

Limited Partnerships Bill 2016

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Defined terms

Western Australia

LEGISLATIVE COUNCIL

Limited Partnerships Bill 2016

A Bill for

An Act to —

- **provide for the formation and registration of limited partnerships and incorporated limited partnerships; and**
- **repeal the *Limited Partnerships Act 1909*; and**
- **make consequential amendments to the *Partnership Act 1895*, and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Limited Partnerships Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

AFOF has the meaning given in the Income Tax Assessment Act section 995-1;

agreed contribution, in relation to a limited partner or a proposed limited partner, means the amount of any capital, or the value of any property, that the partner has agreed to contribute to the partnership;

assets, in relation to the winding up of an incorporated limited partnership, means the assets remaining after satisfaction of the liabilities of the partnership and the costs, charges and expenses of the winding up;

associate has a meaning affected by section 4;

authorised person means —

- (a) the Commissioner; and
- (b) an investigator designated under the Fair Trading Act section 64 as applied by section 108(1) of this Act;

business has the meaning given in the Partnership Act section 3;

Business Names Registration Act means the *Business Names Registration Act 2011* (Commonwealth);

- 1 **Commissioner** has the meaning given in the Fair Trading Act
2 section 6;
- 3 **Corporations Act** means the *Corporations Act 2001*
4 (Commonwealth);
- 5 **corresponding law** means —
- 6 (a) in relation to a limited partnership — a law of another
7 State, a Territory or another country or jurisdiction that
8 is declared under section 113(1) to be a corresponding
9 law in relation to limited partnerships for the purposes
10 of this Act; or
- 11 (b) in relation to an incorporated limited partnership — a
12 law of another State, a Territory or another country or
13 jurisdiction that —
- 14 (i) is declared under section 113(1) to be a
15 corresponding law in relation to incorporated
16 limited partnerships for the purposes of this Act;
17 or
- 18 (ii) substantially corresponds to the provisions of this
19 Act that relate to incorporated limited
20 partnerships;
- 21 **court** has the meaning given in the Partnership Act section 3;
- 22 **ESVCLP** has the meaning given in the Income Tax Assessment
23 Act section 995-1;
- 24 **external partnership** means a partnership (or legal entity,
25 however described, in the nature of a partnership) formed under
26 a law of another State, a Territory or another country or
27 jurisdiction, whether or not under that law —
- 28 (a) the liability of any partner for the liabilities of the
29 partnership is limited; or
- 30 (b) the partnership is incorporated or is otherwise a separate
31 legal entity;
- 32 **Fair Trading Act** means the *Fair Trading Act 2010*;

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firm name —

- (a) of a limited partnership or incorporated limited partnership — means the name of the partnership recorded in the register; or
- (b) of an external partnership — means the name under which, under the law of the place in which it is formed, the partnership carries on the business of the partnership; or
- (c) of any other partnership — means a firm-name as defined in the Partnership Act section 10;

general partner —

- (a) in relation to a limited partnership — means a partner who, at the relevant time, is recorded in the register as being a general partner in the partnership; and
- (b) in relation to an incorporated limited partnership —
 - (i) means a partner who, at the relevant time, is recorded in the register as being a general partner in the partnership; and
 - (ii) includes, if the general partner is a partnership, a reference to a partner in that partnership;

Income Tax Assessment Act means the *Income Tax Assessment Act 1997* (Commonwealth);

incorporated limited partnership means an incorporated limited partnership that is registered under this Act;

liability means a debt, obligation or other liability of any kind, wherever and however incurred;

limited partner, in relation to a limited partnership or incorporated limited partnership, means a partner who, at the relevant time, is recorded in the register as being a limited partner in the partnership;

limited partnership means a limited partnership that is registered under this Act;

1 **partner**, in a limited partnership or incorporated limited
2 partnership, means a general partner or a limited partner;
3 **partnership** has a meaning affected by section 5;
4 **Partnership Act** means the *Partnership Act 1895*;
5 **person** means an individual, body corporate or partnership
6 (including an external partnership);
7 **prescribed** means prescribed by the regulations made under this
8 Act;
9 **register** means the register of limited partnerships and
10 incorporated limited partnerships kept under section 78(1);
11 **registered office**, in relation to a limited partnership or
12 incorporated limited partnership, means the place recorded in
13 the register as the address of the principal office in this State of
14 the partnership;
15 **registered particulars**, in relation to a limited partnership or
16 incorporated limited partnership, means the particulars recorded
17 in the register relating to the limited partnership or incorporated
18 limited partnership and the partners in that partnership;
19 **related body corporate** has the meaning given in the
20 Corporations Act section 9;
21 **securities** has the meaning given in the Corporations Act
22 section 9;
23 **security holder**, in relation to a body (whether incorporated or
24 unincorporated), includes a holder of securities in or of the
25 body;
26 **show cause notice** means a notice given to an incorporated
27 limited partnership under section 56;
28 **VCLP** has the meaning given in the Income Tax Assessment
29 Act section 995-1;
30 **VCMP** has the meaning given in the Income Tax Assessment
31 Act section 995-1;
32 **winding up notice** means a notice given to an incorporated
33 limited partnership under section 58.

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1 **4. Term used: associate**

2 For the purposes of this Act —

3 **associate** —

4 (a) in relation to a general partner, includes —

5 (i) if the general partner is a partnership or
6 incorporated limited partnership — a partner in
7 that partnership (**partner in the general partner**);
8 and

9 (ii) any person who has an interest in the general
10 partner or in any partner in the general partner,
11 whether as security holder, trustee, responsible
12 entity, manager, custodian, sub-custodian,
13 nominee, administrator, executor, legal personal
14 representative, beneficiary or otherwise; and

15 (iii) any person to whom the general partner or any
16 partner in the general partner has delegated any
17 power, authority, right, duty or obligation of the
18 general partner in relation to any partnership or
19 incorporated limited partnership in which the
20 partner is a general partner; and

21 (iv) if the general partner or a partner in the general
22 partner or a person covered by subparagraph (ii)
23 or (iii) is a body corporate — a related body
24 corporate of that body corporate; and

25 (v) a director, officer, employee, agent,
26 representative or security holder of the general
27 partner or of any partner in the general partner or
28 of a person covered by subparagraph (ii), (iii)
29 or (iv);

30 and

- 1 (b) in relation to a limited partner, includes —
- 2 (i) if the limited partner is a partnership or
- 3 incorporated limited partnership — a partner in
- 4 that partnership (*partner in the limited partner*);
- 5 and
- 6 (ii) any person who has an interest in the limited
- 7 partner or in any partner in the limited partner,
- 8 whether as security holder, trustee, responsible
- 9 entity, manager, custodian, sub-custodian,
- 10 nominee, administrator, executor, legal personal
- 11 representative, beneficiary or otherwise; and
- 12 (iii) if the limited partner or a partner in the limited
- 13 partner or a person covered by subparagraph (ii)
- 14 is a body corporate — a related body corporate
- 15 of that body corporate; and
- 16 (iv) a director, officer, employee, agent,
- 17 representative or security holder of the limited
- 18 partner or of any partner in the limited partner or
- 19 of a person covered by subparagraph (ii) or (iii);
- 20 and
- 21 (c) in relation to an incorporated limited partnership,
- 22 includes —
- 23 (i) any body corporate in which the incorporated
- 24 limited partnership has an interest, whether as
- 25 security holder or otherwise, and any related
- 26 body corporate of that body corporate; and
- 27 (ii) any partnership in which the incorporated limited
- 28 partnership has an interest, whether as security
- 29 holder or otherwise.

30 **5. Term used: partnership**

- 31 (1) For the purposes of this Act —
- 32 *partnership* means a partnership as defined in the Partnership
- 33 Act.

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- 1 (2) Any act done in connection with the making of an application
2 for registration under Part 3 or 4 by or on behalf of persons
3 proposing to be the partners in a proposed limited partnership or
4 incorporated limited partnership does not of itself create a
5 partnership between those persons.

1 **Part 2 — Application of laws of partnership**

2 **6. Application of Partnership Act to limited partnership**

3 (1) Subject to subsection (4) and any express provision of this Act,
4 the Partnership Act (other than sections 10 to 12) applies to a
5 limited partnership with the modifications set out in this section.

6 (2) For the purposes of subsection (1), these provisions of the
7 Partnership Act apply as follows —

8 (a) section 22(1) does not apply to an admission or
9 representation made by a limited partner;

10 (b) section 23 does not apply to notice given to a limited
11 partner;

12 (c) section 26 does not apply to an act of a limited partner;

13 (d) section 27 does not apply to a limited partner.

14 (3) For the purposes of subsection (1), the Partnership Act is to be
15 read as if —

16 (a) a reference in that Act to a partnership or a firm were a
17 reference to a limited partnership as defined in section 3;
18 and

19 (b) subject to paragraph (e), a reference in that Act to a
20 partner were a reference to a partner as defined in
21 section 3; and

22 (c) a reference in that Act to a firm-name were a reference
23 to a firm name as defined in section 3; and

24 (d) a reference in section 16 or 24(2) of that Act to debts
25 and obligations were a reference to liability as defined in
26 section 3; and

27 (e) a reference in section 21(1) or 24(1) of that Act to a
28 partner were a reference to a general partner as defined
29 in section 3.

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- 1 (4) If a provision of this Act relating to a limited partnership is
2 inconsistent with a provision of the Partnership Act —
3 (a) the provision of this Act prevails; and
4 (b) the other provision does not, to the extent of the
5 inconsistency, have effect in relation to a limited
6 partnership.

7 **7. Application of general law to incorporated limited**
8 **partnership**

- 9 (1) In this section —
10 *general law* means the principles and rules of common law and
11 equity to the extent that they have effect in the State from time
12 to time.
13 (2) Each of the following is not a partnership for the purposes of the
14 general law —
15 (a) an incorporated limited partnership;
16 (b) the relationship between the partners in an incorporated
17 limited partnership;
18 (c) the relationship between an incorporated limited
19 partnership and its partners.

20 **8. Application of Partnership Act to incorporated limited**
21 **partnership**

- 22 (1) Subject to subsection (3) and any express provision of this Act,
23 the Partnership Act (other than sections 10 to 12, 25, 28, 30(2)
24 and (3), 32 to 34, 37, 38 and 40 to 57) applies to an incorporated
25 limited partnership with the modifications set out in section 9.
26 (2) For the purposes of subsection (1), these provisions of the
27 Partnership Act apply as follows —
28 (a) section 13(1) does not apply to an act done or instrument
29 executed by a limited partner;
30 (b) sections 16, 19 and 27 do not apply to a limited partner;

- 1 (c) section 18(1) does not apply where money or property is
- 2 misapplied by a limited partner;
- 3 (d) section 22(1) does not apply to an admission or
- 4 representation made by a limited partner;
- 5 (e) section 23 does not apply to notice given to a limited
- 6 partner;
- 7 (f) section 26 does not apply to an act of a limited partner.
- 8 (3) If a provision of this Act relating to an incorporated limited
- 9 partnership is inconsistent with a provision of the Partnership
- 10 Act —
- 11 (a) the provision of this Act prevails; and
- 12 (b) the other provision does not, to the extent of the
- 13 inconsistency, have effect in relation to an incorporated
- 14 limited partnership.

15 **9. Application of Partnership Act to incorporated limited**
 16 **partnership: modifications**

17 For the purposes of section 8(1), the Partnership Act is to be
 18 read as if —

- 19 (a) a reference in that Act to a partnership or a firm were a
- 20 reference to an incorporated limited partnership as
- 21 defined in section 3 as a separate legal entity and not to
- 22 the partners in that partnership; and
- 23 (b) subject to paragraphs (d), (e), (i)(i), (k), (n) and (o)(i), a
- 24 reference in that Act to a partner were a reference to a
- 25 partner as defined in section 3; and
- 26 (c) a reference in that Act to a firm-name were a reference
- 27 to a firm name as defined in section 3; and
- 28 (d) a reference in section 13(1) of that Act to all the partners
- 29 were a reference to all the general partners as defined in
- 30 section 3; and
- 31 (e) in section 14 of that Act the words “one partner” were
- 32 deleted and replaced with “one general partner”; and

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- 1 (f) in section 16 of that Act the word “Every” were deleted
2 and replaced with —
3
- 4 (1) Every
5
6 and
7 (g) in section 16 of that Act —
8 (i) a reference to the other partners in a partnership
9 were a reference to the incorporated limited
10 partnership as defined in section 3; and
11 (ii) a reference to debts and obligations were a
12 reference to liabilities as defined in section 3;
13 and
14 (h) at the end of section 16 of that Act the following
15 subsection were inserted —
16
- 17 (2) Despite subsection (1), a general partner in an
18 incorporated limited partnership is only liable for any
19 liabilities of the incorporated limited partnership —
20 (a) to the extent the incorporated limited
21 partnership is unable to satisfy the liabilities;
22 or
23 (b) to a greater extent provided by the partnership
24 agreement.
25
- 26 and
27 (i) in section 17 of that Act —
28 (i) a reference to partner (other than the
29 2nd occurrence) were a reference to general
30 partner as defined in section 3; and

- 1 (ii) the words “the authority of his copartners” and
2 “the authority of the partner’s copartners” were
3 deleted and replaced with “its authority”; and
- 4 (iii) in subsection (2)(a) the words “partner’s
5 copartners, or some of them,” were deleted and
6 replaced with “incorporated limited partnership”;
7 and
- 8 (iv) in subsection (2)(c) the words “any copartner”
9 were deleted and replaced with “any other
10 general partner in the incorporated limited
11 partnership”;
- 12 and
- 13 (j) in section 19 of that Act the word “Every” were deleted
14 and replaced with —
15
- 16 (1) Every
17
- 18 and
- 19 (k) in section 19 of that Act a reference to partner were a
20 reference to general partner as defined in section 3; and
- 21 (l) at the end of section 19 of that Act the following
22 subsection were inserted —
23
- 24 (2) Despite subsection (1), a general partner in an
25 incorporated limited partnership is only liable for any
26 liabilities of the incorporated limited partnership —
- 27 (a) to the extent the incorporated limited
28 partnership is unable to satisfy the liabilities;
29 or
- 30 (b) to a greater extent provided by the partnership
31 agreement.
32
- 33 and

1 (m) section 20 of that Act were deleted and replaced with the
2 following —
3

4 **20. Improper employment of trust property**

5 (1) If a general partner in an incorporated limited
6 partnership being a trustee improperly employs trust
7 property in the business or on account of the
8 partnership, neither the partnership nor any other
9 general partner is liable for the trust property to the
10 persons beneficially interested in it.

11 (2) Subsection (1) —

12 (a) does not affect any liability incurred by any
13 general partner by reason of the partner's
14 having notice of a breach of trust; and

15 (b) does not prevent trust money from being
16 followed and recovered from the incorporated
17 limited partnership if still in its possession or
18 under its control.
19

20 and

21 (n) in section 21(1) of that Act a reference to partner were a
22 reference to general partner as defined in section 3; and

23 (o) in section 24 of that Act —

24 (i) a reference in subsection (1) to a partner were a
25 reference to a general partner as defined in
26 section 3; and

27 (ii) a reference in subsection (2) to debts or
28 obligations were a reference to the liabilities as
29 defined in section 3; and

30 (iii) the words “as newly constituted” were deleted
31 from subsection (3);

32 and

- 1 (p) in section 30(1) of that Act a reference to the partners
2 were a reference to the incorporated limited partnership
3 as defined in section 3; and
- 4 (q) at the end of section 30 of that Act the following
5 subsection were inserted —
6
- 7 (4) No partner in an incorporated limited partnership, by
8 virtue only of being a partner in the partnership, has
9 any legal or beneficial interest in its partnership
10 property.
11
- 12 and
- 13 (r) in section 39 of that Act the words “Partners are” were
14 deleted and replaced with “An incorporated limited
15 partnership is”.

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Part 3 — Limited partnerships

Division 1 — Nature, formation and membership

10. Formation of limited partnership

A limited partnership is formed by and on registration under this Act as a limited partnership.

11. Composition of limited partnership

- (1) A limited partnership must have —
 - (a) at least one general partner; and
 - (b) at least one limited partner.
- (2) A limited partnership may have any number of limited partners.
- (3) A limited partnership must not have —
 - (a) more than 20 general partners; or
 - (b) if the partnership is of a particular kind in relation to which a higher number applies under the Corporations Act section 115(2) — more general partners than that higher number.
- (4) A person may be a general partner or a limited partner in a limited partnership.
- (5) For the purposes of subsection (3), if a general partner is a partnership (including an external partnership), the general partner is to be counted as follows —
 - (a) if, under the law of the place where the partnership is formed, no partner in the partnership has limited liability for the liabilities of the partnership — each partner in the partnership is to be counted in place of the general partner;
 - (b) if, under the law of the place where the partnership is formed, any partner in the partnership has limited liability for the liabilities of the partnership — each

1 partner in the partnership whose liability is not so
2 limited is to be counted in place of the general partner.

3 **12. Change in membership of limited partnership**

4 (1) A person may be admitted as a partner in a limited partnership
5 without the consent of any limited partner.

6 (2) A limited partner in a limited partnership must not assign the
7 limited partner’s share in the partnership without the consent of
8 the general partners in the limited partnership.

9 (3) If the limited partner’s share in a limited partnership is assigned,
10 the assignee is taken to be a limited partner in substitution for
11 the assignor with all the rights and obligations of the assignor.

12 (4) The application of this section may be varied in relation to a
13 limited partnership by a partnership agreement or with the
14 consent of the partners in the limited partnership.

15 **13. Differences between partners**

16 (1) A difference arising as to ordinary matters connected with the
17 business of a limited partnership may be decided by a majority
18 of the general partners.

19 (2) The application of this section may be varied in relation to a
20 limited partnership by a partnership agreement or with the
21 consent of the partners in the limited partnership.

22 **Division 2 — Management**

23 **14. Limited partner must not take part in management of**
24 **limited partnership**

25 (1) A limited partner in a limited partnership must not take part in
26 the management of the business of the partnership.

27 (2) A limited partner in a limited partnership cannot bind the
28 partnership.

1 (3) If a limited partner takes part in the management of the business
2 of the partnership, the limited partner is liable, as if the partner
3 were a general partner, for the liabilities of the partnership
4 incurred while the limited partner takes part in the management
5 of that business.

6 (4) The application of this section cannot be varied in relation to a
7 limited partnership by a partnership agreement or with the
8 consent of the partners in the limited partnership.

9 **15. When does limited partner take part in management?**

10 (1) For the purposes of section 14, a limited partner in a limited
11 partnership does not take part in the management of the
12 business of the partnership merely because the limited partner or
13 a person acting on behalf of the limited partner —

14 (a) is an employee or an independent contractor of the
15 partnership or of a general partner in the partnership, or
16 is an officer of a general partner in the partnership that is
17 a body corporate; or

18 (b) gives advice to, or on behalf of, the partnership or a
19 general partner in the partnership in the proper exercise
20 of functions arising from the engagement of the limited
21 partner in a professional capacity or arising from
22 business dealings between the limited partner and the
23 partnership or a general partner in the partnership; or

24 (c) gives a guarantee or indemnity in respect of any liability
25 of the partnership or of a general partner in the
26 partnership; or

27 (d) participates in any action by other limited partners in the
28 partnership for the purpose of enforcing their rights or
29 safeguarding their interests as limited partners; or

30 (e) if authorised by a partnership agreement, participates in
31 general meetings of all the partners in the partnership; or

32 (f) exercises a power conferred on the limited partner by
33 section 107.

- 1 (2) Subsection (1) is not to be taken to have the effect that a limited
2 partner in a limited partnership takes part in the management of
3 the business of the partnership merely because the limited
4 partner or a person acting on behalf of the limited partner does
5 anything in connection with the conduct of that business that is
6 not referred to in that subsection.
- 7 (3) The application of this section cannot be varied in relation to a
8 limited partnership by a partnership agreement or with the
9 consent of the partners in the limited partnership.

Division 3 — Registration

11 **16. Application for registration**

- 12 (1) An application for registration as a limited partnership may be
13 made by —
- 14 (a) a partnership (including an external partnership); or
15 (b) a proposed partner in a proposed limited partnership.
- 16 (2) An application for registration as a limited partnership is made
17 by lodging with the Commissioner a statement that —
- 18 (a) is in the form approved by the Commissioner; and
19 (b) contains each of the matters set out in subsection (3);
20 and
21 (c) is signed —
- 22 (i) if the application is made by a partnership — by
23 each partner in the partnership or by a person
24 given authority to make the application on behalf
25 of the partnership and the partners in it; or
26 (ii) in any other case — by each proposed partner in
27 the proposed partnership.
- 28 (3) The statement must contain, in relation to the proposed limited
29 partnership, each of the following matters —
- 30 (a) the proposed firm name;

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- 1 (b) the address of the proposed registered office;
- 2 (c) the name of each proposed partner, being —
- 3 (i) if the partner is an individual — their full name;
- 4 or
- 5 (ii) if the partner is a body corporate — its corporate
- 6 name; or
- 7 (iii) if the partner is a partnership — its firm name or,
- 8 if the partnership does not have a firm name, the
- 9 full name of each partner in the partnership;
- 10 (d) the address of each proposed partner, being —
- 11 (i) if the partner is an individual — their principal
- 12 place of residence; or
- 13 (ii) if the partner is a body corporate — its registered
- 14 office as defined in the Corporations Act
- 15 section 9; or
- 16 (iii) if the partner is a partnership — its principal
- 17 office;
- 18 (e) a statement in relation to each proposed partner as to —
- 19 (i) whether they will be a general partner or a
- 20 limited partner; and
- 21 (ii) whether they are an individual, a body corporate
- 22 or a partnership;
- 23 (f) in relation to each proposed limited partner —
- 24 (i) a statement of their agreed contribution; and
- 25 (ii) a statement to the effect that their liability to
- 26 contribute is limited to their agreed contribution;
- 27 and
- 28 (iii) a statement of the amount of their agreed
- 29 contribution that has been paid and the amount of
- 30 their agreed contribution that is unpaid;
- 31 (g) any other particulars that are required by the form or
- 32 prescribed.

1 **17. Registration**

- 2 (1) If an application for registration as a limited partnership is made
3 in accordance with this Division, the Commissioner must
4 register the limited partnership.
- 5 (2) Despite subsection (1), the Commissioner must not register a
6 limited partnership if —
- 7 (a) the partnership does not satisfy the requirements as to
8 the composition of a limited partnership under
9 section 11(1) and (3); or
- 10 (b) the Commissioner is satisfied that the proposed firm
11 name (the *proposed name*) of the proposed limited
12 partnership is identical with or likely to be confused
13 with —
- 14 (i) a business name registered under the Business
15 Names Registration Act; or
- 16 (ii) a name of a body corporate; or
- 17 (iii) a firm name of a partnership;
- 18 or
- 19 (c) the Commissioner is satisfied that the proposed name
20 would not be eligible for registration as a business name
21 under the Business Names Registration Act; or
- 22 (d) the Commissioner is satisfied that the proposed name is
23 undesirable.
- 24 (3) If, in accordance with subsection (2), the Commissioner does
25 not register a limited partnership, the Commissioner must give
26 the applicant notice of the refusal to register the limited
27 partnership and the reasons for the refusal.
- 28 (4) Registration is carried out by recording in the register the
29 particulars contained in the statement lodged with the
30 Commissioner.

1 **Division 4 — Liability of partner**

2 **18. Limitation of liability of limited partner**

- 3 (1) The liability of a limited partner to contribute to the liabilities of
4 the limited partnership is, subject to this Part, not to exceed the
5 amount shown in the register as the partner's agreed
6 contribution.
- 7 (2) If a limited partner in a limited partnership makes a contribution
8 towards their agreed contribution, the liability of the limited
9 partner is reduced to the amount of the partner's agreed
10 contribution shown in the register as unpaid.
- 11 (3) If the whole or any part of a contribution made by a limited
12 partner in a limited partnership towards their agreed
13 contribution is received back by the partner, the liability of the
14 limited partner is increased to the amount of the partner's
15 agreed contribution shown in the register as unpaid.
- 16 (4) If a partnership (the *investing partnership*) is a limited partner
17 in a limited partnership (the *principal partnership*), a partner in
18 the investing partnership has no separate liability to contribute
19 to the liabilities of the principal partnership.
- 20 (5) Nothing in subsection (4) affects any liability of the investing
21 partnership as a limited partner to contribute to the liabilities of
22 the principal partnership.

23 **19. Change in liability of limited partner**

- 24 (1) A reduction in the liability of a limited partner caused by a
25 reduction in the partner's agreed contribution shown in the
26 register does not extend to any liability of the limited
27 partnership that arose before the reduction was recorded in the
28 register.
- 29 (2) An increase in the liability of a limited partner caused by an
30 increase in the partner's agreed contribution shown in the

1 register extends to any liability of the limited partnership that
2 arose before the increase was recorded in the register.

3 **20. Effect on liability of change in status of partner**

4 (1) If a general partner becomes a limited partner, the partner
5 remains liable, as if the partner were a general partner, for any
6 liability of the limited partnership that arose before the partner
7 became a limited partner.

8 (2) If a limited partner becomes a general partner, the partner
9 remains liable, as if the partner were a limited partner, for any
10 liability of the limited partnership that arose before the partner
11 became a general partner.

12 **21. Liability for business conducted outside State**

13 The limitation on the liability of a limited partner in a limited
14 partnership extends to any liability incurred in connection with
15 the conduct of the partnership's business outside this State.

16 **22. Liability under corresponding law**

17 (1) In this section —

18 *recognised limited partnership* means a limited partnership
19 formed under a corresponding law.

20 (2) Any limitation under a corresponding law on the liability of a
21 limited partner in a recognised limited partnership extends to
22 any liability incurred in connection with the conduct of the
23 partnership's business in this State.

24 **23. Effect of sections 21 and 22**

25 Sections 21 and 22 are not to be taken to have the effect that a
26 limited partner in a limited partnership has any liability (or but
27 for that section would have any liability) in connection with the
28 conduct of the partnership's business outside this State that the
29 limited partner would not have in connection with the conduct
30 of the partnership's business within this State.

1 **24. Limitation of liability provisions cannot be varied**

2 The application of the provisions of this Act relating to the
3 limitation of liability of a limited partner cannot be varied in
4 relation to a limited partnership by a partnership agreement or
5 with the consent of the partners in the limited partnership.

6 **Division 5 — Dissolution, cessation and winding up**

7 **25. Dissolution generally**

8 (1) A limited partner is not entitled to dissolve a limited partnership
9 by notice.

10 (2) The other partners are not entitled to dissolve the limited
11 partnership on the basis that —

12 (a) a limited partner has allowed their share of the
13 partnership property to be charged for that partner's
14 separate liabilities; or

15 (b) a limited partner has assigned their share in the
16 partnership.

17 (3) The death, bankruptcy or retirement or, in the case of a body
18 corporate or partnership, the dissolution of a limited partner
19 does not dissolve the partnership.

20 (4) The application of this section may be varied in relation to a
21 limited partnership by a partnership agreement or with the
22 consent of the partners in the limited partnership.

23 **26. Dissolution on grounds of mental disability**

24 (1) In this section —

25 *mental disability* has the meaning given in the *Guardianship*
26 *and Administration Act 1990* section 3(1).

27 (2) The fact that a limited partner in a limited partnership is
28 incapable of managing their affairs because of mental disability
29 is not a ground for dissolution of the partnership by the court
30 unless the share and interest of the partner in the partnership

1 cannot be ascertained or realised other than by dissolving the
2 partnership.

3 **27. Cessation**

- 4 (1) A partnership ceases to be a limited partnership if —
- 5 (a) the partnership ceases to satisfy the requirements as to
6 the composition of a limited partnership under
7 section 11(1) and (3); or
- 8 (b) the partners cease to carry on a business in common
9 with a view of profit; or
- 10 (c) an event occurs that makes it unlawful for the business
11 of the partnership to be carried on or for the partners to
12 carry it on in partnership.
- 13 (2) If a limited partnership ceases to be a limited partnership and
14 the members of the partnership or some of them continue in
15 association or partnership, that association or partnership is
16 taken to have not been formed under this Act from the time it
17 ceased to be a limited partnership.

18 **28. Notice of dissolution or cessation**

- 19 (1) If a limited partnership is dissolved under section 25 or ceases
20 to be a limited partnership under section 27, the persons who
21 were registered as general partners immediately before the
22 dissolution or cessation must lodge with the Commissioner a
23 notice of the dissolution or cessation in accordance with
24 subsection (2).
- 25 (2) The notice must —
- 26 (a) be lodged as soon as practicable after the dissolution or
27 cessation; and
- 28 (b) be in the form approved by the Commissioner; and
- 29 (c) contain the particulars required by the form; and
- 30 (d) specify the day on which the dissolution or cessation
31 took effect.

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- 1 (3) As soon as practicable after receiving a notice under
2 subsection (1), the Commissioner must record in the register —
3 (a) the dissolution or cessation; and
4 (b) the day on which the dissolution or cessation took effect,
5 being the day specified in the notice under
6 subsection (2)(d).
- 7 (4) If subsection (1) is not complied with, each person registered as
8 a general partner in the limited partnership immediately before
9 the dissolution or cessation commits an offence.
10 Penalty for this subsection: a fine of \$1 500.

11 **29. No notice of dissolution or cessation**

- 12 (1) Subsection (2) applies if —
13 (a) section 28(1) is not complied with; and
14 (b) the Commissioner is satisfied that a limited partnership
15 has dissolved or ceased to be a limited partnership.
- 16 (2) The Commissioner may give the limited partnership a notice
17 informing the limited partnership that, if it does not satisfy the
18 Commissioner, within 28 days after the day on which the notice
19 is given, that the limited partnership has not dissolved or ceased
20 to be a limited partnership, the dissolution or cessation of the
21 limited partnership will be recorded in the register.
- 22 (3) The Commissioner must, as soon as practicable after giving a
23 notice to a limited partnership under subsection (2), record the
24 giving of the notice in the register.
- 25 (4) If, after the expiry of 28 days after the day on which a notice is
26 given to a limited partnership under subsection (2), the
27 Commissioner is still satisfied that the limited partnership has
28 dissolved or ceased to be a limited partnership, the
29 Commissioner may record in the register —
30 (a) the dissolution or cessation; and

- 1 (b) the day on which the dissolution or cessation took effect,
2 being the day on which the record is made.
- 3 (5) If, at any time within 28 days after the day on which a notice is
4 given to a limited partnership under subsection (2), the
5 Commissioner becomes satisfied that the limited partnership has
6 not dissolved or ceased to be a limited partnership, the
7 Commissioner must —
- 8 (a) record that fact in the register; and
9 (b) give the limited partnership notice of that fact.

10 **30. Winding up**

11 If the affairs of a limited partnership are to be wound up by the
12 partners with a view to its dissolution, the winding up must be
13 carried out by the general partners unless the court orders
14 otherwise.

15 **Division 6 — Cancellation of registration**

16 **31. Cancellation of registration on dissolution or cessation**

17 If the Commissioner records the dissolution or cessation of a
18 limited partnership in the register under section 28(3) or 29(4),
19 the Commissioner must, at the same time, cancel the registration
20 of the limited partnership by recording in the register —

21 (a) the cancellation; and
22 (b) the day on which the cancellation took effect, being the
23 day on which the dissolution or cessation took effect.

24 **32. Cancellation of registration on incorporation**

25 (1) If the Commissioner registers a limited partnership as an
26 incorporated limited partnership, the Commissioner must, at the
27 same time, cancel the registration of the limited partnership by
28 recording in the register —

29 (a) the cancellation; and

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1 (b) the day on which the cancellation took effect, being the
2 day on which the registration as an incorporated limited
3 partnership took effect.

4 (2) Any liability of a partnership to which subsection (1) applies, or
5 of a partner in the partnership, that arose before its registration
6 as an incorporated limited partnership is to be dealt with as if
7 the partnership were still a limited partnership.

8 **33. Notice of cancellation**

9 If the registration of a limited partnership is cancelled under this
10 Division, the Commissioner must give the partners notice of the
11 cancellation and the reasons for the cancellation.

12 **34. Effect of cancellation**

13 A limited partnership ceases to exist on cancellation of its
14 registration as a limited partnership under this Division.

1 **Part 4 — Incorporated limited partnerships**

2 **Division 1 — Nature, formation and membership**

3 **35. Nature of incorporated limited partnerships**

4 (1) An incorporated limited partnership is a body corporate with —

5 (a) legal personality separate from that of the partners in it;
6 and

7 (b) perpetual succession.

8 (2) An incorporated limited partnership may have a common seal.

9 (3) An incorporated limited partnership may sue and be sued in its
10 firm name.

11 (4) An incorporated limited partnership has the legal capacity and
12 powers of an individual.

13 (5) An incorporated limited partnership has the powers of a body
14 corporate, including the power to do any of the following,
15 whether within or outside this State or outside Australia —

16 (a) carry on the business of the partnership;

17 (b) enter into contracts or otherwise acquire rights or
18 liabilities;

19 (c) create, confer, vary or cancel interests in the partnership;

20 (d) acquire, hold and dispose of real or personal property or
21 an interest (whether beneficial or legal) in real or
22 personal property;

23 (e) appoint agents and attorneys, and act as agent for other
24 persons;

25 (f) form, and participate in the formation of, companies or
26 incorporated limited partnerships;

27 (g) participate in partnerships, trusts, joint ventures or other
28 associations and other arrangements for the sharing of
29 profits;

1 (h) do any other things that it is authorised to do by or under
2 this Act.

3 (6) The powers of an incorporated limited partnership may be
4 limited by the partnership agreement.

5 (7) A reference in this Act, in relation to an incorporated limited
6 partnership, to the partnership is a reference to the incorporated
7 limited partnership as a separate legal entity and not to the
8 partners in that partnership.

9 **36. Formation of incorporated limited partnerships**

10 An incorporated limited partnership is formed by and on
11 registration under this Act as an incorporated limited
12 partnership.

13 **37. Composition of incorporated limited partnerships**

14 (1) An incorporated limited partnership must have —

- 15 (a) at least one general partner; and
16 (b) at least one limited partner.

17 (2) An incorporated limited partnership may have any number of
18 limited partners.

19 (3) An incorporated limited partnership must not have more than
20 20 general partners.

21 (4) A person may be a general partner or a limited partner in an
22 incorporated limited partnership.

23 (5) For the purposes of subsection (3), if a general partner is a
24 partnership (including an external partnership), the general
25 partner is to be counted as follows —

- 26 (a) if, under the law of the place where the partnership is
27 formed, no partner in the partnership has limited liability
28 for the liabilities of the partnership — each partner in
29 the partnership is to be counted in place of the general
30 partner;

- 1 (b) if, under the law of the place where the partnership is
2 formed, any partner in the partnership has limited
3 liability for the liabilities of the partnership — each
4 partner in the partnership whose liability is not so
5 limited is to be counted in place of the general partner.

6 **38. Change in membership**

- 7 (1) A person may be admitted as a partner in an incorporated
8 limited partnership without the consent of any limited partner.
- 9 (2) A limited partner in an incorporated limited partnership must
10 not transfer the whole or a part of the limited partner's interest
11 in the incorporated limited partnership without —
- 12 (a) the consent of the general partners in the incorporated
13 limited partnership; and
- 14 (b) the consent of the transferee.
- 15 (3) If the whole of the limited partner's interest in the incorporated
16 limited partnership is transferred to a transferee, the transferee
17 becomes a limited partner in substitution for the transferor with
18 all the rights and obligations of the transferor.
- 19 (4) If only a part of the limited partner's interest in the incorporated
20 limited partnership is transferred to a transferee, the transferee
21 becomes a limited partner in substitution for the transferor in
22 relation to the transferred part and with all the rights and
23 obligations of the transferor in relation to it.
- 24 (5) The application of this section may be varied in relation to an
25 incorporated limited partnership by the partnership agreement or
26 with the consent of the partners in the incorporated limited
27 partnership.

28 **39. Differences between partners**

- 29 (1) A difference arising as to ordinary matters connected with the
30 business of an incorporated limited partnership may be decided
31 by a majority of the general partners.

1 (2) The application of this section may be varied in relation to an
2 incorporated limited partnership by the partnership agreement or
3 with the consent of the partners in the incorporated limited
4 partnership.

5 **40. Agents**

6 (1) Each of the following is not an agent of, and cannot bind, a
7 limited partner in an incorporated limited partnership —

- 8 (a) the partnership;
- 9 (b) a general partner in the partnership;
- 10 (c) an officer, employee, agent or representative of a
11 general partner in the partnership;
- 12 (d) an officer, employee, agent or representative of the
13 partnership.

14 (2) A limited partner in an incorporated limited partnership is not
15 an agent of, or a fiduciary for, and cannot bind —

- 16 (a) the partnership; or
- 17 (b) a general partner in the partnership; or
- 18 (c) another limited partner in the partnership.

19 (3) The application of subsections (1) and (2) may be varied in
20 relation to an incorporated limited partnership by the
21 partnership agreement or with the consent of the partners in the
22 incorporated limited partnership.

23 (4) Subsections (1) and (2) do not prevent the making of, or limit or
24 restrict, an agreement between a partner (the *first person*) in an
25 incorporated limited partnership and either another partner in
26 the partnership or the partnership (the *second person*) under
27 which —

- 28 (a) the first person acts as an agent of the second person
29 and, by so acting, binds the second person; or
- 30 (b) the second person acts as an agent of the first person
31 and, by so acting, binds the first person.

1 **41. Partnership agreement**

- 2 (1) There must at all times be a written partnership agreement
3 between the partners in an incorporated limited partnership.
- 4 (2) The interests of the partners in an incorporated limited
5 partnership and their rights and duties in relation to the
6 partnership are, subject to this Act, to be determined in
7 accordance with the agreement.
- 8 (3) A partnership agreement has effect as a contract between the
9 incorporated limited partnership and each partner in the
10 partnership under which the partnership and each of the partners
11 agree to observe and perform the agreement so far as it applies
12 to them.
- 13 (4) Nothing in subsection (3) prevents an incorporated limited
14 partnership itself executing a partnership agreement.

15 **Division 2 — Management**

16 **42. Limited partner must not take part in management of**
17 **incorporated limited partnership**

- 18 (1) A limited partner in an incorporated limited partnership must
19 not take part in the management of the business of the
20 partnership.
- 21 (2) Subsection (3) applies if —
- 22 (a) as a direct result of any wrongful act or omission of a
23 limited partner in taking part in the management of the
24 business of an incorporated limited partnership, the
25 limited partner causes any loss or injury to any person
26 (a *third party*) other than a partner in the partnership;
27 and
- 28 (b) at the time of the act or omission, the third party had
29 reasonable grounds to believe that the limited partner
30 was a general partner in the partnership.

1 (3) The limited partner is liable for the loss or injury to the same
2 extent that the limited partner would have been liable if the
3 limited partner were a general partner in the partnership.

4 (4) The application of this section cannot be varied in relation to an
5 incorporated limited partnership by the partnership agreement or
6 with the consent of the partners in the incorporated limited
7 partnership.

8 **43. When does limited partner take part in management?**

9 (1) For the purposes of section 42, a limited partner in an
10 incorporated limited partnership does not take part in the
11 management of the business of the partnership merely because
12 the limited partner or a person acting on behalf of the limited
13 partner —

14 (a) is an employee of or an independent contractor engaged
15 by —

16 (i) the partnership; or

17 (ii) a general partner in the partnership; or

18 (iii) an associate of a general partner in the
19 partnership;

20 or

21 (b) is an officer of a body corporate that is —

22 (i) a general partner in the partnership; or

23 (ii) an associate of a general partner in the
24 partnership;

25 or

26 (c) gives advice to, or on behalf of, the partnership, a
27 general partner in the partnership or an associate of a
28 general partner in the partnership in the proper exercise
29 of functions arising from —

30 (i) the engagement of the limited partner, or the
31 person acting on behalf of the limited partner, in
32 a professional capacity; or

- 1 (ii) business dealings between the limited partner, or
2 the person acting on behalf of the limited partner,
3 and the partnership, a general partner in the
4 partnership or an associate of a general partner in
5 the partnership;
- 6 or
- 7 (d) gives a guarantee or indemnity in respect of any liability
8 of the partnership, a general partner in the partnership or
9 an associate of a general partner in the partnership; or
- 10 (e) takes any action, or participates in any action taken by
11 any other limited partner in the partnership, for the
12 purpose of enforcing the rights, or safeguarding the
13 interests, of the limited partner as a limited partner; or
- 14 (f) if authorised by the partnership agreement —
- 15 (i) calls, requisitions, convenes, chairs, participates
16 in, postpones, adjourns or makes a record of a
17 meeting of any of the partners in the partnership;
18 or
- 19 (ii) requisitions, signs or otherwise passes, approves,
20 disapproves or amends any resolution (whether
21 at a meeting, in writing or otherwise) of any of
22 the partners in the partnership, including without
23 limitation by formulating, moving, proposing,
24 supporting, opposing, speaking to or voting on
25 the resolution;
- 26 or
- 27 (g) exercises a power conferred on the limited partner by
28 section 107; or
- 29 (h) gives advice to, or consults with, an officer, director,
30 security holder, partner, agent, representative, employee
31 of, or independent contractor engaged by, an associate
32 of the partnership; or
- 33 (i) is, or acts as, an officer, director, security holder,
34 partner, agent, representative, employee of, or

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- 1 independent contractor engaged by, an associate of the
2 partnership; or
- 3 (j) is, or acts as, a lender to, or fiduciary for, an associate of
4 the partnership; or
- 5 (k) to the extent authorised by the partnership agreement —
- 6 (i) participates on a committee (a **relevant**
7 **committee**) that considers, approves of, consents
8 to or disapproves of a proposal of a kind referred
9 to in section 44; or
- 10 (ii) has, or exercises, any right to appoint one or
11 more persons to, remove one or more persons
12 from, or to nominate one or more persons for
13 appointment to or removal from, a relevant
14 committee;
- 15 or
- 16 (l) nominates, selects, investigates, evaluates or negotiates
17 with any person in connection with the removal or
18 replacement of a general partner; or
- 19 (m) participates on a committee that proposes, considers,
20 approves of, consents to or disapproves of any
21 nomination, selection, appointment, change in control or
22 ownership, suspension, replacement or removal of a
23 general partner or an associate of a general partner; or
- 24 (n) takes any action, or participates in any action taken by
25 any other limited partner, for the purpose of registering
26 or maintaining the registration of the partnership or a
27 general partner in the partnership as an AFOF, ESVCLP
28 or VCLP.
- 29 (2) Subsection (1) is not to be taken to have the effect that a limited
30 partner in an incorporated limited partnership takes part in the
31 management of the business of the partnership merely because
32 the limited partner or a person acting on behalf of the limited
33 partner does anything in connection with the conduct of that
34 business that is not referred to in that subsection.

- 1 (3) Subsection (1) is not to be taken to have the effect that a limited
2 partner in an incorporated limited partnership that is a VCMP
3 takes part in the management of the business of the incorporated
4 limited partnership merely because of any act the limited partner
5 takes in respect of the incorporated limited partnership in the
6 capacity of a partner or associate of a partner in the VCMP.
- 7 (4) The application of this section cannot be varied in relation to an
8 incorporated limited partnership by the partnership agreement or
9 with the consent of the partners in the incorporated limited
10 partnership.

11 **44. Proposals to which section 43(1)(k)(i) applies**

12 Section 43(1)(k)(i) applies to the following kinds of proposals in
13 relation to an incorporated limited partnership —

- 14 (a) a proposal involving a material change in the nature of
15 the business of the partnership (including a change in, or
16 departure from, any investment guidelines, policies or
17 conditions relating to the business of the partnership);
- 18 (b) a proposal for the adoption of a method for valuing
19 some or all of the assets of the partnership (including a
20 change to, replacement of or variation from that
21 method);
- 22 (c) a proposal for an extension or reduction in the period in
23 which, under the partnership agreement, investments (or
24 certain types of investments) can be made by the
25 partnership, or for any approval or disapproval of
26 investments that the partnership does not otherwise have
27 a right to make;
- 28 (d) a proposal relating to any actual or potential transaction
29 or other matter involving any actual or potential conflict
30 of interest;
- 31 (e) a proposal relating to any actual or potential transaction,
32 contract, arrangement or understanding between one or
33 more of the partners in the partnership, or their
34 associates, and a general partner in the partnership, the

- 1 partnership or any associate of a general partner in the
2 partnership or of the partnership;
- 3 (f) a proposal for the delegation, waiver, release or
4 variation of an authority, right, duty or obligation of a
5 general partner in the partnership;
- 6 (g) a proposal for the appointment or approval under the
7 partnership agreement of any person as a senior
8 executive of a general partner in the partnership or of an
9 associate of a general partner in the partnership.

10 **Division 3 — Registration**

11 **45. Application for registration**

- 12 (1) An application for registration as an incorporated limited
13 partnership may be made, in the circumstances described in
14 subsection (2), by —
- 15 (a) a partnership (including an external partnership); or
16 (b) a proposed partner in a proposed incorporated limited
17 partnership.
- 18 (2) For the purposes of subsection (1), the circumstances are —
- 19 (a) if the application is made by a partnership under
20 subsection (1)(a) — the partnership is an AFOF,
21 ESVCLP, VCLP or VCMP; or
- 22 (b) a general partner in the partnership or a proposed
23 general partner in the proposed partnership intends to
24 apply for registration of the partnership or proposed
25 partnership as an AFOF, ESVCLP or VCLP; or
- 26 (c) the partners in the partnership or the proposed partners
27 in the proposed partnership intend that the partnership or
28 proposed partnership will meet the requirements set out
29 in the *Income Tax Assessment Act 1936*
30 (Commonwealth) section 94D(3) for recognition as a
31 VCMP; or
- 32 (d) any other prescribed circumstances.

- 1 (3) An application for registration as an incorporated limited
2 partnership is made by lodging with the Commissioner a
3 statement that —
- 4 (a) is in the form approved by the Commissioner; and
5 (b) contains each of the matters set out in subsection (4);
6 and
7 (c) is signed —
- 8 (i) if the application is made by a partnership — by
9 each partner in the partnership or by a person
10 given authority to make the application on behalf
11 of the partnership and the partners in it; or
12 (ii) in any other case — by each proposed partner in
13 the proposed partnership.
- 14 (4) For the purposes of subsection (3)(b), the statement must
15 contain, in relation to the proposed incorporated limited
16 partnership, each of the following matters —
- 17 (a) the proposed firm name;
18 (b) the address of the proposed registered office;
19 (c) the name of each proposed partner, being —
- 20 (i) if the partner is an individual — their full name;
21 or
22 (ii) if the partner is a body corporate — its corporate
23 name; or
24 (iii) if the partner is a partnership — the firm name
25 or, if the partnership does not have a firm name,
26 the full name of each partner in the partnership;
- 27 (d) the address of each proposed partner, being —
- 28 (i) if the partner is an individual — their principal
29 place of residence; or
30 (ii) if the partner is a body corporate — its registered
31 office as defined in the Corporations Act
32 section 9; or

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- 1 (iii) if the partner is a partnership — its principal
2 office;
- 3 (e) a statement in relation to each proposed partner as to —
4 (i) whether they will be a general partner or a
5 limited partner; and
6 (ii) whether they are an individual, a body corporate
7 or a partnership;
- 8 (f) if the partnership is registered as an AFOF, ESVCLP or
9 VCLP — a statement to that effect;
- 10 (g) if it is intended that the partnership apply for registration
11 as an AFOF, ESVCLP or VCLP — a statement to that
12 effect;
- 13 (h) if the partnership is a VCMP — a statement to that
14 effect;
- 15 (i) if it is intended that the partnership meet the
16 requirements for recognition as a VCMP — a statement
17 to that effect;
- 18 (j) any other particulars that are required by the form or
19 prescribed.

20 **46. Registration**

- 21 (1) If an application for registration as an incorporated limited
22 partnership is made in accordance with this Division the
23 Commissioner must register the incorporated limited
24 partnership.
- 25 (2) Despite subsection (1), the Commissioner must not register an
26 incorporated limited partnership if —
27 (a) the partnership does not satisfy the requirements as to
28 the composition of an incorporated limited partnership
29 under section 37(1) and (3); or
30 (b) the Commissioner is satisfied that the proposed firm
31 name (the *proposed name*) of the proposed incorporated

- 1 limited partnership is identical with or likely to be
2 confused with —
- 3 (i) a business name registered under the Business
4 Names Registration Act; or
- 5 (ii) a name of a body corporate; or
- 6 (iii) a firm name of a partnership;
- 7 or
- 8 (c) the Commissioner is satisfied that the proposed name
9 would not be eligible for registration as a business name
10 under the Business Names Registration Act; or
- 11 (d) the Commissioner is satisfied that the proposed name is
12 undesirable.
- 13 (3) If, in accordance with subsection (2), the Commissioner does
14 not register an incorporated limited partnership, the
15 Commissioner must give the applicant notice of the refusal to
16 register the incorporated limited partnership and the reasons for
17 the refusal.
- 18 (4) Registration is carried out by recording in the register the
19 particulars contained in the statement lodged with the
20 Commissioner.

21 **Division 4 — Lodgment of documents relating to registration**

22 **47. Evidence of status: on registration**

- 23 A statement lodged under section 45(3) in the circumstances
24 described in section 45(2)(a) must be accompanied by —
- 25 (a) if the partnership is registered as an AFOF, ESVCLP or
26 VCLP — a copy of a document evidencing its status as
27 an AFOF, ESVCLP or VCLP; or
- 28 (b) if the partnership is a VCMP — a copy of a document
29 evidencing its status as a VCMP.

1 **48. Evidence of status: after registration**

- 2 (1) An incorporated limited partnership that was incorporated on
3 the basis of an intention to apply for registration of the
4 partnership as an AFOF, ESVCLP or VCLP must —
- 5 (a) if the incorporated limited partnership has, within the
6 period of 2 years after its incorporation, been so
7 registered — lodge with the Commissioner a copy of a
8 document evidencing its status as an AFOF, ESVCLP or
9 VCLP within 1 month after being so registered; or
- 10 (b) if the incorporated limited partnership has not, within
11 the period of 2 years after its incorporation, been so
12 registered — lodge with the Commissioner a notice of
13 that fact as soon as practicable after the end of the 2 year
14 period.
- 15 (2) An incorporated limited partnership that was incorporated on
16 the basis of an intention to meet the requirements for
17 recognition as a VCMP must —
- 18 (a) if the incorporated limited partnership has, within the
19 period of 2 years after its incorporation, met the
20 requirements for recognition as a VCMP — lodge with
21 the Commissioner a document evidencing its status as a
22 VCMP with 1 month after so meeting the requirements;
23 or
- 24 (b) if the incorporated limited partnership has not, within
25 the period of 2 years after its incorporation, met the
26 requirements for recognition as a VCMP — lodge with
27 the Commissioner a notice of that fact as soon as
28 practicable after the end of the 2 year period.
- 29 (3) Subsection (4) applies if —
- 30 (a) the registration of an incorporated limited partnership as
31 an AFOF, ESVCLP or VCLP is revoked; or
- 32 (b) an incorporated limited partnership ceases to be a
33 VCMP.

-
- 1 (4) The incorporated limited partnership must, within 7 days after
2 the day on which the revocation takes effect or it ceases to be a
3 VCMP, lodge with the Commissioner a notice of that revocation
4 or cessation specifying the day on which the revocation or
5 cessation took effect.
- 6 (5) If subsection (1), (2) or (3) is not complied with, each general
7 partner in the incorporated limited partnership commits an
8 offence.
- 9 Penalty for this subsection: a fine of \$1 500.
- 10 (6) A notice required to be lodged with the Commissioner under
11 this section must be —
- 12 (a) in the form approved by the Commissioner; and
13 (b) contain the particulars that are required by the form or
14 prescribed.

15 **Division 5 — Liability of partner**

16 **49. Limitation of liability of limited partner**

- 17 (1) Subject to section 42 and subsection (2), a limited partner in an
18 incorporated limited partnership has no liability for the
19 liabilities of —
- 20 (a) the partnership; or
21 (b) a general partner in the partnership.
- 22 (2) Nothing in section 51 or 52 prevents either of the following in
23 satisfaction of a liability of the partnership or a general partner
24 in the partnership —
- 25 (a) a contribution of capital or property made by a limited
26 partner to the incorporated limited partnership being
27 used;
- 28 (b) an obligation of a limited partner to contribute capital or
29 property to the incorporated limited partnership being
30 enforced by any person to whom the obligation is owed.

1 **50. Effect on liability of change in status of partner**

2 (1) If a general partner becomes a limited partner, the partner
3 remains liable, as if the partner were a general partner, for any
4 liability of the incorporated limited partnership that arose before
5 the partner became a limited partner to the extent that the
6 partnership is unable to satisfy the liability or to any greater
7 extent provided by the partnership agreement.

8 (2) If a limited partner becomes a general partner, the partner
9 remains not liable for any liability of the incorporated limited
10 partnership that arose before the partner became a general
11 partner.

12 **51. Liability for business conducted outside State**

13 The limitation on the liability of a limited partner in an
14 incorporated limited partnership extends to any liability
15 incurred —

- 16 (a) in connection with the conduct of the partnership's
17 business outside this State; or
- 18 (b) as a result of an act or omission outside this State of —
- 19 (i) a partner in the partnership; or
- 20 (ii) the partnership; or
- 21 (iii) an officer, employee, agent or representative of
22 the partnership or of a general partner in the
23 partnership.

24 **52. Liability under corresponding law**

25 (1) In this section —
26 *recognised incorporated limited partnership* means an
27 incorporated limited partnership formed under a corresponding
28 law.

-
- 1 (2) Subject to subsection (3), a partner in a recognised incorporated
2 limited partnership is liable for a liability incurred by the
3 partnership as a result of —
- 4 (a) the conduct of the recognised incorporated limited
5 partnership’s business in this State; or
- 6 (b) the acts or omissions in this State of —
- 7 (i) a partner in the partnership; or
- 8 (ii) the partnership; or
- 9 (iii) any officer, employee, agent or representative of
10 the partnership or a general partner in the
11 partnership.
- 12 (3) Subsection (2) only applies in circumstances where the partner
13 would be so liable under the corresponding law if the conduct or
14 acts or omissions occurred in the place where the recognised
15 incorporated limited partnership was formed.

16 **53. Effect of sections 51 and 52**

17 Sections 51 and 52 are not to be taken to have the effect that a
18 limited partner in an incorporated limited partnership has any
19 liability (or but for that section would have any liability) in
20 connection with the conduct of the partnership’s business or acts
21 or omissions outside this State that the limited partner would not
22 have in connection with the conduct of the partnership’s
23 business or acts or omissions within this State.

24 **Division 6 — Winding up**

25 **Subdivision 1 — Voluntary winding up**

26 **54. Voluntary winding up**

- 27 (1) An incorporated limited partnership may be wound up
28 voluntarily —
- 29 (a) under the partnership agreement; or

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- 1 (b) subject to the partnership agreement, if the limited
2 partners so resolve by special resolution.
- 3 (2) In subsection (1) —
4 **special resolution** means a resolution that has been passed by at
5 least 75% of the limited partners.
- 6 (3) On a voluntary winding up of an incorporated limited
7 partnership —
8 (a) if the partnership agreement sets out how the assets are
9 to be dealt with on a voluntary winding up — the assets
10 must be dealt with under the partnership agreement; or
11 (b) otherwise — the assets must be distributed among the
12 partners in shares that are proportionate to their
13 respective contributions of capital or property to the
14 partnership.
- 15 (4) Any person aggrieved by the operation of this section in relation
16 to the assets of an incorporated limited partnership may apply to
17 the court.
- 18 (5) On an application under subsection (4), the court may make any
19 order relating to the disposal of the assets that it considers
20 appropriate.

21 **Subdivision 2 — Winding up required by Commissioner**

22 **55. Grounds for winding up required by Commissioner**

23 There are grounds to give a show cause notice to an
24 incorporated limited partnership under section 56 if the
25 Commissioner is satisfied that the partnership —

- 26 (a) does not satisfy the requirements as to the composition
27 of an incorporated limited partnership under
28 section 37(1) and (3); or
29 (b) is an AFOF, ESVCLP, VCLP or VCMP and has ceased
30 to carry on business with a view of profit; or
31 (c) has obtained incorporation by mistake or fraud; or

- 1 (d) exists for an illegal purpose; or
2 (e) having been incorporated on the basis that the
3 partnership is or is intended to be an AFOF, ESVCLP or
4 VCLP —
5 (i) has had its registration as an AFOF, ESVCLP or
6 VCLP revoked; or
7 (ii) has not, within the period of 2 years after its
8 incorporation, become so registered;
9 or
10 (f) having been incorporated on the basis that the
11 partnership is or is intended to be a VCMP —
12 (i) has ceased to meet the requirements set out in the
13 *Income Tax Assessment Act 1936*
14 (Commonwealth) section 94D(3) for recognition
15 as a VCMP; or
16 (ii) has not, within the period of 2 years after its
17 incorporation, met those requirements.

18 **56. Commissioner may require incorporated limited**
19 **partnership to show cause**

20 If the Commissioner is satisfied that there are grounds to give a
21 show cause notice to an incorporated limited partnership, the
22 Commissioner may give the incorporated limited partnership a
23 notice —

- 24 (a) stating that the Commissioner proposes to require that
25 the incorporated limited partnership be wound up; and
26 (b) specifying the ground or grounds on which that is
27 proposed; and
28 (c) informing the incorporated limited partnership that, if it
29 does not show cause within 28 days after the day on
30 which the notice is given, the incorporated limited
31 partnership will be required to be wound up.

1 **57. How incorporated limited partnership may show cause**

2 If a show cause notice has been given to an incorporated limited
3 partnership, the incorporated limited partnership shows cause
4 for the purposes of sections 58 and 59 if it satisfies the
5 Commissioner that the ground or grounds stated in the notice
6 does not or do not apply to the incorporated limited partnership.

7 **58. Commissioner may give winding up notice where cause not**
8 **shown**

9 If a show cause notice has been given to an incorporated limited
10 partnership and the incorporated limited partnership does not
11 show cause within 28 days after the day on which the notice is
12 given, the Commissioner may give the incorporated limited
13 partnership a notice requiring the incorporated limited
14 partnership to be wound up.

15 **59. Commissioner must record in register where cause shown**

16 If a show cause notice has been given to an incorporated limited
17 partnership and the incorporated limited partnership shows
18 cause within 28 days after the day on which the notice is given,
19 the Commissioner must —

- 20 (a) record that fact in the register; and
21 (b) give the incorporated limited partnership notice of that
22 fact.

23 **60. Power to cancel winding up notice given in error**

24 (1) This section applies if the Commissioner is satisfied, in relation
25 to a winding up notice given to an incorporated limited
26 partnership, that —

- 27 (a) the notice was given in error; or
28 (b) the incorporated limited partnership should not be
29 required to be wound up.

30 (2) The Commissioner may cancel the winding up notice by giving
31 a notice to the incorporated limited partnership to that effect.

1 **61. Notices must be recorded in register**

2 As soon as practicable after giving a show cause notice, winding
3 up notice or a notice under section 60(2), the Commissioner —

- 4 (a) must record the giving of the notice in the register; and
5 (b) may publish the notice in a manner the Commissioner
6 considers appropriate.

7 **62. Commencement and completion of winding up**

8 (1) This section applies in relation to an incorporated limited
9 partnership if the Commissioner has given a winding up notice
10 to the incorporated limited partnership and that notice has not
11 been cancelled.

12 (2) The incorporated limited partnership must be wound up by —
13 (a) the incorporated limited partnership; or
14 (b) if a person is appointed to be the liquidator of the
15 incorporated limited partnership under section 64(1) —
16 the liquidator.

17 (3) Winding up of the incorporated limited partnership must be
18 commenced —
19 (a) if paragraph (b) does not apply — no later than 28 days
20 after the day on which the notice is given; or
21 (b) if an application is made under section 96 and the State
22 Administrative Tribunal affirms the decision to give the
23 notice — no later than 28 days after the day on which
24 the application is determined.

25 (4) Winding up of the incorporated limited partnership must be
26 completed —
27 (a) within the period specified by the Commissioner in a
28 notice given to the incorporated limited partnership,
29 being at least 60 days after the day on which the notice
30 is given; or

- 1 (b) within a longer period approved in writing by the
2 Commissioner.

3 **63. Costs of winding up**

4 The reasonable costs of a winding up required on a winding up
5 notice given to an incorporated limited partnership are payable
6 out of the property of the partnership.

7 **64. Appointment of liquidator**

- 8 (1) On the commencement of the winding up of an incorporated
9 limited partnership required on a winding up notice, the
10 Commissioner may appoint a person to be the liquidator of the
11 incorporated limited partnership.
- 12 (2) The liquidator is not required to be a registered liquidator as
13 defined in the Corporations Act section 9 and may be —
- 14 (a) a general partner in the incorporated limited partnership;
15 or
- 16 (b) an associate of a general partner in the incorporated
17 limited partnership.
- 18 (3) If the Commissioner appoints a person to be the liquidator of an
19 incorporated limited partnership under subsection (1), the
20 Commissioner must record the appointment in the register.
- 21 (4) The regulations may make provision for or in relation to the
22 giving of security by the liquidator to the Commissioner.
- 23 (5) The liquidator is entitled to receive from the incorporated
24 limited partnership property the remuneration that is fixed by
25 the Commissioner.
- 26 (6) Any vacancy occurring in the office of liquidator must be filled
27 by a person appointed by the Commissioner.

- 1 **65. Distribution of assets on winding up**
- 2 (1) On a winding up of an incorporated limited partnership required
- 3 on a winding up notice —
- 4 (a) if the partnership agreement sets out how the assets are
- 5 to be dealt with on a winding up — the assets must be
- 6 dealt with under the partnership agreement; or
- 7 (b) otherwise — the assets must be distributed among the
- 8 partners in shares that are proportionate to their
- 9 respective contributions of capital or property to the
- 10 partnership.
- 11 (2) Any person aggrieved by the operation of this section in relation
- 12 to the assets of an incorporated limited partnership may apply to
- 13 the court.
- 14 (3) On an application, the court may make any order relating to the
- 15 disposal of the assets that it considers appropriate.

16 **Subdivision 3 — Winding up under Corporations Act**

- 17 **66. Application of Corporations Act to winding up**
- 18 (1) In this section —
- 19 *ASIC* means the Australian Securities and Investments
- 20 Commission established under the ASIC Act;
- 21 *ASIC Act* means the *Australian Securities and Investments*
- 22 *Commission Act 2001* (Commonwealth).
- 23 (2) Subject to subsection (4), the winding up of an incorporated
- 24 limited partnership is declared to be an applied Corporations
- 25 legislation matter for the purposes of the *Corporations*
- 26 *(Ancillary Provisions) Act 2001* Part 3 in relation to the
- 27 provisions of the Corporations Act Part 5.7, with the
- 28 modifications set out in subsection (3).

- 1 (3) For the purposes of subsection (2), the provisions of the
2 Corporations Act Part 5.7 —
- 3 (a) apply as if the incorporated limited partnership were a
4 Part 5.7 body (as defined in the Corporations Act
5 section 9); and
- 6 (b) are to be read as if the words “or in the public interest”
7 were inserted in section 583(c)(ii) after the words “just
8 and equitable”; and
- 9 (c) are to be read as if section 583(d) were deleted; and
- 10 (d) are to be read subject to any other modifications (within
11 the meaning of the *Corporations (Ancillary Provisions)*
12 *Act 2001* Part 3) that are prescribed.
- 13 (4) Subsection (2) does not apply to a voluntary winding up or a
14 winding up required on a winding up notice.
- 15 (5) ASIC may perform a function conferred on it under a law
16 applied by subsection (2) —
- 17 (a) under an agreement or arrangement of the kind referred
18 to in the ASIC Act section 11(8) or (9A)(b); and
- 19 (b) if ASIC is authorised to perform that function under
20 section 11 of that Act.
- 21 (6) Unless a function under a law applied by subsection (2) is
22 conferred on ASIC as referred to in subsection (5), that law
23 applies as if a reference in it to ASIC were a reference to the
24 Commissioner.

25 **Subdivision 4 — Winding up generally**

26 **67. Notice of winding up**

- 27 (1) An incorporated limited partnership must ensure that a notice of
28 the commencement of the winding up of the partnership is
29 lodged with the Commissioner within 7 days after —
- 30 (a) the day on which a special resolution referred to in
31 section 54(1)(b) is passed; or

- 1 (b) otherwise, the day on which the winding up is
2 commenced.
- 3 (2) An incorporated limited partnership must ensure that a notice of
4 the completion of the winding up of the partnership is lodged
5 with the Commissioner within 7 days after the day on which the
6 winding up is completed, specifying the day on which the
7 winding up was completed.
- 8 (3) The Commissioner must, as soon as practicable after receiving a
9 notice under subsection (1) or (2), record the receipt of the
10 notice in the register.
- 11 (4) The Commissioner must, as soon as practicable after receiving a
12 notice under subsection (2), record in the register —
- 13 (a) the winding up; and
14 (b) the day on which the winding up took effect, being the
15 day specified in the notice as the day on which the
16 winding up was completed.
- 17 (5) If subsection (1) is not complied with, each general partner in
18 the incorporated limited partnership when the special resolution
19 was passed or the winding up commenced, as the case requires,
20 commits an offence.
- 21 Penalty for this subsection: a fine of \$1 500.
- 22 (6) If subsection (2) is not complied with, each partner in the
23 incorporated limited partnership immediately before the
24 winding up was completed commits an offence.
- 25 Penalty for this subsection: a fine of \$1 500.
- 26 **68. No notice of winding up**
- 27 (1) Subsection (2) applies if —
- 28 (a) section 67(2) is not complied with; and
29 (b) the Commissioner is satisfied that an incorporated
30 limited partnership has been wound up.

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- 1 (2) The Commissioner may give the incorporated limited
2 partnership a notice informing the incorporated limited
3 partnership that, if it does not satisfy the Commissioner, within
4 28 days after the day on which the notice is given, that the
5 incorporated limited partnership has not been wound up, the
6 winding up of the incorporated limited partnership will be
7 recorded in the register.
- 8 (3) The Commissioner must, as soon as practicable after giving a
9 notice to an incorporated limited partnership under
10 subsection (2), record the giving of the notice in the register.
- 11 (4) If, after the expiry of 28 days after the day on which a notice is
12 given to an incorporated limited partnership under
13 subsection (2), the Commissioner is still satisfied that the
14 incorporated limited partnership has been wound up, the
15 Commissioner may record in the register —
16 (a) the winding up; and
17 (b) the day on which the winding up took effect, being the
18 day on which the record is made.
- 19 (5) If, at any time within 28 days after the day on which a notice is
20 given to an incorporated limited partnership under
21 subsection (2), the Commissioner becomes satisfied that the
22 incorporated limited partnership has not been wound up, the
23 Commissioner must —
24 (a) record that fact in the register; and
25 (b) give the incorporated limited partnership notice of that
26 fact.

27 **Division 7 — Cancellation of registration**

28 **69. Cancellation of registration on winding up**

29 If the Commissioner records the winding up of an incorporated
30 limited partnership in the register under section 67(4) or 68(4),
31 the Commissioner must, at the same time, cancel the registration

1 of the incorporated limited partnership by recording in the
2 register —

- 3 (a) the cancellation; and
4 (b) the day on which the cancellation took effect, being the
5 day on which the winding up took effect.

6 **70. Notice of cancellation**

7 If the registration of an incorporated limited partnership is
8 cancelled under this Division, the Commissioner must give the
9 partners notice of the cancellation and the reasons for the
10 cancellation.

11 **71. Effect of cancellation**

12 An incorporated limited partnership ceases to exist on
13 cancellation of its registration as an incorporated limited
14 partnership under this Division.

15 **Division 8 — Miscellaneous**

16 **72. Entitlement to make assumptions**

- 17 (1) A person is entitled to make the assumptions in section 73 in
18 relation to dealings with an incorporated limited partnership.
- 19 (2) The incorporated limited partnership is not entitled to assert in
20 proceedings in relation to the dealings that any of the
21 assumptions in section 73 are incorrect.
- 22 (3) A person is entitled to make the assumptions in section 73 in
23 relation to dealings with another person (the *other person*) who
24 has, or purports to have, directly or indirectly acquired title to
25 property from an incorporated limited partnership.
- 26 (4) The incorporated limited partnership and the other person are
27 not entitled to assert in proceedings in relation to the dealings
28 that any of the assumptions in section 73 are incorrect.

1 (5) The assumptions in section 73 may be made even if a partner or
2 agent of the incorporated limited partnership acts fraudulently,
3 or forges a document, in connection with the dealings.

4 (6) A person is not entitled to make an assumption in section 73 if,
5 at the time of the dealings, they knew or suspected that the
6 assumption was incorrect.

7 **73. Assumptions that can be made**

8 (1) A person may assume that the partnership agreement of an
9 incorporated limited partnership has been complied with.

10 (2) A person may assume that anyone who appears, from
11 information that is available to the public from the register, to
12 be a general partner in an incorporated limited partnership —

13 (a) is a general partner in the incorporated limited
14 partnership; and

15 (b) has authority to exercise the powers and perform the
16 duties customarily exercised or performed by a general
17 partner in an incorporated limited partnership.

18 (3) A person may assume that anyone who is held out by an
19 incorporated limited partnership to be a general partner in, or an
20 agent of, the incorporated limited partnership —

21 (a) is a general partner in the incorporated limited
22 partnership or has been appointed as an agent of the
23 incorporated limited partnership, as the case requires;
24 and

25 (b) has authority to exercise the powers and perform the
26 duties customarily exercised or performed by a general
27 partner in, or agent of, an incorporated limited
28 partnership, as the case requires.

29 (4) A person may assume that a general partner in, or an agent of,
30 an incorporated limited partnership properly performs their
31 duties to the incorporated limited partnership.

- 1 (5) A person may assume that a document has been executed by an
2 incorporated limited partnership if —
- 3 (a) the incorporated limited partnership’s common seal
4 appears to have been attached to the document; or
- 5 (b) the document appears to have been signed in accordance
6 with section 75.
- 7 (6) A person may assume that a general partner in, or agent of, an
8 incorporated limited partnership who has authority to issue a
9 document or certified copy of a document on its behalf also has
10 authority to warrant that the document is genuine or is a true
11 copy.
- 12 (7) Without limiting the generality of this section, the assumptions
13 that may be made under this section apply for the purposes of
14 this section.

15 **74. Common seal**

- 16 (1) The common seal of an incorporated limited partnership must
17 be kept in the custody that the partnership directs and must not
18 be used except as authorised by it.
- 19 (2) All courts must take judicial notice of the common seal of an
20 incorporated limited partnership attached to a document and,
21 until the contrary is proved, must presume that it was attached
22 in accordance with this section.

23 **75. Execution**

- 24 Without limiting the ways in which an incorporated limited
25 partnership may execute a document (including a deed), an
26 incorporated limited partnership may execute a document —
- 27 (a) if the document is signed by a general partner —
28 without using a common seal (whether it has one or
29 not); or

- 1 (b) if the document is expressed to be executed as a deed
2 and is executed with the use of a common seal or under
3 paragraph (a) — as a deed.

4 **76. Enforcing judgments**

5 An enforcement order must not be made under the *Civil*
6 *Judgments Enforcement Act 2004* Part 4 in relation to any
7 available debt in relation to, or any property of, an incorporated
8 limited partnership, unless it is made for the purpose of
9 enforcing a judgment against the partnership itself.

10 **77. Proper party to proceeding**

11 A limited partner in an incorporated limited partnership, in the
12 capacity of a limited partner, is not a proper party to any
13 proceeding commenced in a court or tribunal by or against the
14 incorporated limited partnership, other than a proceeding
15 commenced by —

- 16 (a) the incorporated limited partnership against the limited
17 partner; or
18 (b) the limited partner against the incorporated limited
19 partnership.

Part 5 — General

Division 1 — Register and registration

78. Register

- (1) The Commissioner must keep a register of limited partnerships and incorporated limited partnerships registered under this Act.
- (2) Subject to subsection (3), the register may be kept in the manner and form determined by the Commissioner.
- (3) The register must include a division for limited partnerships and a division for incorporated limited partnerships.
- (4) A person may, on payment of the prescribed fee (if any), inspect a copy of the register at the office of the Commissioner during the ordinary business hours of that office.
- (5) The Commissioner may make the register publicly available, free of charge, on a website maintained by or on behalf of the office of the Commissioner.
- (6) The Commissioner may withhold a person's personal information from the copy of the register that is available for inspection under subsection (4) or that is publicly available under subsection (5) in prescribed circumstances.
- (7) In subsection (6) —
personal information has the meaning given in the *Freedom of Information Act 1992* Glossary clause 1.

79. Power to make or correct certain entries in register

- (1) The Commissioner may correct any error or omission in the register by —
- (a) inserting an entry; or
 - (b) amending an entry; or
 - (c) deleting an entry.

- 1 (2) The Commissioner must not delete an entry in the register
2 unless satisfied that the whole of the entry was included in error.
- 3 (3) If the Commissioner deletes an entry from the register under
4 subsection (1) that records —
- 5 (a) the cancellation of the registration of a limited
6 partnership — the limited partnership is taken to have
7 been registered as if the entry had never been made; or
- 8 (b) the cancellation of the registration of an incorporated
9 limited partnership — the incorporated limited
10 partnership is taken to have been registered as if the
11 entry had never been made.
- 12 (4) If court proceedings are pending against a person under
13 section 88, 89 or 90, the Commissioner may insert an entry to
14 that effect in the register.
- 15 (5) If the Commissioner makes or corrects an entry in the register
16 under this section in relation to a limited partnership or
17 incorporated limited partnership, the Commissioner must give
18 the partnership notice of the entry or correction.

19 **80. Reinstatement of registration**

- 20 (1) If the Commissioner is satisfied that the registration of a limited
21 partnership or incorporated limited partnership should not have
22 been cancelled under section 31, 32 or 69, the Commissioner
23 may, by notice given to the limited partnership or incorporated
24 limited partnership, reinstate the partnership's registration.
- 25 (2) The Commissioner must, as soon as practicable after reinstating
26 the registration of a limited partnership or incorporated limited
27 partnership under subsection (1), record in the register —
- 28 (a) the reinstatement; and
- 29 (b) the day on which the reinstatement took effect, being the
30 day on which the notice was given to the limited
31 partnership or incorporated limited partnership under
32 subsection (1).

- 1 (3) If the registration of a limited partnership or incorporated
2 limited partnership is reinstated under this section the
3 partnership is taken to have continued in existence as if the
4 partnership's registration had not been cancelled.
- 5 (4) The regulations may make provision of a savings or transitional
6 nature consequent on the reinstatement of the registration of a
7 limited partnership or incorporated limited partnership under
8 this section.

9 **81. Entry in register constitutes notice**

10 An entry in the register of any particular fact concerning a
11 limited partnership or incorporated limited partnership,
12 including an entry stating the effect of a notice received by the
13 Commissioner —

- 14 (a) is sufficient notice of the fact or of the effect of the
15 notice to all persons who deal with the partnership; and
16 (b) in relation to a limited partnership — has effect, for the
17 purposes of the Partnership Act section 47(2) as if it
18 were an advertisement in the *Gazette*.

19 **Division 2 — Certificates of registration**

20 **82. Certificate of registration to be issued**

- 21 (1) The Commissioner must issue to the general partners of a
22 limited partnership or incorporated limited partnership a
23 certificate as to its formation and its registered particulars as at
24 the time of —
- 25 (a) registering the limited partnership or incorporated
26 limited partnership; or
27 (b) recording a change in its registered particulars.
- 28 (2) The Commissioner may, on application, issue to the applicant a
29 certificate in relation to a limited partnership or incorporated
30 limited partnership as to its formation and its registered
31 particulars as at the time of the application.

- 1 (3) A certificate under this section must be in the form approved by
2 the Commissioner.
- 3 (4) A certificate under this section —
- 4 (a) as to the formation of a limited partnership or
5 incorporated limited partnership is conclusive evidence
6 that the partnership was formed on the day of
7 registration referred to in the certificate; and
- 8 (b) as to the registered particulars as at a specified time of
9 the partnership is (unless the contrary is established)
10 conclusive evidence that the partnership existed at that
11 time; and
- 12 (c) as to the general partners and limited partners in a
13 limited partnership or incorporated limited partnership
14 as at a specified time is (unless the contrary is
15 established) conclusive evidence of the general partners
16 and limited partners as at that time; and
- 17 (d) as to any other particular of a limited partnership or
18 incorporated limited partnership recorded in the register
19 as at a specified time is (unless the contrary is
20 established) conclusive evidence of that particular as at
21 that time.

22 **83. Certificate of registration to be displayed**

- 23 (1) The certificate of registration of a limited partnership or
24 incorporated limited partnership, or a copy of that certificate,
25 must be displayed in a conspicuous position —
- 26 (a) in the registered office of the partnership; or
27 (b) if there is no registered office of the partnership — in
28 the principal office in this State of the partnership.
- 29 (2) If subsection (1) is not complied with, each general partner in
30 the partnership commits an offence.
- 31 Penalty for this subsection: a fine of \$3 000.

1 **Division 3 — Change in registered particulars**

2 **84. Notice of change in registered particulars**

3 (1) If any change occurs in relation to the registered particulars of a
4 limited partnership or incorporated limited partnership, every
5 general partner in the partnership must ensure that a notice
6 setting out the changed particulars is lodged with the
7 Commissioner within 7 days after the day on which the change
8 occurs.

9 (2) If subsection (1) is not complied with, each general partner in
10 the partnership commits an offence.

11 Penalty for this subsection: a fine of \$1 500.

12 (3) The notice must be in the form approved by the Commissioner
13 and contain all the particulars that are required by the form or
14 prescribed.

15 (4) The notice must be signed by all the general partners or by a
16 general partner authorised by all the general partners for the
17 purposes of this section.

18 (5) In the case of a limited partnership, if the change relates to the
19 admission of a limited partner or a change in the agreed
20 contribution of a limited partner, the notice must also be
21 signed —

22 (a) by the limited partner concerned; or

23 (b) if that limited partner is a limited partnership, by —

24 (i) all the general partners in the limited partnership;
25 or

26 (ii) a general partner in the limited partnership
27 authorised by all the general partners in the
28 limited partnership for the purposes of this
29 section.

1 **85. Change in agreed contribution of limited partner**

2 Without limitation, a change occurs in relation to the registered
3 particulars of a limited partnership if there is a change in the
4 amount of the agreed contribution of a limited partner in the
5 limited partnership that is paid, and the amount of that
6 contribution that is unpaid, as a result of —

- 7 (a) the limited partner making a contribution towards the
8 agreed contribution; or
9 (b) the limited partner receiving back the whole or part of a
10 contribution towards the agreed contribution.

11 **86. Register to record change in registered particulars**

12 If a notice is lodged in accordance with section 84, the
13 Commissioner must record in the register the changed
14 particulars set out in the notice.

15 **Division 4 — Restrictions on members**

16 **87. Terms used**

17 In this Division —

18 *manage a limited partnership* or *manage an incorporated*
19 *limited partnership* means —

- 20 (a) to make, or to participate in making, decisions that
21 affect the whole, or a substantial part, of the business of
22 the partnership; or
23 (b) to exercise the capacity to affect significantly the
24 partnership's financial standing; or
25 (c) to communicate instructions or wishes (other than
26 advice given in the proper performance of functions
27 attaching to a professional capacity or a business
28 relationship with the partners or the partnership) to the
29 partners of the partnership —
30 (i) knowing that the partners are accustomed to act
31 in accordance with the instructions or wishes; or

- 1 (ii) intending that the partners will act in accordance
2 with the instructions or wishes.

3 **88. Restrictions on insolvents**

4 (1) In this section —

5 *insolvent* means —

- 6 (a) in relation to an individual — an insolvent under
7 administration as defined in the Corporations Act
8 section 9; and
9 (b) in relation to a body corporate — an
10 externally-administered body corporate as defined in the
11 Corporations Act section 9; and
12 (c) in relation to a partnership — a partnership that has an
13 insolvent general partner.

14 (2) An insolvent must not, except with the leave of the
15 Commissioner —

- 16 (a) be a general partner in a limited partnership or
17 incorporated limited partnership; or
18 (b) manage a limited partnership or manage an incorporated
19 limited partnership.

20 Penalty for this subsection: a fine of \$10 000 and imprisonment
21 for 1 year.

22 **89. Restrictions on convicted persons**

23 (1) In this section —

24 *convicted person* means a person who has been convicted,
25 whether before, on or after the day on which this section comes
26 into operation and whether in this State or elsewhere, of an
27 offence involving fraud or dishonesty of a kind punishable on
28 conviction with imprisonment for 3 months or more;

29 *prescribed period*, in relation to a convicted person, means —

- 30 (a) the period of 5 years after the person's conviction; or

- 1 (b) if the person served time in prison in respect of their
2 conviction — the period of 5 years after their release
3 from prison.
- 4 (2) A convicted person must not, except with the leave of the
5 Commissioner —
- 6 (a) be a general partner in a limited partnership or
7 incorporated limited partnership during the prescribed
8 period; or
- 9 (b) manage a limited partnership or manage an incorporated
10 limited partnership during the prescribed period.
- 11 Penalty for this subsection: a fine of \$10 000 and imprisonment
12 for 1 year.

13 **90. Restrictions on disqualified persons**

- 14 (1) In this section —
- 15 ***disqualified person*** means a person who —
- 16 (a) has been convicted of an offence, whether before, on or
17 after the day on which this section comes into operation
18 and whether in this State or elsewhere, and is in prison
19 serving a sentence of imprisonment; or
- 20 (b) has been convicted of an offence under this Act that is
21 prescribed; or
- 22 (c) is disqualified from managing corporations under the
23 Corporations Act; or
- 24 (d) is disqualified in prescribed circumstances from —
- 25 (i) being a general partner in a limited partnership or
26 incorporated limited partnership; or
- 27 (ii) managing a limited partnership or incorporated
28 limited partnership.

- 1 (2) A disqualified person must not, except with the leave of the
2 Commissioner —
- 3 (a) be a general partner in a limited partnership or
4 incorporated limited partnership; or
- 5 (b) manage a limited partnership or incorporated limited
6 partnership.
- 7 Penalty for this subsection: a fine of \$10 000 and imprisonment
8 for 1 year.

9 **91. Contravention does not affect liability**

10 A contravention of section 88, 89 or 90 does not affect any
11 liability imposed by or arising under another provision of this
12 Act.

13 **92. Leave of Commissioner**

- 14 (1) An application for leave for the purposes of section 88, 89 or 90
15 must be —
- 16 (a) made in writing; and
17 (b) lodged with the Commissioner.
- 18 (2) The application may request that the Commissioner grant leave
19 with effect from a day specified in the application.
- 20 (3) The application must be made at least 21 days before any day
21 specified in the application under subsection (2).
- 22 (4) On an application under subsection (1), the Commissioner may,
23 by notice to the applicant —
- 24 (a) grant leave subject to any condition or limitation the
25 Commissioner considers appropriate, including a
26 limitation on the period for which leave is granted; or
27 (b) refuse to grant leave.
- 28 (5) A person who contravenes any condition or limitation imposed
29 under subsection (4) commits an offence.
- 30 Penalty for this subsection: a fine of \$10 000.

1 **93. Revoking leave of Commissioner**

2 (1) The Commissioner may at any time revoke leave granted under
3 section 92(4) by notice to the person granted leave.

4 (2) Nothing in section 96 prevents the Commissioner from revoking
5 leave at any time after an application for review is made under
6 that section.

7 **Division 5 — Reviews**

8 **94. Terms used**

9 In this Division —

10 *affected person*, in relation to a reviewable decision, means a
11 person who is an affected person in relation to the decision
12 under section 95(1)(b) or regulations made for the purposes of
13 section 95(2)(b);

14 *reviewable decision* means a decision referred to in
15 section 95(1)(a) or (2)(a).

16 **95. Reviewable decisions**

17 (1) For the purposes of this Division —

18 (a) a decision of the Commissioner to do something referred
19 to in column 1 in the Table is a reviewable decision; and

20 (b) a person referred to in column 2 of the Table is an
21 affected person in relation to the corresponding
22 reviewable decision referred to in column 1 of the Table.

23 **Table**

Item	Column 1 Reviewable decision	Column 2 Affected person
1.	Refuse to register a limited partnership under section 17(2)	The applicant for registration as a limited partnership

Item	Column 1 Reviewable decision	Column 2 Affected person
2.	Record the dissolution or cessation of a limited partnership in the register under section 29(4)	A person whose interests are affected by the decision
3.	Refuse to register an incorporated limited partnership under section 46(2)	The applicant for registration as an incorporated limited partnership
4.	Give a winding up notice to an incorporated limited partnership under section 58	A person whose interests are affected by the decision
5.	Record the winding up of an incorporated limited partnership in the register under section 68(4)	A person whose interests are affected by the decision
6.	Grant leave under section 92(4)	A person whose interests are affected by the decision
7.	Revoke leave under section 93(1)	A person whose interests are affected by the decision

- 1 (2) The regulations may provide —
- 2 (a) that specified decisions made under the regulations are
- 3 reviewable decisions for the purposes of this Division;
- 4 and
- 5 (b) that specified persons are affected persons in relation to
- 6 those decisions.

1 **96. Review of reviewable decisions**

2 An affected person may apply to the State Administrative
3 Tribunal for review of a reviewable decision.

4 **Division 6 — Offences**

5 **97. Giving false or misleading information**

6 A person who lodges, or causes to be lodged, with the
7 Commissioner under this Act a document that the person knows
8 is false or misleading in a material particular, whether by way of
9 a statement in the document or an omission from the document,
10 commits an offence.

11 Penalty: a fine of \$10 000.

12 **98. Offences by partnership**

13 (1) This section applies if this Act provides that a general partner in
14 a limited partnership or incorporated limited partnership
15 commits an offence.

16 (2) If the general partner is a partnership (including an external
17 partnership) the reference to the general partner is to be read as
18 a reference —

19 (a) if the partnership is one in which any partner has under
20 the law of the place where it is formed limited liability
21 for the liabilities of the partnership — to each partner in
22 the partnership whose liability is not so limited; or

23 (b) otherwise — to each partner in the partnership.

24 (3) In any proceeding against a partner for an offence under this Act
25 brought in accordance with subsection (2), it is a defence for the
26 partner to prove that the partner took all reasonable precautions
27 and exercised all due diligence to avoid the commission of the
28 offence.

1 **99. Time for bringing proceedings for offences**

2 Proceedings for an offence under this Act must be commenced
3 within 3 years after the day on which the offence is alleged to
4 have been committed.

5 **Division 7 — Miscellaneous**

6 **100. How notices may be given**

7 (1) A notice under this Act must be given in writing.

8 (2) A notice under this Act may be given to a limited partnership or
9 incorporated limited partnership —

10 (a) by leaving it at or sending it by pre-paid post to the
11 partnership's registered office; or

12 (b) if it is not reasonably practicable to serve notice under
13 paragraph (a) — by publishing it in a manner the
14 Commissioner considers appropriate.

15 (3) A notice under this Act may be given to the partners in a limited
16 partnership or incorporated limited partnership —

17 (a) by leaving it at or sending it by pre-paid post to the
18 partnership's registered office; or

19 (b) if it is not reasonably practicable to give notice under
20 paragraph (a) — by publishing it in a manner the
21 Commissioner considers appropriate.

22 **101. How consent may be given**

23 (1) Any consent or authority that is required or permitted to be
24 given under this Act may be either express or inferred from a
25 course of dealing.

26 (2) Any consent or authority that is, under this Act or the
27 Partnership Act, required or permitted to be given by a partner
28 in a limited partnership or incorporated limited partnership may
29 be given by that partner by or under the partnership
30 agreement —

31 (a) in relation to all cases; or

- 1 (b) in relation to all cases subject to specified exceptions; or
2 (c) in relation to any specified case or class of cases.
- 3 (3) Any consent or authority that is, under this Act or the
4 Partnership Act, required or permitted to be given by a limited
5 partnership or incorporated limited partnership may be given by
6 a general partner in the partnership acting in accordance with
7 the partnership agreement.
- 8 (4) Subsections (2) and (3) do not limit any other way in which
9 consent or authority may be given.

10 **102. Registered office**

- 11 (1) A limited partnership or incorporated limited partnership must
12 keep at its registered office an office to which all
13 communications with the partnership may be addressed.
- 14 (2) If subsection (1) is not complied with, each general partner in
15 the limited partnership or incorporated limited partnership
16 commits an offence.
- 17 Penalty for this subsection: a fine of \$3 000.

18 **103. Service**

- 19 (1) A document concerning the business of a limited partnership or
20 incorporated limited partnership may be served on the partners
21 in the partnership by leaving it at, or by sending it by post
22 addressed to —
- 23 (a) the registered office of the partnership; or
24 (b) if there is no registered office of the partnership — the
25 principal office in this State of the partnership.
- 26 (2) This section does not affect any other method of serving
27 documents on a limited partnership or incorporated limited
28 partnership.
- 29 (3) This section does not apply to a document relating to
30 proceedings before a court or the State Administrative Tribunal.

1 **104. Lodgment of documents**

2 (1) A document is not lodged under this Act unless —

3 (a) all information required to be provided in or with the
4 document is provided; and

5 (b) the prescribed fee (if any) has been paid.

6 (2) The Commissioner may reject a document lodged with the
7 Commissioner if the Commissioner considers that the
8 document —

9 (a) contains matter contrary to law; or

10 (b) contains matter that, in a material particular, is false or
11 misleading in the form or context in which it is included;
12 or

13 (c) because of an omission or misdescription, is incomplete;
14 or

15 (d) does not comply with the requirements of this Act; or

16 (e) contains any error, alteration or erasure; or

17 (f) if the document is in electronic form — is not readily
18 accessible so as to be useable by the Commissioner.

19 (3) If the Commissioner rejects a document under subsection (2),
20 the Commissioner may request —

21 (a) that the document be appropriately amended; or

22 (b) that a fresh document be lodged in its place; or

23 (c) if the document is incomplete — that a supplementary
24 document in the form approved by the Commissioner be
25 lodged.

26 **105. Signing of documents**

27 (1) A document lodged with the Commissioner is taken to have
28 been signed by a person required to sign the document if —

29 (a) for a document that is required to be signed by an
30 individual — the document is signed by another person

- 1 authorised by the individual in writing to sign on the
2 individual's behalf; or
- 3 (b) for a document that is required to be signed by a body
4 corporate — the document is signed by an officer of the
5 body corporate or a person authorised by an officer of
6 the body corporate in writing to sign on behalf of the
7 body corporate.
- 8 (2) A person must, if required by the Commissioner, show the
9 written authorisation to the Commissioner.
- 10 (3) Despite any other provision of this Act, if the Commissioner is
11 satisfied that it is not practicable to obtain the signature of a
12 person required by this Act to sign a document, the
13 Commissioner may accept the document without its being
14 signed by that person, but the person is not relieved of the
15 requirement to sign the document.
- 16 (4) If a copy of a document has been received by the Commissioner
17 for the purposes of lodgment under this Act, it is sufficient
18 compliance with a requirement for the document to be signed if
19 the original document is signed.

20 **106. Business documents**

- 21 (1) In this section —
- 22 *business document* includes any letter, notice, publication,
23 written offer, contract, order for goods or services, invoice, bill
24 of exchange, promissory note, cheque, negotiable instrument,
25 endorsement, letter of credit, receipt or statement of account.
- 26 (2) A business document issued on behalf of a limited partnership
27 in connection with the conduct of the partnership business must
28 contain in legible letters of similar print size —
- 29 (a) the firm name of the partnership; and
30 (b) the words “A Limited Partnership” (or “L.P.” or “LP” as
31 an abbreviation) immediately adjacent to the firm name.

- 1 (3) Subsection (2)(b) is taken to be complied with if the words
2 “Limited Partnership” or the abbreviation “L.P.” or “LP” forms
3 part of the firm name.
- 4 (4) A business document issued on behalf of an incorporated
5 limited partnership in connection with the conduct of the
6 partnership business must contain in legible letters of similar
7 print size —
- 8 (a) the firm name of the partnership; and
9 (b) the words “An Incorporated Limited Partnership” (or
10 “I.L.P.” or “ILP” as an abbreviation) immediately
11 adjacent to the firm name.
- 12 (5) Subsection (4)(b) is taken to be complied with if the words
13 “Incorporated Limited Partnership” or the abbreviation “I.L.P.”
14 or “ILP” forms part of the firm name.
- 15 (6) A person who issues, or authorises the issue of, a business
16 document that the person knows contravenes subsection (2)
17 or (4) commits an offence.
- 18 Penalty for this subsection: a fine of \$3 000.
- 19 (7) A general partner in a limited partnership or incorporated
20 limited partnership commits an offence if —
- 21 (a) a business document is issued on behalf of the limited
22 partnership or incorporated limited partnership; and
23 (b) the general partner knows that the business document
24 contravenes subsection (2) or (4).
- 25 Penalty for this subsection: a fine of \$3 000.

26 **107. Inspection of accounts and financial records**

- 27 (1) A partner in a limited partnership or incorporated limited
28 partnership or a person authorised by the partner may at any
29 time —
- 30 (a) have access to, inspect and copy any of the accounts and
31 financial records of the partnership; and

- 1 (b) examine the state and prospects of the partnership
2 business; and
- 3 (c) advise and consult with other partners regarding the
4 matters referred to in paragraphs (a) and (b).
- 5 (2) The application of this section may be varied in relation to a
6 limited partnership or incorporated limited partnership by a
7 partnership agreement or with the consent of the partners in the
8 limited partnership or incorporated limited partnership.

9 **Division 8 — Application of other written laws**

10 **108. Application of Fair Trading Act**

- 11 (1) The Fair Trading Act sections 60 and 61, Part 6 (other than
12 section 77 and Division 4A), section 112 (other than
13 subsection (3)(c)(ii), (da) and (f)) and sections 113, 114 and 115
14 apply, with any modifications that are necessary for the
15 purposes of this Act, as if those provisions were a part of this
16 Act.
- 17 (2) For the purposes of subsection (1), the Fair Trading Act is to be
18 read as if —
- 19 (a) a reference to “this Act” were a reference to this Act;
20 and
- 21 (b) a reference in Part 6 (other than Division 4A) to an
22 authorised person were a reference to an authorised
23 person as defined in section 3; and
- 24 (c) a reference in Part 6 to “this Part” were a reference to
25 this section; and
- 26 (d) the words “or another Act” or “or another Act that
27 confers functions on the Commissioner” in Part 6 were
28 deleted; and
- 29 (e) the words “or 4A” in section 88(1) were deleted; and
- 30 (f) section 89(2A) were deleted; and
- 31 (g) the words “or 88E” in section 89(2) were deleted; and

1 (h) section 89(5A) were deleted.

2 **109. Application of *Criminal Procedure Act 2004***

3 (1) If this Act is a prescribed Act for the purposes of the *Criminal*
4 *Procedure Act 2004* Part 2, this section applies in relation to the
5 service of an infringement notice under that Part by an
6 authorised officer in relation to an alleged offence under this
7 Act.

8 (2) The infringement notice must be served within —

9 (a) 21 days after the day on which the authorised officer is
10 satisfied that there is sufficient evidence to support the
11 allegation of the offence; and

12 (b) 6 months after the alleged offence is believed to have
13 been committed.

14 (3) The *Criminal Procedure Act 2004* Part 2 is modified to the
15 extent necessary to give effect to this section.

16 **Division 9 — Regulations and orders**

17 **110. Regulations**

18 (1) The Governor may make regulations prescribing matters —

19 (a) required or permitted to be prescribed by this Act; or

20 (b) necessary or convenient to be prescribed for giving
21 effect to this Act.

22 (2) Regulations may be made for or in relation to any of the
23 following —

24 (a) the conduct and regulation of registration under this Act;

25 (b) the manner in which a limited partnership or
26 incorporated limited partnership must keep accounts and
27 financial records;

28 (c) the matters in respect of which fees may be charged, the
29 amounts of those fees and persons liable for payment of
30 those fees;

- 1 (d) information or copies of records or documents required
2 to be provided to the Commissioner by a limited
3 partnership or incorporated limited partnership;
- 4 (e) the form in which any record required under this Act to
5 be kept must be kept;
- 6 (f) the hours during which the registered office of a limited
7 partnership or incorporated limited partnership must be
8 open and accessible to the public;
- 9 (g) the lodgment of annual returns by a limited partnership
10 or incorporated limited partnership;
- 11 (h) the manner in which a person may apply for leave under
12 section 92;
- 13 (i) the method by which documents may be lodged with the
14 Commissioner.

15 **111. Regulations prescribing model limited partnership**
16 **agreement**

17 Regulations may prescribe a model limited partnership
18 agreement.

19 **112. Regulations relating to Corporations Act**

20 Regulations may declare a matter dealt with, provided for, done
21 or occurring under this Act or the regulations to be an excluded
22 matter for the purposes of the Corporations Act section 5F in
23 relation to —

- 24 (a) the whole of the Corporations legislation to which the
25 Corporations Act Part 1.1A applies; or
- 26 (b) a specified provision of that legislation; or
- 27 (c) that legislation other than a specified provision; or
- 28 (d) that legislation otherwise than to a specified extent.

1 **113. Orders declaring corresponding law**

2 (1) The Governor may, by order published in the *Gazette*, declare a
3 law of another State, a Territory or another country or
4 jurisdiction to be a corresponding law for the purposes of this
5 Act in relation to either or both of the following —

- 6 (a) limited partnerships;
7 (b) incorporated limited partnerships.

8 (2) The law of another country or jurisdiction (other than another
9 State or a Territory) cannot be declared to be a corresponding
10 law unless the Minister has certified to the Governor that the
11 law provides for the limitation of liability of certain partners in
12 certain partnerships or legal entities in the nature of
13 incorporated limited partnerships.

14 (3) The law of another State or a Territory cannot be declared to be
15 a corresponding law unless the Minister has certified to the
16 Governor that —

- 17 (a) the provisions of the law are similar to the provisions of
18 this Act; and
19 (b) under that law the limitation of liability of limited
20 partners in a limited partnership formed under this Act
21 extends to any liability incurred in connection with the
22 conduct of the partnership's business in that State or
23 Territory, or will so extend if this Act is declared to be a
24 corresponding law under that law.

25 (4) This section is additional to, and does not detract from, any rule
26 of law under which recognition is or may be given to a
27 limitation of liability of a partner in a partnership (including an
28 external partnership).

1 **Part 6 — Repeals and transitional matters**

2 **114. Terms used**

3 In this Part —

4 *commencement day* means the day on which section 115 comes
5 into operation;

6 *existing limited partnership* —

7 (a) means a partnership that, immediately before
8 commencement day, was registered as a limited
9 partnership under the repealed Act; and

10 (b) includes a partnership that, immediately before
11 commencement day, had sent or delivered a statement in
12 accordance with the repealed Act section 8;

13 *repealed Act* means the *Limited Partnerships Act 1909* repealed
14 by section 115(1).

15 **115. Written laws repealed**

16 (1) The *Limited Partnerships Act 1909* is repealed.

17 (2) The *Limited Partnerships Rules 1909* are repealed.

18 **116. Existing limited partnerships**

19 (1) An existing limited partnership is taken to be a limited
20 partnership under this Act.

21 (2) An existing limited partnership must, not later than 90 days after
22 commencement day, lodge with the Commissioner a statement
23 that —

24 (a) is in the form approved by the Commissioner; and

25 (b) is signed by each partner; and

26 (c) contains each of the matters set out in subsection (3).

- 1 (3) A statement lodged under subsection (2) must contain, in
 2 relation to the existing limited partnership, each of the following
 3 matters —
- 4 (a) the address of the principal office in this State of the
 5 partnership;
- 6 (b) the name of each partner, being —
- 7 (i) if the partner is an individual — their full name;
 8 or
- 9 (ii) if the partner is a body corporate — its corporate
 10 name; or
- 11 (iii) if the partner is a partnership — the firm name
 12 or, if the partnership does not have a firm name,
 13 the full name of each partner in the partnership;
- 14 (c) the address of each partner, being —
- 15 (i) if the partner is an individual — their principal
 16 place of residence; or
- 17 (ii) if the partner is a body corporate — its registered
 18 office as defined in the Corporations Act
 19 section 9; or
- 20 (iii) if the partner is a partnership — its principal
 21 office;
- 22 (d) a statement in relation to each partner as to —
- 23 (i) whether they are a general partner or a limited
 24 partner; and
- 25 (ii) whether they are an individual, body corporate or
 26 partnership;
- 27 (e) in relation to each limited partner —
- 28 (i) a statement of their agreed contribution; and
- 29 (ii) a statement to the effect that their liability to
 30 contribute is limited to their agreed contribution;
 31 and

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- 1 (iii) a statement of the amount of their agreed
2 contribution that has been paid and the amount of
3 their agreed contribution that is unpaid;
- 4 (f) any other particulars that are required by the form or
5 prescribed.
- 6 (4) The Commissioner must, in relation to a statement lodged under
7 subsection (2) —
- 8 (a) record in the register the particulars contained in the
9 statement; and
- 10 (b) issue to the general partners of the partnership that
11 lodged the statement a certificate as to its formation and
12 its registered particulars as at the time of recording in
13 the register the particulars contained in the statement.
- 14 (5) Section 84(1) does not apply in relation to any changed
15 particulars contained in a statement lodged under subsection (2).

16 **117. Existing register**

- 17 (1) In this section —
- 18 *existing register* means the register kept under the repealed Act
19 section 14.
- 20 (2) The existing register forms part of the register.
- 21 (3) The Commissioner may make any changes to the form of the
22 existing register that the Commissioner considers necessary for
23 the purposes of this Act.

24 **118. Existing statements**

- 25 (1) In this section —
- 26 *existing statement* means a statement that was sent or delivered
27 in accordance with the repealed Act before commencement day;
28 *Registrar* means the Registrar under the repealed Act.

-
- 1 (2) The Registrar must —
- 2 (a) in relation to an existing statement received before
- 3 commencement day — comply with the repealed Act
- 4 sections 13 and 14; and
- 5 (b) in relation to an existing statement received on or after
- 6 commencement day — provide the statement to the
- 7 Commissioner.
- 8 (3) The Commissioner must, in relation to a statement provided by
- 9 the Registrar under subsection (2)(b) —
- 10 (a) record in the register the particulars contained in the
- 11 statement; and
- 12 (b) issue to the general partners of the partnership that
- 13 lodged the statement a certificate as to its formation and
- 14 its registered particulars as at the time of recording in
- 15 the register the particulars contained in the statement.
- 16 (4) Section 84(1) does not apply in relation to any changed
- 17 particulars contained in an existing statement.
- 18 **119. Time limit under section 99**
- 19 Section 99 does not apply to an offence committed under the
- 20 repealed Act.
- 21 **120. Leave taken to have been granted under section 92(4)**
- 22 (1) Subsection (2) applies to a person (a *relevant person*) who at
- 23 the beginning of commencement day —
- 24 (a) is a person to whom section 88, 89 or 90 applies; and
- 25 (b) is a general partner in or manages a limited partnership.
- 26 (2) The relevant person is taken to have been granted leave under
- 27 section 92(4) for the period of 6 months beginning on
- 28 commencement day.

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- 1 (3) If the relevant person makes an application under section 92
2 within the period referred to in subsection (2), the leave referred
3 to in that subsection —
- 4 (a) continues to have effect, whether or not the period
5 referred to in subsection (2) expires, until the application
6 is determined; and
- 7 (b) is cancelled by force of this subsection at the time of
8 that determination.

9 **121. Transitional regulations**

- 10 (1) In this section —
11 *specified* means specified or described in the regulations;
12 *transitional matter* —
- 13 (a) means a matter or issue of a transitional nature that
14 arises as a result of the enactment of this Act; and
- 15 (b) includes a saving or application matter.
- 16 (2) The regulations may make provision for a transitional matter if
17 there is no sufficient provision made in this Part for the matter.
- 18 (3) A regulation made for the purposes of this section cannot come
19 into operation more than 2 years after commencement day.
- 20 (4) Regulations made for the purposes of this section may provide
21 that a specified provision of this Act —
- 22 (a) is not to apply to or in relation to a matter; or
23 (b) is to apply, with any specified modifications, to or in
24 relation to a matter.
- 25 (5) Regulations made for the purposes of this section may provide
26 that a state of affairs is taken to have existed, or not to have
27 existed, on and from a day that is —
- 28 (a) earlier than the day on which the regulations are
29 published in the *Gazette*; but
30 (b) not earlier than commencement day.

- 1 (6) A provision referred to in subsection (5) does not operate so as
2 to —
- 3 (a) affect in a manner prejudicial to any person (other than
4 the State) the rights of that person existing before the
5 day on which the regulations are published in the
6 *Gazette*; or
- 7 (b) impose liabilities on any person (other than the State) in
8 respect of anything done or omitted to be done before
9 that day.
- 10 (7) If the Minister is satisfied that an anomaly arises in giving effect
11 to any provision of this Part, regulations made for the purposes
12 of this section may —
- 13 (a) modify that provision to remove the anomaly; and
14 (b) make any provision that is necessary or expedient to
15 carry out the intention of that provision.

1 **Part 7 — *Partnership Act 1895* amended**

2 **122. *Partnership Act 1895* amended**

3 (1) This Part amends the *Partnership Act 1895*.

4 (2) In section 3 insert in alphabetical order:

5

6 *incorporated limited partnership* has the meaning
7 given in the *Limited Partnerships Act 2016* section 3;

8 *limited partnership* has the meaning given in the
9 *Limited Partnerships Act 2016* section 3;

10

11 (3) In section 4 delete “This” and insert:

12

13 (1) Subject to subsections (2) and (3), this

14

15 (4) At the end of section 4 insert:

16

17 (2) This Act applies to a limited partnership to the extent
18 and with the modifications set out in the *Limited*
19 *Partnerships Act 2016* section 6.

20 (3) This Act applies to an incorporated limited partnership
21 to the extent and with the modifications set out in the
22 *Limited Partnerships Act 2016* sections 8 and 9.

23

24 (5) In section 7(1) delete “Partnership” and insert:

25

26 Subject to subsection (3), partnership

27

1 (6) After section 7(2) insert:
2

3 (3) Partnership does not include the relation which subsists
4 between —

5 (a) the partners in an incorporated limited
6 partnership; or

7 (b) an incorporated limited partnership and its
8 partners.
9

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Defined terms

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

The list is not part of the law.]

Defined term	Provision(s)
affected person	94
AFOF	3
agreed contribution	3
ASIC	66(1)
ASIC Act	66(1)
assets	3
associate	3, 4
authorised person	3
business	3
business document	106(1)
Business Names Registration Act	3
commencement day	114
Commissioner	3
convicted person	89(1)
Corporations Act	3
corresponding law	3
court	3
disqualified person	90(1)
ESVCLP	3
existing limited partnership	114
existing register	117(1)
existing statement	118(1)
external partnership	3
Fair Trading Act	3
firm name	3
first person	40(4)
general law	7(1)
general partner	3
Income Tax Assessment Act	3
incorporated limited partnership	3
insolvent	88(1)
investing partnership	18(4)
liability	3
limited partner	3
limited partnership	3
manage a limited partnership	87
manage an incorporated limited partnership	87
mental disability	26(1)
other person	72(3)
partner	3

partner in the general partner	4
partner in the limited partner.....	4
partnership	3, 5(1)
Partnership Act	3
person.....	3
personal information	78(7)
prescribed.....	3
prescribed period.....	89(1)
principal partnership	18(4)
proposed name	17(2), 46(2)
recognised incorporated limited partnership.....	52(1)
recognised limited partnership.....	22(1)
register	3
registered office	3
registered particulars.....	3
Registrar.....	118(1)
related body corporate	3
relevant committee.....	43(1)
relevant person.....	120(1)
repealed Act	114
reviewable decision.....	94
second person.....	40(4)
securities	3
security holder	3
show cause notice	3
special resolution	54(2)
specified.....	121(1)
third party.....	42(2)
transitional matter	121(1)
VCLP	3
VCMP.....	3
winding up notice.....	3