
- (e) if permitted by the partnership agreement—
 - (i) calls, requisitions, convenes, chairs, participates in, postpones, adjourns or makes a record of a meeting of the partners, the limited partners or any of them; or
 - (ii) requisitions, signs, or otherwise passes, approves, disapproves or amends any resolution (whether or not at a meeting or in writing) of the partners, the limited partners or any of them, including by formulating, moving, proposing, supporting, opposing, speaking to or voting on the resolution; or
- (f) exercises a power of the limited partner under subsection (5) or has, or exercises, a right to—
 - (i) have access to and inspect the books or records of the partnership or copy any of them; or

- (ii) examine the state or prospects of the business of the partnership or advise, or consult with, other partners in relation to them; or
- (g) gives advice to, consults with, or is or acts as an officer, director, security holder, partner, agent, representative, employee of, or independent contractor engaged by, an associate of the partnership; or
- (h) is or acts as a lender to, or fiduciary for, an associate of the partnership; or
- (i) to the extent authorised by the partnership agreement, participates on, or has or exercises any right to appoint 1 or more people to, remove 1 or more people from, or to nominate 1 or more people for appointment to or removal from, a committee that considers, approves of, consents to or disapproves of any 1 or more of the following proposals from a general partner:
 - (i) a proposal involving a material change in the nature of the partnership's business (including a change in, or departure from, any investment guidelines, policies or conditions relating to the partnership's business);
 - (ii) a proposal for the adoption of a method for valuing some or all of the partnership's assets (including a change to, replacement of or variation from the method);
 - (iii) a proposal for an extension or reduction in the period in which, under the partnership agreement, investments (or certain kinds of investments) can be made by the partnership, or for any approval or disapproval of investments that the partnership does not otherwise have a right to make;
 - (iv) a proposal relating to any actual or potential transaction or anything else involving any actual or potential conflict of interest;

- (v) a proposal relating to any actual or potential transaction, contract, arrangement or understanding between 1 or more of the partners, or their associates, and the general partner, the partnership or any associate of the general partner or of the partnership;
 - (vi) a proposal for the delegation, waiver, release or variation of an authority, right, duty or obligation of the general partner;
 - (vii) a proposal for the appointment or approval under the partnership agreement of anyone as a senior executive of the general partner or an associate of the general partner; or
 - (j) nominates, selects, investigates, evaluates or negotiates with anyone in relation to the removal or replacement of a general partner, or participates on a committee that proposes, considers, approves of, consents to or disapproves of any nomination, selection, appointment, change in control or ownership, suspension, replacement or removal of a general partner or an associate of a general partner; or
 - (k) takes any action, or participates in any action taken by any other limited partner, for the purpose of registering or maintaining the registration of the partnership or a general partner in the partnership as a VCLP or AFOF under the *Venture Capital Act 2002* (Cwlth), part 2 (Registration of venture capital limited partnerships and Australian venture capital funds of funds).
- (5) A limited partner in an incorporated limited partnership or a person authorised by the limited partner may, if and to the extent the partner or person is authorised by the partnership agreement—
- (a) have access to and inspect the books or records of the partnership or copy any of them; and

- (b) examine the state or prospects of the business of the partnership and advise, or consult with, other partners in relation to them.
- (6) The operation of this section may not be varied by the partnership agreement or with the consent of the partners, whether given under the partnership agreement or otherwise.

Note Section 66 (4) (Relationship of partners to others and between themselves) enables partners to give consent in accordance with the partnership agreement.

- (7) Subsection (4) does not imply that a limited partner in an incorporated limited partnership is to be regarded as taking part in the management of the partnership's business only because the limited partner or a person acting on behalf of the partner does any thing in relation to the conduct of that business that is not mentioned in that subsection.
- (8) For this section, a limited partner in an incorporated limited partnership that is a venture capital management partnership under the *Income Tax Assessment Act 1936* (Cwlth), section 94D (3) (Corporate limited partnerships) is not to be regarded as taking part in the management of the partnership's business only because of any act the limited partner takes in relation to the incorporated limited partnership in the capacity of a partner or associate of a partner in the venture capital management partnership.

69 Interpretation for s 68

- (1) In section 68:
 - associate*—
 - (a) of a general partner, includes—
 - (i) if the general partner is a partnership (including an external partnership)—a partner in that partnership (a *partner in the general partner*); and

- (ii) anyone who has an interest in the general partner or in any partner in the general partner, whether as security holder, trustee, responsible entity, manager, custodian, subcustodian, nominee, administrator, executor, legal personal representative, beneficiary or otherwise; and
 - (iii) anyone to whom the general partner or any partner in the general partner has delegated any power, authority, right, duty or obligation of the general partner in relation to the partnership or any other partnership in which the general partner is general partner; and
 - (iv) if the general partner, a partner in the general partner or a person covered by subparagraph (ii) or (iii) is a corporation—a related body corporate of that corporation; and
 - (v) a director, officer, employee, agent, representative or security holder of the general partner, of any partner in the general partner or of a person covered by subparagraph (ii), (iii) or (iv); and
- (b) of a limited partner, includes—
- (i) if the limited partner is a partnership (including an external partnership)—a partner in that partnership (a *partner in the limited partner*); and
 - (ii) anyone who has an interest in the limited partner or in any partner in the limited partner, whether as security holder, trustee, responsible entity, manager, custodian, subcustodian, nominee, administrator, executor, legal personal representative, beneficiary or otherwise; and
 - (iii) if the limited partner, a partner in the limited partner or a person covered by subparagraph (ii) is a corporation—a related body corporate of that corporation; and

- (iv) a director, officer, employee, agent, representative or security holder of the limited partner, of any partner in the limited partner or of a person covered by subparagraph (ii) or (iii); and
- (c) of an incorporated limited partnership, includes—
 - (i) any person or partnership (including an external partnership) in which the incorporated limited partnership has an interest, whether as security holder or otherwise; and
 - (ii) if a person or partnership (including an external partnership) covered by subparagraph (i) is a corporation—a related corporation of that corporation.
- (2) In section 68 and this section:

general partner, in an incorporated limited partnership, includes, if the general partner is a partnership (including an external partnership), a partner in that partnership.

related body corporate—see the Corporations Act, section 9 (Dictionary).

securities—see the Corporations Act, section 92 (3) (Securities).

security holder, in relation to a body, includes a holder of securities in or of the body.

70 Differences between partners

- (1) A difference arising about ordinary matters connected with an incorporated limited partnership's business may be decided by a majority of the general partners.
- (2) The operation of this section may be varied with the partners' consent.

71 Change in partners

- (1) A limited partner in an incorporated limited partnership may, with the general partners' consent and the transferee's agreement, transfer all or part of the limited partner's interest in the partnership.
- (2) If all of the limited partner's interest in the incorporated limited partnership is transferred to a single transferee, the transferee becomes a limited partner in substitution for the transferor with all the rights and obligations of the transferor.
- (3) Subsection (4) applies if—
 - (a) only part of the interest of the limited partner (the *transferor*) in the incorporated limited partnership is transferred to a transferee; and
 - (b) the part of the interest that is transferred is (or includes) part of the transferor's legal interest in the partnership (whether or not the part of the interest that is transferred also includes all or part of the transferor's beneficial interest in the partnership).
- (4) If this subsection applies, the transferee becomes a limited partner in substitution for the transferor in relation to the transferred part and with all the rights and obligations of the transferor in relation to that part.
- (5) A person may be admitted as a partner in an incorporated limited partnership without the consent of any limited partner.
- (6) The operation of this section may be varied with the partners' consent.

72 Change in status of partners

- (1) If a general partner becomes a limited partner, the partner remains liable for any liability of the incorporated limited partnership that arose before the partner became a limited partner to the extent that the partnership cannot satisfy the liability or to the greater extent provided by the partnership agreement.

- (2) If a limited partner becomes a general partner, the partner remains not liable (subject to section 68 (2) and (3)) for any liability of the incorporated limited partnership that arose before the partner became a general partner.

Note Section 68 (2) and (3) imposes liability in certain circumstances on a limited partner who takes part in the management of the business of the incorporated limited partnership.

73 Liability for conduct, acts or omissions outside the ACT

A limited partner in an incorporated limited partnership may only be liable for a liability incurred by the partnership because of either of the following in circumstances where the limited partner would be liable if the conduct or acts happened in the ACT:

- (a) the conduct of the partnership's business outside the ACT;
- (b) acts outside the ACT of a general partner, a limited partner, the partnership or any officer, employee or agent of a general partner or the partnership.

Note Section 68 (2) and (3) imposes liability in certain circumstances on a limited partner who takes part in the management of the business of the incorporated limited partnership.

74 Incorporated limited partnerships formed under corresponding laws

- (1) A partner in a recognised incorporated limited partnership is liable for a liability incurred by the partnership as a result of either of the following, only in circumstances where the partner would be liable under the corresponding law if the conduct, acts or omissions happened in the place where the partnership was formed:
- (a) the conduct of the partnership's business in the ACT;
 - (b) the acts or omissions in the ACT of a partner in the partnership, the partnership itself or any officer, employee, agent or representative of the partner or partnership.

- (2) The Minister may, in writing, declare a law of a State, another Territory, foreign country or another jurisdiction to be a corresponding law for this part.
- (3) However, the Minister may declare a law of a State or another Territory to be a corresponding law only if under that law a partner in an incorporated limited partnership formed in accordance with this part and registered or otherwise recognised under that law is liable for a liability incurred by the partnership as a result of either of the following, only in circumstances where the partner would be liable under this Act if the conduct, acts or omissions happened in the ACT:
 - (a) the conduct in that State or Territory of the business of the partnership;
 - (b) the acts or omissions in that State or Territory of a partner in the partnership, the partnership itself or any officer, employee or agent of a general partner or the partnership.
- (4) Also, the Minister may declare a law of a foreign country or another jurisdiction to be a corresponding law only if that law provides for the limitation of liability of certain partners in certain partnerships.
- (5) A declaration under subsection (2) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.
- (6) This section is additional to any rule of law under which recognition is or may be given to a limitation of liability of a partner in a partnership.
- (7) In this section:

corresponding law means—

 - (a) a law of a State, another Territory, foreign country or another jurisdiction that substantially corresponds to the provisions of this Act relating to incorporated limited partnerships; or

- (b) a law declared under subsection (2) to be a corresponding law for this part.

recognised incorporated limited partnership means a partnership formed in accordance with a corresponding law.

75 Effect of s 73 and s 74

Section 73 or section 74 does not imply that a limited partner has any liability (or apart from that section would have any liability) in connection with the conduct of a partnership's business, or acts or omissions outside the ACT, that the limited partner would not have in connection with the conduct of a partnership's business or acts or omissions in the ACT.

Division 6.6 Winding-up of incorporated limited partnership

76 Meaning of assets for div 6.6

In this division:

assets, of an incorporated limited partnership, means the assets remaining after satisfaction of the partnership's liabilities and the costs, charges and expenses of the winding-up.

77 Voluntary winding-up

- (1) An incorporated limited partnership may be wound up voluntarily—
- (a) if the partnership agreement sets out the terms on which the partnership may voluntarily be wound up—in accordance with the partnership agreement; or
 - (b) subject to the partnership agreement, if the limited partners resolve to wind up the partnership by special resolution.

- (2) On a voluntary winding-up of an incorporated limited partnership—
 - (a) if the partnership agreement sets out how the assets are to be dealt with on a voluntary winding-up—the assets must be dealt with in accordance with the partnership agreement; or
 - (b) in any other case—the assets must be distributed among the partners in shares that are proportionate to their respective contributions of capital or property to the partnership.
- (3) Any person aggrieved by the operation of this section in relation to the assets of an incorporated limited partnership may apply to the Supreme Court.
- (4) On an application under subsection (3), the Supreme Court may make any order relating to the disposal of the assets that it considers appropriate.

78 Winding-up on commissioner's certificate

- (1) The commissioner for fair trading may, by written notice given to an incorporated limited partnership, require the partnership to show good cause why it should not be required to be wound up if the commissioner considers that—
 - (a) the partnership has stopped carrying on business; or
 - (b) having been incorporated on the basis that the partnership is or is intended to be either of the following, the partnership has stopped being, or has not within the period of 2 years after its incorporation become, either of the following:
 - (i) registered as a VCLP or AFOF under the *Venture Capital Act 2002* (Cwlth), part 2 (Registration of venture capital limited partnerships and Australian venture capital funds of funds);
 - (ii) a venture capital management partnership under the *Income Tax Assessment Act 1936* (Cwlth), section 94D (3) (Corporate limited partnerships); or

- (c) none of the partners is a limited partner; or
 - (d) incorporation of the partnership has been obtained by mistake or fraud; or
 - (e) the partnership exists for an illegal purpose.
- (2) If, at least 28 days after the day the notice is given under subsection (1), the commissioner for fair trading is satisfied that the incorporated limited partnership should be required to be wound up, the commissioner may issue a certificate that the incorporated limited partnership be wound up.

- (3) The certificate is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (4) The commissioner for fair trading must give written notice of the issue of the certificate to the incorporated limited partnership as soon as possible after the issue.
- (5) The commissioner for fair trading must record in the register that the notice has been given as soon as possible after it is given.
- (6) The commissioner for fair trading may issue a certificate under subsection (2) only if satisfied that good cause has not been shown why the incorporated limited partnership should not be required to be wound up.
- (7) A notice under subsection (1) or (4) must be given to the incorporated limited partnership—
- (a) by being served on the incorporated limited partnership at its registered office; or
 - (b) if service cannot reasonably be made in accordance with paragraph (a)—by being published in a newspaper circulating generally in the ACT.

79 Review of certificate

- (1) A person whose interests are affected by a decision of the commissioner for fair trading to issue a certificate under section 78 (2) may apply to the Supreme Court for review of the decision.
- (2) An application under subsection (1) must be made within 28 days after the day the certificate is notified.
- (3) The operation of the certificate is suspended until the application is withdrawn or the review is decided.
- (4) In deciding an application for review, the Supreme Court may—
 - (a) confirm the decision under review; or
 - (b) set aside the decision under review and cancel the certificate.
- (5) This section does not prevent the commissioner for fair trading cancelling a certificate under section 78 (2) at any time after an application is made under subsection (1).

80 Procedure for winding-up on certificate

- (1) This section applies if a certificate is issued under section 78 (2) in relation to an incorporated limited partnership.
- (2) The winding-up of the incorporated limited partnership—
 - (a) must be begun—
 - (i) within 28 days after the day the certificate is notified, unless an application is made under section 79 (1); or
 - (ii) if an application is made under section 79 (1) and the Supreme Court confirms the decision to issue the certificate—within 28 days after the day the application is decided; and

- (b) must be finished by the day stated by the commissioner in a written notice given to the partnership, that is a day at least 60 days after the day the notice is given.
- (3) At the beginning of the winding-up, the commissioner for fair trading may appoint a person to be the liquidator of the incorporated limited partnership.
- (4) The liquidator may be a general partner in the incorporated limited partnership and need not be a registered liquidator under the Corporations Act.
- (5) Within 10 days after the day the liquidator is appointed, the liquidator must publish a notice of the liquidator's appointment in a newspaper circulating in the ACT.
- (6) The liquidator must give the security that is prescribed under the regulations (if any), and is entitled to receive the fees set by the commissioner for fair trading.
- (7) If the position of liquidator is vacant, the commissioner for fair trading must appoint a person to fill the position.
- (8) The reasonable costs of the winding-up are payable out of the property of the incorporated limited partnership.

81 Distribution of assets on winding-up required on commissioner's certificate

- (1) On the winding-up of an incorporated limited partnership under section 80—
 - (a) if the partnership agreement sets out how the assets are to be dealt with on the winding-up—the assets must be dealt with in accordance with the partnership agreement; or
 - (b) in any other case—the assets must be distributed among the partners in shares that are proportionate to their respective contributions of capital or property to the partnership.

- (2) A person aggrieved by the operation of this section in relation to the assets of an incorporated limited partnership may apply to the Supreme Court.
- (3) On an application under subsection (2), the Supreme Court may make any order relating to the disposal of the assets that it considers appropriate.

82 Displacement and application of Corporations legislation etc

- (1) The winding-up of an incorporated limited partnership is declared to be an excluded matter for the purposes of the Corporations Act, section 5F in relation to the Corporations Act, part 5.7 (Winding up bodies other than companies).

Note The Corporations Act, s 5F provides that if a State or Territory law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, the provisions that are the subject of the declaration will not apply in relation to that matter in the State or Territory that made the declaration.

- (2) The Corporations Act, part 5.7 applies to an incorporated limited partnership as if the partnership were a Part 5.7 body, subject to the following changes:
 - (a) as if the words ‘or in the public interest’ were inserted in section 583 (c) (ii) after the words ‘just and equitable’;
 - (b) as if section 583 (d) did not form part of that section;
 - (c) any other necessary changes;
 - (c) any other changes prescribed under the regulations.

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- (3) The Australian Securities and Investments Commission may exercise a function given to it under part 5.7 as changed under subsection (2)—
 - (a) under an agreement or arrangement of the kind mentioned in the *Australian Securities and Investments Commission Act 2001* (Cwlth), section 11 (8) or (9A) (b); and
 - (b) the commission is authorised to exercise that function under that Act, section 11.
 - (4) Unless a function under part 5.7 as changed under subsection (2) is given to the Australian Securities and Investments Commission as mentioned in subsection (3), that part applies as if a reference in it to the commission were a reference to the commissioner for fair trading.
 - (5) In this section:
Part 5.7 body—see the Corporations Act, section 9.

83 Commissioner to be told about winding-up

- (1) An incorporated limited partnership must give the commissioner for fair trading written notice of the beginning of the winding-up of the partnership within 7 days after—
 - (a) the day a special resolution mentioned in section 77 (1) (b) (Voluntary winding-up) is passed; or
 - (b) in any other case—the day the winding-up begins.
- (2) An incorporated limited partnership must give the commissioner for fair trading written notice of the finish of the winding-up of the partnership within 7 days after the day the winding-up is finished, stating the date when the winding-up was finished.
- (3) The commissioner for fair trading must, as soon as practicable after receiving a notice under subsection (1) or (2), record the receipt of the notice in the register.

- (4) Each general partner in the incorporated limited partnership commits an offence if subsection (1) or (2) is not complied with.

Maximum penalty: 10 penalty units.

- (5) It is a defence to a prosecution for an offence for failing to comply with subsection (4) if the general partner proves that—
- (a) the general partner did not know about the failure; and
 - (b) reasonable precautions were taken and appropriate diligence was exercised to avoid the failure.
- (6) An offence against subsection (4) is a strict liability offence.

84 Cancellation of incorporation

- (1) The commissioner for fair trading must, by written notice, cancel the incorporation of an incorporated limited partnership as soon as practicable after the partnership is wound up.
- (2) The notice is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (3) The commissioner for fair trading must, as soon as practicable after the notice is notified, record the cancellation of the incorporation in the register.
- (4) An incorporated limited partnership ceases to exist on the cancellation of its incorporation under this part.

Division 6.7 Miscellaneous

85 Execution of documents

- (1) An incorporated limited partnership may execute a document (including a deed)—
- (a) without using a common seal (whether it has one or not) if the document is signed by a general partner; or

- (b) as a deed if the document is expressed to be executed as a deed and is executed with the use of a common seal or in accordance with paragraph (a).

Note The *Evidence Act 1995* (Cwlth), section 150 (1) (Seals and signatures) provides for certain presumptions to be made about seals and duly sealed documents. See also this Act, s 54 (2) on seals of incorporated limited partnerships.

- (2) This section does not limit the ways in which an incorporated limited partnership may execute a document (including a deed).

86 Entitlement to make assumptions

- (1) A person is entitled to make the assumptions in section 87 in relation to dealings with an incorporated limited partnership.
- (2) The incorporated limited partnership is not entitled to assert in a proceeding in relation to the dealings that any of the assumptions are incorrect.
- (3) A person is entitled to make the assumptions in section 87 in relation to dealings with someone else who has, or purports to have, directly or indirectly acquired title to property from an incorporated limited partnership.
- (4) The incorporated limited partnership and the other person are not entitled to assert in a proceeding in relation to the dealings that any of the assumptions are incorrect.
- (5) The assumptions may be made even if a partner or agent of the incorporated limited partnership acts fraudulently, or forges a document, in relation to the dealings.
- (6) A person is not entitled to make an assumption in section 87 if, at the time of the dealings, the person knew or suspected that the assumption was incorrect.

87 Assumptions that may be made under s 86

- (1) A person may assume that the partnership agreement of the incorporated limited partnership has been complied with.
- (2) A person may assume that anyone who appears, from information provided by the incorporated limited partnership that is available to the public from the register, to be a general partner in the incorporated limited partnership—
 - (a) is a general partner in the incorporated limited partnership; and
 - (b) has authority to exercise the functions usually exercised by a general partner in an incorporated limited partnership.
- (3) A person may assume that anyone who is held out by the incorporated limited partnership to be a general partner in, or an agent of, the incorporated limited partnership—
 - (a) is a general partner in the incorporated limited partnership, or has been properly appointed as an agent of the incorporated limited partnership; and
 - (b) has authority to exercise the functions usually exercised by a general partner in, or agent of, an incorporated limited partnership.
- (4) A person may assume that the general partners in, and agents of, the incorporated limited partnership properly exercise their functions in relation to the incorporated limited partnership.
- (5) A person may assume that a document has been properly executed by the incorporated limited partnership if the document appears to have been signed in accordance with section 85 (Execution of documents).
- (6) A person may assume that a document has been properly executed by the incorporated limited partnership if the incorporated limited partnership's common seal appears to have been properly attached to the document.

- (7) A person may assume that a general partner in, or agent of, the incorporated limited partnership who has authority to issue a document or certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.
- (8) Without limiting the generality of this section, the assumptions that may be made under this section apply for this section.

88 Identification of incorporated limited partnerships

- (1) Any document issued on behalf of an incorporated limited partnership in relation to the conduct of the partnership's business must contain in legible letters the term 'An Incorporated Limited Partnership' (or 'L.P.' or 'LP' as an abbreviation) at the end of the partnership's firm name as recorded in the register.

- (2) A person commits an offence if the person issues or authorises the issue of a document that does not comply with subsection (1).

Maximum penalty: 20 penalty units.

- (3) A person commits an offence if—
 - (a) the person is a general partner in an incorporated limited partnership; and
 - (b) a document that does not comply with subsection (1) is issued on behalf of the partnership; and
 - (c) at the time the document is issued, the person knows the document does not comply with subsection (1).

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (2) is a strict liability offence.
- (5) Strict liability applies to subsection (3) (a) and (b).
- (6) In this section:

document includes any letter, notice, publication, written offer, contract, order for goods or services, invoice, bill of exchange,

promissory note, cheque, other negotiable instrument, endorsement, letter of credit, receipt and statement of account.

89 Display of certificate of registration

- (1) The certificate of registration of an incorporated limited partnership must be displayed at all times in a conspicuous position at the registered office of the partnership.
- (2) Each general partner of an incorporated limited partnership commits an offence if the certificate of registration of the partnership is not displayed in accordance with subsection (1).

Maximum penalty: 20 penalty units.

- (3) It is a defence to a prosecution for an offence for failing to comply with subsection (2) if the general partner proves that—
 - (a) the general partner did not know about the failure; and
 - (b) reasonable precautions were taken and appropriate diligence was exercised to avoid the failure.
- (4) An offence against subsection (2) is a strict liability offence.

90 Registered office

- (1) An incorporated limited partnership must keep in the ACT (at the place shown in the register as the address of the registered office of the partnership) an office to which all communications with the partnership may be addressed.
- (2) The regulations may prescribe the hours when the registered office must be open to the public.
- (3) Each general partner in the incorporated limited partnership commits an offence if subsection (1) is not complied with.

Maximum penalty: 10 penalty units.

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- (4) It is a defence to a prosecution for an offence for failing to comply with subsection (3) if the general partner proves that—
 - (a) the general partner did not know about the failure; and
 - (b) reasonable precautions were taken and appropriate diligence was exercised to avoid the failure.
 - (5) An offence against subsection (3) is a strict liability offence.

91 Certain documents to be given to commissioner

- (1) An incorporated limited partnership that was incorporated on the basis that it intended to apply for registration of the partnership as a VCLP or AFOF under the *Venture Capital Act 2002* (Cwlth), part 2 (Registration of venture capital limited partnerships and Australian venture capital funds of funds) must, within 1 month after being registered, give the commissioner for fair trading a copy of a document proving its status as a VCLP or AFOF.
- (2) An incorporated limited partnership that was incorporated on the basis that it intended to meet the requirements for recognition as a venture capital management partnership under the *Income Tax Assessment Act 1936* (Cwlth), section 94D (3) (Corporate limited partnerships) must, within 1 month after becoming that venture capital management partnership, give the commissioner for fair trading a statement that it is that venture capital management partnership.
- (3) Subsection (4) applies if—
 - (a) the registration of an incorporated limited partnership as a VCLP or AFOF under the *Venture Capital Act 2002* (Cwlth), part 2 is revoked; or
 - (b) an incorporated limited partnership ceases to be a venture capital management partnership under the *Income Tax Assessment Act 1936* (Cwlth), section 94D (3).

- (4) The incorporated limited partnership must, within 7 days after the day the revocation took effect or it ceased to be that venture capital management partnership, give the commissioner for fair trading written notice of the revocation or cessation, stating the date it took effect.
- (5) If an incorporated limited partnership ceases to carry on business, the incorporated limited partnership must, as soon as practicable, give the commissioner for fair trading written notice of the cessation, stating the date it took effect.

Note 1 A fee may be determined under s 99 for this provision.

Note 2 If a form is approved under s 100 for this provision, the form must be used.

- (6) A notice under this section must contain the information required by the regulations.
- (7) Each general partner in the incorporated limited partnership commits an offence if subsection (1), (2), (4) or (5) is not complied with.

Maximum penalty: 10 penalty units.

- (8) It is a defence to a prosecution for an offence for failing to comply with subsection (7) if the general partner proves that—
 - (a) the general partner did not know about the failure; and
 - (b) reasonable precautions were taken and appropriate diligence was exercised to avoid the failure.
- (9) An offence against subsection (7) is a strict liability offence.

92 Service on incorporated limited partnership

- (1) A document concerning the business of an incorporated limited partnership may be served on the partnership if it is left at, or sent by post addressed to, the partnership's registered office shown in the register.

Note For how documents may be served, see Legislation Act, pt 19.5.

- (2) This section—
 - (a) does not affect any other way of serving a document on an incorporated limited partnership; and
 - (b) does not apply to a document relating to a proceeding before a court.

93 Entry in register constitutes notice

An entry in the register of information about an incorporated limited partnership, including an entry stating the effect of any notice received by the commissioner for fair trading, is sufficient notice of the information, or of the effect of the notice, to all people who deal with the partnership.

94 Duty to give information

- (1) For monitoring compliance with this part, the commissioner for fair trading may, by written notice given to an incorporated limited partnership, require the partnership to give the commissioner the information mentioned in the notice.
- (2) The information must be given within the period stated in the notice (that is at least 28 days after the day the notice is given to the incorporated limited partnership) or any additional period allowed by the commissioner.

- (3) Each general partner in the incorporated limited partnership commits an offence if subsection (2) is not complied with.

Maximum penalty: 50 penalty units.

- (4) It is a defence to a prosecution for an offence for failing to comply with subsection (3) if the general partner proves that—

- (a) the general partner did not know about the failure; and
- (b) reasonable precautions were taken and appropriate diligence was exercised to avoid the failure.

- (5) It is also a defence to a prosecution for an offence against subsection (3) if the defendant proves that it was not within the power of the incorporated limited partnership to give the information to the commissioner for fair trading.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (6) An offence against subsection (3) is a strict liability offence.

95 Secrecy

- (1) In this section:

court includes a tribunal or other entity with power to require the production of documents or the answering of questions.

person to whom this section applies means—

- (a) the commissioner for fair trading; or
- (b) anyone else employed or engaged in the administration of this part.

produce includes allow access to.

protected information means information obtained under this part by a person to whom this section applies because of the exercise of a function under this part.

- (2) A person commits an offence if—
- (a) the person is a person to whom this section applies; and
 - (b) the person—
 - (i) makes a record of protected information; or
 - (ii) directly or indirectly, divulges or communicates protected information to someone else; and
 - (c) the record is not made, or the information is not divulged or communicated, in relation to the exercise of a function, as a person to whom this section applies, under this Act or another Territory law.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information—
- (a) with the consent of the person from whom the information was obtained; or
 - (b) to a law enforcement authority.
- (4) A person to whom this section applies need not divulge or communicate protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another Territory law.

96 Offences by partnerships

If this part provides that a general partner in an incorporated limited partnership commits an offence, and the general partner is a partnership (whether or not an external partnership), the reference to the general partner is a reference to—

- (a) each partner in the partnership (or external partnership); or

- (b) if the partnership (or external partnership) is a partnership in which any partner has under the law of the place where it is formed limited liability for the liabilities of the partnership—each partner in the partnership whose liability is not limited.

97 Delegation by commissioner

The commissioner for fair trading may delegate the commissioner's functions under this part to a public servant.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

98 Relationship with Corporations legislation

The regulations may declare a matter that is dealt with by this Act to be an excluded matter for the Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter) in relation to—

- (a) the whole of the Corporations legislation to which the Corporations Act, part 1.1A (Interaction between Corporations Legislation and State and Territory laws) applies; or
- (b) a stated provision of that legislation; or
- (c) that legislation other than a stated provision; or
- (d) that legislation otherwise than to a stated extent.

Note Section 5F of the Corporations Act provides that if a State or Territory law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State or Territory that made the declaration.

Part 7 Miscellaneous

99 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

100 Approved forms

- (1) The commissioner for fair trading may, in writing, approve forms for this Act.

Note For other provisions about forms, see Legislation Act, s 255.

- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

101 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may deal with the following:

- (a) the keeping of records by an incorporated limited partnership;
- (b) information or copies of records or documents required to be given to the commissioner for fair trading by an incorporated limited partnership.

- (3) The regulations may exempt, or provide for the exemption of, any person, matter or thing from this Act.
- (4) The regulations may make provision about a matter by applying, adopting or incorporating (with or without change) a standard, or a provision of a standard, as in force from time to time.
- (5) The Legislation Act, section 47 (6) does not apply in relation to an Australian Standard, or an Australian/New Zealand Standard, applied, adopted or incorporated under the regulations.
- (6) The regulations may create offences for contraventions of the regulations and fix maximum penalties of not more than 10 penalty units for offences against the regulations.

39 New dictionary

insert

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- commissioner for fair trading
- exercise
- function
- notifiable instrument
- property
- public servant
- registrar-general
- under.

assets, for division 6.6 (Winding-up of incorporated limited partnership)—see section 76.

business includes a trade, occupation or profession.

external partnership—see section 51.

firm means—

- (a) for a partnership other than an incorporated limited partnership—the collective name for the people who have entered the partnership with one another; and
- (b) for an incorporated limited partnership—the partnership as a separate legal entity and not the partners in the partnership.

firm name—

- (a) for a firm other than an incorporated limited partnership—means the name under which the firm's business is carried on; and
- (b) for an incorporated limited partnership—see section 51; and
- (c) for an external partnership—see section 51.

general partner—see section 51.

incorporated limited partnership—see section 51.

liability, for part 6 (Incorporated limited partnerships)—see section 51.

limited partner, for part 6 (Incorporated limited partnerships)—see section 51.

partner, for an incorporated limited partnership—see section 51.

partnership—see section 6.

partnership property—

- (a) of a firm other than an incorporated limited partnership—see section 24; and
- (b) of an incorporated limited partnership—see section 24A.

register, for part 6 (Incorporated limited partnerships)—see section 60.

special resolution, for part 6 (Incorporated limited partnerships)—see section 51.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 May 2004.

2 Notification

Notified under the Legislation Act on 2 September 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Partnership (Venture Capital Funds) Amendment Bill 2004, which was passed by the Legislative Assembly on 19 August 2004.

Acting Clerk of the Legislative Assembly