



Western Australia

## **Limited Partnerships Act 2016**

Compare between:

[29 Nov 2016, 00-a0-00] and [01 Feb 2017, 00-b0-01]





Western Australia

## Limited Partnerships Act 2016

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.

*[Assented to 29 November 2016]*

The Parliament of Western Australia enacts as follows:

## **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.

~~*[3-5. Have not come into operation<sup>2</sup>.]*~~

~~*[Parts 2-7 have not come into operation<sup>2</sup>.]*~~

**Notes**

<sup>1</sup> ~~This is a compilation of the *Limited Partnerships Act 2016*. The following table contains information about that Act<sup>1a</sup>.~~

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Limited Partnerships Act 2016</i> s. 1 and 2	54 of 2016	29 Nov 2016	<del>29 Nov 2016 (see s. 2(a))</del>

<sup>1a</sup> ~~On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Limited Partnerships Act 2016</i> s. 3-5, Pt. 2-7 <sup>2</sup>	54 of 2016	29 Nov 2016	<del>To be proclaimed (see s. 2(b))</del>

<sup>2</sup> ~~On the date as at which this compilation was prepared, the *Limited Partnerships Act 2016* s. 3-5 and Pt. 2-7 had not come into operation. They read as follows:~~

**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

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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);

**Commissioner** has the meaning given in the Fair Trading Act section 6;

**Corporations Act** means the *Corporations Act 2001* (Commonwealth);

**corresponding law** means —

- (a) in relation to a limited partnership — a law of another State, a Territory or another country or jurisdiction that is declared under section 113(1) to be a corresponding law in relation to limited partnerships for the purposes of this Act; or
- (b) in relation to an incorporated limited partnership — a law of another State, a Territory or another country or jurisdiction that —
  - (i) is declared under section 113(1) to be a corresponding law in relation to incorporated limited partnerships for the purposes of this Act; or
  - (ii) substantially corresponds to the provisions of this Act that relate to incorporated limited partnerships;

**court** has the meaning given in the Partnership Act section 3;

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

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

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

**Fair Trading Act** means the *Fair Trading Act 2010*;

**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;

***partner***, in a limited partnership or incorporated limited partnership, means a general partner or a limited partner;

***partnership*** has a meaning affected by section 5;

***Partnership Act*** means the *Partnership Act 1895*;

***person*** means an individual, body corporate or partnership (including an external partnership);

***prescribed*** means prescribed by the regulations made under this Act;

***register*** means the register of limited partnerships and incorporated limited partnerships kept under section 78(1);

***registered office***, in relation to a limited partnership or incorporated limited partnership, means the place recorded in the register as the address of the principal office in this State of the partnership;

***registered particulars***, in relation to a limited partnership or incorporated limited partnership, means the particulars recorded in the register relating to the limited partnership or incorporated limited partnership and the partners in that partnership;

***related body corporate*** has the meaning given in the Corporations Act section 9;

***securities*** has the meaning given in the Corporations Act section 9;



***security holder***, in relation to a body (whether incorporated or unincorporated), includes a holder of securities in or of the body;

***show cause notice*** means a notice given to an incorporated limited partnership under section 56;

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

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

***winding up notice*** means a notice given to an incorporated limited partnership under section 58.

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**4. Term used: associate**

For the purposes of this Act —

**associate** —

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

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

and

- (b) in relation to a limited partner, includes —
  - (i) if the limited partner is a partnership or incorporated limited partnership — a partner in that partnership (*partner in the limited partner*); and
  - (ii) any person who has an interest in the limited partner or in any partner in the limited partner, whether as security holder, trustee, responsible entity, manager, custodian, sub-custodian, nominee, administrator, executor, legal personal representative, beneficiary or otherwise; and
  - (iii) if the limited partner or a partner in the limited partner or a person covered by subparagraph (ii) is a body corporate — a related body corporate of that body corporate; and
  - (iv) a director, officer, employee, agent, representative or security holder of the limited partner or of any partner in the limited partner or of a person covered by subparagraph (ii) or (iii);
 and
- (c) in relation to an incorporated limited partnership, includes —
  - (i) any body corporate in which the incorporated limited partnership has an interest, whether as security holder or otherwise, and any related body corporate of that body corporate; and
  - (ii) any partnership in which the incorporated limited partnership has an interest, whether as security holder or otherwise.

**5. Term used: partnership**

- (1) For the purposes of this Act —

***partnership*** means a partnership as defined in the Partnership Act.

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

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

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

- (1) Subject to subsection (4) and any express provision of this Act, the Partnership Act (other than sections 10 to 12) applies to a limited partnership with the modifications set out in this section.
- (2) For the purposes of subsection (1), these provisions of the Partnership Act apply as follows —
  - (a) section 22(1) does not apply to an admission or representation made by a limited partner;
  - (b) section 23 does not apply to notice given to a limited partner;
  - (c) section 26 does not apply to an act of a limited partner;
  - (d) section 27 does not apply to a limited partner.
- (3) For the purposes of subsection (1), the Partnership Act is to be read as if —
  - (a) a reference in that Act to a partnership or a firm were a reference to a limited partnership as defined in section 3; and
  - (b) subject to paragraph (e), a reference in that Act to a partner were a reference to a partner as defined in section 3; and
  - (c) a reference in that Act to a firm-name were a reference to a firm name as defined in section 3; and
  - (d) a reference in section 16 or 24(2) of that Act to debts and obligations were a reference to liability as defined in section 3; and
  - (e) a reference in section 21(1) or 24(1) of that Act to a partner were a reference to a general partner as defined in section 3.

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

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

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

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

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

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

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

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

- (a) a reference in that Act to a partnership or a firm were a reference to an incorporated limited partnership as defined in section 3 as a separate legal entity and not to the partners in that partnership; and
- (b) subject to paragraphs (d), (e), (i)(i), (k), (n) and (o)(i), a reference in that Act to a partner were a reference to a partner as defined in section 3; and
- (c) a reference in that Act to a firm-name were a reference to a firm name as defined in section 3; and
- (d) a reference in section 13(1) of that Act to all the partners were a reference to all the general partners as defined in section 3; and
- (e) in section 14 of that Act the words “one partner” were deleted and replaced with “one general partner”; and

- (f) in section 16 of that Act the word “Every” were deleted and replaced with —

—(1) Every

and

- (g) in section 16 of that Act —

- (i) a reference to the other partners in a partnership were a reference to the incorporated limited partnership as defined in section 3; and
- (ii) a reference to debts and obligations were a reference to liabilities as defined in section 3;

and

- (h) at the end of section 16 of that Act the following subsection were inserted —

—(2) Despite subsection (1), a general partner in an incorporated limited partnership is only liable for any liabilities of the incorporated limited partnership —

—(a) to the extent the incorporated limited partnership is unable to satisfy the liabilities; or

—(b) to a greater extent provided by the partnership agreement.

and

- (i) in section 17 of that Act —

- (i) a reference to partner (other than the 2<sup>nd</sup> occurrence) were a reference to general partner as defined in section 3; and



- (ii) the words “the authority of his copartners” and “the authority of the partner’s copartners” were deleted and replaced with “its authority”; and
- (iii) in subsection (2)(a) the words “partner’s copartners, or some of them,” were deleted and replaced with “incorporated limited partnership”; and
- (iv) in subsection (2)(c) the words “any copartner” were deleted and replaced with “any other general partner in the incorporated limited partnership”;

and

- (j) in section 19 of that Act the word “Every” were deleted and replaced with —

—(1) Every

and

- (k) in section 19 of that Act a reference to partner were a reference to general partner as defined in section 3; and
- (l) at the end of section 19 of that Act the following subsection were inserted —

—(2) Despite subsection (1), a general partner in an incorporated limited partnership is only liable for any liabilities of the incorporated limited partnership —

—(a) to the extent the incorporated limited partnership is unable to satisfy the liabilities; or

—(b) to a greater extent provided by the partnership agreement.

and

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

**20. Improper employment of trust property**

- ~~(1)~~ If a general partner in an incorporated limited partnership being a trustee improperly employs trust property in the business or on account of the partnership, neither the partnership nor any other general partner is liable for the trust property to the persons beneficially interested in it.
- ~~(2)~~ Subsection (1) —
- ~~(a)~~ does not affect any liability incurred by any general partner by reason of the partner's having notice of a breach of trust; and
- ~~(b)~~ does not prevent trust money from being followed and recovered from the incorporated limited partnership if still in its possession or under its control.

and

- (n) in section 21(1) of that Act a reference to partner were a reference to general partner as defined in section 3; and
- (o) in section 24 of that Act —
- (i) a reference in subsection (1) to a partner were a reference to a general partner as defined in section 3; and
- (ii) a reference in subsection (2) to debts or obligations were a reference to the liabilities as defined in section 3; and
- (iii) the words “as newly constituted” were deleted from subsection (3);

and

- (p) in section 30(1) of that Act a reference to the partners were a reference to the incorporated limited partnership as defined in section 3; and
- (q) at the end of section 30 of that Act the following subsection were inserted —

—(4) No partner in an incorporated limited partnership, by virtue only of being a partner in the partnership, has any legal or beneficial interest in its partnership property.

and

- (r) in section 39 of that Act the words “Partners are” were deleted and replaced with “An incorporated limited partnership is”.

## **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

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

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

- (1) A person may be admitted as a partner in a limited partnership without the consent of any limited partner.
- (2) A limited partner in a limited partnership must not assign the limited partner's share in the partnership without the consent of the general partners in the limited partnership.
- (3) If the limited partner's share in a limited partnership is assigned, the assignee is taken to be a limited partner in substitution for the assignor with all the rights and obligations of the assignor.
- (4) The application of this section may be varied in relation to a limited partnership by a partnership agreement or with the consent of the partners in the limited partnership.

**13. Differences between partners**

- (1) A difference arising as to ordinary matters connected with the business of a limited partnership may be decided by a majority of the general partners.
- (2) The application of this section may be varied in relation to a limited partnership by a partnership agreement or with the consent of the partners in the limited partnership.

**Division 2 — Management**

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

- (1) A limited partner in a limited partnership must not take part in the management of the business of the partnership.
- (2) A limited partner in a limited partnership cannot bind the partnership.

- (3) If a limited partner takes part in the management of the business of the partnership, the limited partner is liable, as if the partner were a general partner, for the liabilities of the partnership incurred while the limited partner takes part in the management of that business.
- (4) The application of this section cannot be varied in relation to a limited partnership by a partnership agreement or with the consent of the partners in the limited partnership.

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

- (1) For the purposes of section 14, a limited partner in a limited partnership does not take part in the management of the business of the partnership merely because the limited partner or a person acting on behalf of the limited partner —
  - (a) is an employee or an independent contractor of the partnership or of a general partner in the partnership, or is an officer of a general partner in the partnership that is a body corporate; or
  - (b) gives advice to, or on behalf of, the partnership or a general partner in the partnership in the proper exercise of functions arising from the engagement of the limited partner in a professional capacity or arising from business dealings between the limited partner and the partnership or a general partner in the partnership; or
  - (c) gives a guarantee or indemnity in respect of any liability of the partnership or of a general partner in the partnership; or
  - (d) participates in any action by other limited partners in the partnership for the purpose of enforcing their rights or safeguarding their interests as limited partners; or
  - (e) if authorised by a partnership agreement, participates in general meetings of all the partners in the partnership; or
  - (f) exercises a power conferred on the limited partner by section 107.

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

### **Division 3 — Registration**

#### **16. Application for registration**

- (1) An application for registration as a limited partnership may be made by —
  - (a) a partnership (including an external partnership); or
  - (b) a proposed partner in a proposed limited partnership.
- (2) An application for registration as a limited partnership is made by lodging with the Commissioner a statement that —
  - (a) is in the form approved by the Commissioner; and
  - (b) contains each of the matters set out in subsection (3); and
  - (c) is signed —
    - (i) if the application is made by a partnership — by each partner in the partnership or by a person given authority to make the application on behalf of the partnership and the partners in it; or
    - (ii) in any other case — by each proposed partner in the proposed partnership.
- (3) The statement must contain, in relation to the proposed limited partnership, each of the following matters —
  - (a) the proposed firm name;

- (b) the address of the proposed registered office;
- (c) the name of each proposed partner, being —
  - (i) if the partner is an individual — their full name; or
  - (ii) if the partner is a body corporate — its corporate name; or
  - (iii) if the partner is a partnership — its firm name or, if the partnership does not have a firm name, the full name of each partner in the partnership;
- (d) the address of each proposed partner, being —
  - (i) if the partner is an individual — their principal place of residence; or
  - (ii) if the partner is a body corporate — its registered office as defined in the Corporations Act section 9; or
  - (iii) if the partner is a partnership — its principal office;
- (e) a statement in relation to each proposed partner as to —
  - (i) whether they will be a general partner or a limited partner; and
  - (ii) whether they are an individual, a body corporate or a partnership;
- (f) in relation to each proposed limited partner —
  - (i) a statement of their agreed contribution; and
  - (ii) a statement to the effect that their liability to contribute is limited to their agreed contribution; and
  - (iii) a statement of the amount of their agreed contribution that has been paid and the amount of their agreed contribution that is unpaid;
- (g) any other particulars that are required by the form or prescribed.



**17. Registration**

- (1) If an application for registration as a limited partnership is made in accordance with this Division, the Commissioner must register the limited partnership.
- (2) Despite subsection (1), the Commissioner must not register a limited partnership if —
  - (a) the partnership does not satisfy the requirements as to the composition of a limited partnership under section 11(1) and (3); or
  - (b) the Commissioner is satisfied that the proposed firm name (the ***proposed name***) of the proposed limited partnership is identical with or likely to be confused with —
    - (i) a business name registered under the Business Names Registration Act; or
    - (ii) a name of a body corporate; or
    - (iii) a firm name of a partnership;or
  - (c) the Commissioner is satisfied that the proposed name would not be eligible for registration as a business name under the Business Names Registration Act; or
  - (d) the Commissioner is satisfied that the proposed name is undesirable.
- (3) If, in accordance with subsection (2), the Commissioner does not register a limited partnership, the Commissioner must give the applicant notice of the refusal to register the limited partnership and the reasons for the refusal.
- (4) Registration is carried out by recording in the register the particulars contained in the statement lodged with the Commissioner.

### **Division 4 — Liability of partner**

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

- (1) The liability of a limited partner to contribute to the liabilities of the limited partnership is, subject to this Part, not to exceed the amount shown in the register as the partner's agreed contribution.
- (2) If a limited partner in a limited partnership makes a contribution towards their agreed contribution, the liability of the limited partner is reduced to the amount of the partner's agreed contribution shown in the register as unpaid.
- (3) If the whole or any part of a contribution made by a limited partner in a limited partnership towards their agreed contribution is received back by the partner, the liability of the limited partner is increased to the amount of the partner's agreed contribution shown in the register as unpaid.
- (4) If a partnership (the *investing partnership*) is a limited partner in a limited partnership (the *principal partnership*), a partner in the investing partnership has no separate liability to contribute to the liabilities of the principal partnership.
- (5) Nothing in subsection (4) affects any liability of the investing partnership as a limited partner to contribute to the liabilities of the principal partnership.

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

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

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

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

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

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

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

**22. Liability under corresponding law**

- (1) In this section —  
*recognised limited partnership* means a limited partnership formed under a corresponding law.
- (2) Any limitation under a corresponding law on the liability of a limited partner in a recognised limited partnership extends to any liability incurred in connection with the conduct of the partnership's business in this State.

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

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

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

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

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

**25. Dissolution generally**

- (1) A limited partner is not entitled to dissolve a limited partnership by notice.
- (2) The other partners are not entitled to dissolve the limited partnership on the basis that —
  - (a) a limited partner has allowed their share of the partnership property to be charged for that partner's separate liabilities; or
  - (b) a limited partner has assigned their share in the partnership.
- (3) The death, bankruptcy or retirement or, in the case of a body corporate or partnership, the dissolution of a limited partner does not dissolve the partnership.
- (4) The application of this section may be varied in relation to a limited partnership by a partnership agreement or with the consent of the partners in the limited partnership.

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

- (1) In this section —

***mental disability*** has the meaning given in the *Guardianship and Administration Act 1990* section 3(1).
- (2) The fact that a limited partner in a limited partnership is incapable of managing their affairs because of mental disability is not a ground for dissolution of the partnership by the court

unless the share and interest of the partner in the partnership cannot be ascertained or realised other than by dissolving the partnership.

**27. Cessation**

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

**28. Notice of dissolution or cessation**

- (1) If a limited partnership is dissolved under section 25 or ceases to be a limited partnership under section 27, the persons who were registered as general partners immediately before the dissolution or cessation must lodge with the Commissioner a notice of the dissolution or cessation in accordance with subsection (2).
- (2) The notice must —
  - (a) be lodged as soon as practicable after the dissolution or cessation; and
  - (b) be in the form approved by the Commissioner; and
  - (c) contain the particulars required by the form; and

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

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

- (1) Subsection (2) applies if —
  - (a) section 28(1) is not complied with; and
  - (b) the Commissioner is satisfied that a limited partnership has dissolved or ceased to be a limited partnership.
- (2) The Commissioner may give the limited partnership a notice informing the limited partnership that, if it does not satisfy the Commissioner, within 28 days after the day on which the notice is given, that the limited partnership has not dissolved or ceased to be a limited partnership, the dissolution or cessation of the limited partnership will be recorded in the register.
- (3) The Commissioner must, as soon as practicable after giving a notice to a limited partnership under subsection (2), record the giving of the notice in the register.
- (4) If, after the expiry of 28 days after the day on which a notice is given to a limited partnership under subsection (2), the Commissioner is still satisfied that the limited partnership has dissolved or ceased to be a limited partnership, the Commissioner may record in the register —

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

**30. Winding up**

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

**Division 6 — Cancellation of registration**

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

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

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

**32. Cancellation of registration on incorporation**

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

- (a) the cancellation; and
  - (b) the day on which the cancellation took effect, being the day on which the registration as an incorporated limited partnership took effect.
- (2) Any liability of a partnership to which subsection (1) applies, or of a partner in the partnership, that arose before its registration as an incorporated limited partnership is to be dealt with as if the partnership were still a limited partnership.

**33. Notice of cancellation**

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

**34. Effect of cancellation**

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



## **Part 4 — Incorporated limited partnerships**

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

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

- (1) An incorporated limited partnership is a body corporate with —
  - (a) legal personality separate from that of the partners in it; and
  - (b) perpetual succession.
- (2) An incorporated limited partnership may have a common seal.
- (3) An incorporated limited partnership may sue and be sued in its firm name.
- (4) An incorporated limited partnership has the legal capacity and powers of an individual.
- (5) An incorporated limited partnership has the powers of a body corporate, including the power to do any of the following, whether within or outside this State or outside Australia —
  - (a) carry on the business of the partnership;
  - (b) enter into contracts or otherwise acquire rights or liabilities;
  - (c) create, confer, vary or cancel interests in the partnership;
  - (d) acquire, hold and dispose of real or personal property or an interest (whether beneficial or legal) in real or personal property;
  - (e) appoint agents and attorneys, and act as agent for other persons;
  - (f) form, and participate in the formation of, companies or incorporated limited partnerships;
  - (g) participate in partnerships, trusts, joint ventures or other associations and other arrangements for the sharing of profits;

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

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

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

**36. Formation of incorporated limited partnerships**

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

**37. Composition of incorporated limited partnerships**

(1) An incorporated limited partnership must have —

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

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

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

(4) A person may be a general partner or a limited partner in an incorporated 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 partner in the partnership whose liability is not so limited is to be counted in place of the general partner.

**38. Change in membership**

- (1) A person may be admitted as a partner in an incorporated limited partnership without the consent of any limited partner.
- (2) A limited partner in an incorporated limited partnership must not transfer the whole or a part of the limited partner's interest in the incorporated limited partnership without —
  - (a) the consent of the general partners in the incorporated limited partnership; and
  - (b) the consent of the transferee.
- (3) If the whole of the limited partner's interest in the incorporated limited partnership is transferred to a transferee, the transferee becomes a limited partner in substitution for the transferor with all the rights and obligations of the transferor.
- (4) If only a part of the limited partner's interest in the incorporated limited partnership is transferred to a transferee, the transferee becomes a limited partner in substitution for the transferor in relation to the transferred part and with all the rights and obligations of the transferor in relation to it.
- (5) The application of this section may be varied in relation to an incorporated limited partnership by the partnership agreement or with the consent of the partners in the incorporated limited partnership.

**39. Differences between partners**

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

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

**40. Agents**

- (1) Each of the following is not an agent of, and cannot bind, a limited partner in an incorporated limited partnership —
- (a) the partnership;
  - (b) a general partner in the partnership;
  - (c) an officer, employee, agent or representative of a general partner in the partnership;
  - (d) an officer, employee, agent or representative of the partnership.
- (2) A limited partner in an incorporated limited partnership is not an agent of, or a fiduciary for, and cannot bind —
- (a) the partnership; or
  - (b) a general partner in the partnership; or
  - (c) another limited partner in the partnership.
- (3) The application of subsections (1) and (2) may be varied in relation to an incorporated limited partnership by the partnership agreement or with the consent of the partners in the incorporated limited partnership.
- (4) Subsections (1) and (2) do not prevent the making of, or limit or restrict, an agreement between a partner (the *first person*) in an incorporated limited partnership and either another partner in the partnership or the partnership (the *second person*) under which —
- (a) the first person acts as an agent of the second person and, by so acting, binds the second person; or
  - (b) the second person acts as an agent of the first person and, by so acting, binds the first person.

**41. Partnership agreement**

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

**Division 2 — Management**

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

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

- (3) The limited partner is liable for the loss or injury to the same extent that the limited partner would have been liable if the limited partner were a general partner in the partnership.
- (4) The application of this section cannot be varied in relation to an incorporated limited partnership by the partnership agreement or with the consent of the partners in the incorporated limited partnership.

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

- (1) For the purposes of section 42, a limited partner in an incorporated limited partnership does not take part in the management of the business of the partnership merely because the limited partner or a person acting on behalf of the limited partner —
  - (a) is an employee of or an independent contractor engaged by —
    - (i) the partnership; or
    - (ii) a general partner in the partnership; or
    - (iii) an associate of a general partner in the partnership;
  - or
  - (b) is an officer of a body corporate that is —
    - (i) a general partner in the partnership; or
    - (ii) an associate of a general partner in the partnership;
  - or
  - (c) gives advice to, or on behalf of, the partnership, a general partner in the partnership or an associate of a general partner in the partnership in the proper exercise of functions arising from —

- (i) the engagement of the limited partner, or the person acting on behalf of the limited partner, in a professional capacity; or
- (ii) business dealings between the limited partner, or the person acting on behalf of the limited partner, and the partnership, a general partner in the partnership or an associate of a general partner in the partnership;

or

- (d) gives a guarantee or indemnity in respect of any liability of the partnership, a general partner in the partnership or an associate of a general partner in the partnership; or
- (e) takes any action, or participates in any action taken by any other limited partner in the partnership, for the purpose of enforcing the rights, or safeguarding the interests, of the limited partner as a limited partner; or
- (f) if authorised by the partnership agreement —
  - (i) calls, requisitions, convenes, chairs, participates in, postpones, adjourns or makes a record of a meeting of any of the partners in the partnership; or
  - (ii) requisitions, signs or otherwise passes, approves, disapproves or amends any resolution (whether at a meeting, in writing or otherwise) of any of the partners in the partnership, including without limitation by formulating, moving, proposing, supporting, opposing, speaking to or voting on the resolution;

or

- (g) exercises a power conferred on the limited partner by section 107; or
- (h) gives advice to, or consults with, an officer, director, security holder, partner, agent, representative, employee

of, or independent contractor engaged by, an associate of the partnership; or

- (i) is, or acts as, an officer, director, security holder, partner, agent, representative, employee of, or independent contractor engaged by, an associate of the partnership; or
- (j) is, or acts as, a lender to, or fiduciary for, an associate of the partnership; or
- (k) to the extent authorised by the partnership agreement —
  - (i) participates on a committee (a **relevant committee**) that considers, approves of, consents to or disapproves of a proposal of a kind referred to in section 44; or
  - (ii) has, or exercises, any right to appoint one or more persons to, remove one or more persons from, or to nominate one or more persons for appointment to or removal from, a relevant committee;

or

- (l) nominates, selects, investigates, evaluates or negotiates with any person in connection with the removal or replacement of a general partner; or
- (m) participates on a committee that proposes, considers, approves of, consents to or disapproves of any nomination, selection, appointment, change in control or ownership, suspension, replacement or removal of a general partner or an associate of a general partner; or
- (n) takes any action, or participates in any action taken by any other limited partner, for the purpose of registering or maintaining the registration of the partnership or a general partner in the partnership as an AFOF, ESVCLP or VCLP.



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

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

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

- (a) a proposal involving a material change in the nature of the business of the partnership (including a change in, or departure from, any investment guidelines, policies or conditions relating to the business of the partnership);
- (b) a proposal for the adoption of a method for valuing some or all of the assets of the partnership (including a change to, replacement of or variation from that method);
- (c) a proposal for an extension or reduction in the period in which, under the partnership agreement, investments (or certain types of investments) can be made by the partnership, or for any approval or disapproval of investments that the partnership does not otherwise have a right to make;

- (d) a proposal relating to any actual or potential transaction or other matter involving any actual or potential conflict of interest;
- (e) a proposal relating to any actual or potential transaction, contract, arrangement or understanding between one or more of the partners in the partnership, or their associates, and a general partner in the partnership, the partnership or any associate of a general partner in the partnership or of the partnership;
- (f) a proposal for the delegation, waiver, release or variation of an authority, right, duty or obligation of a general partner in the partnership;
- (g) a proposal for the appointment or approval under the partnership agreement of any person as a senior executive of a general partner in the partnership or of an associate of a general partner in the partnership.

### **Division 3 — Registration**

#### **45. Application for registration**

- (1) An application for registration as an incorporated limited partnership may be made, in the circumstances described in subsection (2), by —
  - (a) a partnership (including an external partnership); or
  - (b) a proposed partner in a proposed incorporated limited partnership.
- (2) For the purposes of subsection (1), the circumstances are —
  - (a) if the application is made by a partnership under subsection (1)(a) — the partnership is an AFOF, ESVCLP, VCLP or VCMP; or
  - (b) a general partner in the partnership or a proposed general partner in the proposed partnership intends to apply for registration of the partnership or proposed partnership as an AFOF, ESVCLP or VCLP; or

- (c) the partners in the partnership or the proposed partners in the proposed partnership intend that the partnership or proposed partnership will meet the requirements set out in the *Income Tax Assessment Act 1936* (Commonwealth) section 94D(3) for recognition as a VCMP; or
  - (d) any other prescribed circumstances.
- (3) An application for registration as an incorporated limited partnership is made by lodging with the Commissioner a statement that —
  - (a) is in the form approved by the Commissioner; and
  - (b) contains each of the matters set out in subsection (4); and
  - (c) is signed —
    - (i) if the application is made by a partnership — by each partner in the partnership or by a person given authority to make the application on behalf of the partnership and the partners in it; or
    - (ii) in any other case — by each proposed partner in the proposed partnership.
- (4) For the purposes of subsection (3)(b), the statement must contain, in relation to the proposed incorporated limited partnership, each of the following matters —
  - (a) the proposed firm name;
  - (b) the address of the proposed registered office;
  - (c) the name of each proposed partner, being —
    - (i) if the partner is an individual — their full name; or
    - (ii) if the partner is a body corporate — its corporate name; or

- (iii) if the partner is a partnership — the firm name or, if the partnership does not have a firm name, the full name of each partner in the partnership;
- (d) the address of each proposed partner, being —
  - (i) if the partner is an individual — their principal place of residence; or
  - (ii) if the partner is a body corporate — its registered office as defined in the Corporations Act section 9; or
  - (iii) if the partner is a partnership — its principal office;
- (e) a statement in relation to each proposed partner as to —
  - (i) whether they will be a general partner or a limited partner; and
  - (ii) whether they are an individual, a body corporate or a partnership;
- (f) if the partnership is registered as an AFOF, ESVCLP or VCLP — a statement to that effect;
- (g) if it is intended that the partnership apply for registration as an AFOF, ESVCLP or VCLP — a statement to that effect;
- (h) if the partnership is a VCMP — a statement to that effect;
- (i) if it is intended that the partnership meet the requirements for recognition as a VCMP — a statement to that effect;
- (j) any other particulars that are required by the form or prescribed.

**46. Registration**

- (1) If an application for registration as an incorporated limited partnership is made in accordance with this Division the

Commissioner must register the incorporated limited partnership.

- (2) Despite subsection (1), the Commissioner must not register an incorporated limited partnership if —
- (a) the partnership does not satisfy the requirements as to the composition of an incorporated limited partnership under section 37(1) and (3); or
  - (b) the Commissioner is satisfied that the proposed firm name (the ***proposed name***) of the proposed incorporated limited partnership is identical with or likely to be confused with —
    - (i) a business name registered under the Business Names Registration Act; or
    - (ii) a name of a body corporate; or
    - (iii) a firm name of a partnership;or
  - (c) the Commissioner is satisfied that the proposed name would not be eligible for registration as a business name under the Business Names Registration Act; or
  - (d) the Commissioner is satisfied that the proposed name is undesirable.
- (3) If, in accordance with subsection (2), the Commissioner does not register an incorporated limited partnership, the Commissioner must give the applicant notice of the refusal to register the incorporated limited partnership and the reasons for the refusal.
- (4) Registration is carried out by recording in the register the particulars contained in the statement lodged with the Commissioner.

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

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

A statement lodged under section 45(3) in the circumstances described in section 45(2)(a) must be accompanied by —

- (a) if the partnership is registered as an AFOF, ESVCLP or VCLP — a copy of a document evidencing its status as an AFOF, ESVCLP or VCLP; or
- (b) if the partnership is a VCMP — a copy of a document evidencing its status as a VCMP.

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

- (1) An incorporated limited partnership that was incorporated on the basis of an intention to apply for registration of the partnership as an AFOF, ESVCLP or VCLP must —
  - (a) if the incorporated limited partnership has, within the period of 2 years after its incorporation, been so registered — lodge with the Commissioner a copy of a document evidencing its status as an AFOF, ESVCLP or VCLP within 1 month after being so registered; or
  - (b) if the incorporated limited partnership has not, within the period of 2 years after its incorporation, been so registered — lodge with the Commissioner a notice of that fact as soon as practicable after the end of the 2 year period.
- (2) An incorporated limited partnership that was incorporated on the basis of an intention to meet the requirements for recognition as a VCMP must —
  - (a) if the incorporated limited partnership has, within the period of 2 years after its incorporation, met the requirements for recognition as a VCMP — lodge with the Commissioner a document evidencing its status as a VCMP with 1 month after so meeting the requirements; or

- (b) if the incorporated limited partnership has not, within the period of 2 years after its incorporation, met the requirements for recognition as a VCMP — lodge with the Commissioner a notice of that fact as soon as practicable after the end of the 2 year period.
- (3) Subsection (4) applies if —
  - (a) the registration of an incorporated limited partnership as an AFOF, ESVCLP or VCLP is revoked; or
  - (b) an incorporated limited partnership ceases to be a VCMP.
- (4) The incorporated limited partnership must, within 7 days after the day on which the revocation takes effect or it ceases to be a VCMP, lodge with the Commissioner a notice of that revocation or cessation specifying the day on which the revocation or cessation took effect.
- (5) If subsection (1), (2) or (3) is not complied with, each general partner in the incorporated limited partnership commits an offence.  
Penalty for this subsection: a fine of \$1 500.
- (6) A notice required to be lodged with the Commissioner under this section must be —
  - (a) in the form approved by the Commissioner; and
  - (b) contain the particulars that are required by the form or prescribed.

### **Division 5 — Liability of partner**

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

- (1) Subject to section 42 and subsection (2), a limited partner in an incorporated limited partnership has no liability for the liabilities of —
  - (a) the partnership; or

- (b) a general partner in the partnership.
- (2) Nothing in section 51 or 52 prevents either of the following in satisfaction of a liability of the partnership or a general partner in the partnership —
  - (a) a contribution of capital or property made by a limited partner to the incorporated limited partnership being used;
  - (b) an obligation of a limited partner to contribute capital or property to the incorporated limited partnership being enforced by any person to whom the obligation is owed.

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

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

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

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

- (a) in connection with the conduct of the partnership's business outside this State; or
- (b) as a result of an act or omission outside this State of —
  - (i) a partner in the partnership; or
  - (ii) the partnership; or



- (iii) an officer, employee, agent or representative of the partnership or of a general partner in the partnership.

**52. Liability under corresponding law**

- (1) In this section —  
*recognised incorporated limited partnership* means an incorporated limited partnership formed under a corresponding law.
- (2) Subject to subsection (3), a partner in a recognised incorporated limited partnership is liable for a liability incurred by the partnership as a result of —
  - (a) the conduct of the recognised incorporated limited partnership's business in this State; or
  - (b) the acts or omissions in this State of —
    - (i) a partner in the partnership; or
    - (ii) the partnership; or
    - (iii) any officer, employee, agent or representative of the partnership or a general partner in the partnership.
- (3) Subsection (2) only applies in circumstances where the partner would be so liable under the corresponding law if the conduct or acts or omissions occurred in the place where the recognised incorporated limited partnership was formed.

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

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

## **Division 6 — Winding up**

### **Subdivision 1 — Voluntary winding up**

#### **54. Voluntary winding up**

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

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

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

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

- (a) does not satisfy the requirements as to the composition of an incorporated limited partnership under section 37(1) and (3); or
  - (b) is an AFOF, ESVCLP, VCLP or VCMP and has ceased to carry on business with a view of profit; or
  - (c) has obtained incorporation by mistake or fraud; or
  - (d) exists for an illegal purpose; or
  - (e) having been incorporated on the basis that the partnership is or is intended to be an AFOF, ESVCLP or VCLP —
    - (i) has had its registration as an AFOF, ESVCLP or VCLP revoked; or
    - (ii) has not, within the period of 2 years after its incorporation, become so registered;
- or
- (f) having been incorporated on the basis that the partnership is or is intended to be a VCMP —
    - (i) has ceased to meet the requirements set out in the *Income Tax Assessment Act 1936* (Commonwealth) section 94D(3) for recognition as a VCMP; or
    - (ii) has not, within the period of 2 years after its incorporation, met those requirements.

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

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

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

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

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

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

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

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

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

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

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

- (1) This section applies if the Commissioner is satisfied, in relation to a winding up notice given to an incorporated limited partnership, that —
  - (a) the notice was given in error; or
  - (b) the incorporated limited partnership should not be required to be wound up.
- (2) The Commissioner may cancel the winding up notice by giving a notice to the incorporated limited partnership to that effect.

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

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

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

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

- (1) This section applies in relation to an incorporated limited partnership if the Commissioner has given a winding up notice to the incorporated limited partnership and that notice has not been cancelled.
- (2) The incorporated limited partnership must be wound up by —
  - (a) the incorporated limited partnership; or
  - (b) if a person is appointed to be the liquidator of the incorporated limited partnership under section 64(1) — the liquidator.
- (3) Winding up of the incorporated limited partnership must be commenced —
  - (a) if paragraph (b) does not apply — no later than 28 days after the day on which the notice is given; or

- (b) if an application is made under section 96 and the State Administrative Tribunal affirms the decision to give the notice — no later than 28 days after the day on which the application is determined.
- (4) Winding up of the incorporated limited partnership must be completed —
  - (a) within the period specified by the Commissioner in a notice given to the incorporated limited partnership, being at least 60 days after the day on which the notice is given; or
  - (b) within a longer period approved in writing by the Commissioner.

**63. Costs of winding up**

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

**64. Appointment of liquidator**

- (1) On the commencement of the winding up of an incorporated limited partnership required on a winding up notice, the Commissioner may appoint a person to be the liquidator of the incorporated limited partnership.
- (2) The liquidator is not required to be a registered liquidator as defined in the Corporations Act section 9 and may be —
  - (a) a general partner in the incorporated limited partnership; or
  - (b) an associate of a general partner in the incorporated limited partnership.
- (3) If the Commissioner appoints a person to be the liquidator of an incorporated limited partnership under subsection (1), the Commissioner must record the appointment in the register.

- (4) The regulations may make provision for or in relation to the giving of security by the liquidator to the Commissioner.
- (5) The liquidator is entitled to receive from the incorporated limited partnership property the remuneration that is fixed by the Commissioner.
- (6) Any vacancy occurring in the office of liquidator must be filled by a person appointed by the Commissioner.

**65. Distribution of assets on winding up**

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

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

**66. Application of Corporations Act to winding up**

- (1) In this section —

*ASIC* means the Australian Securities and Investments Commission established under the ASIC Act;

*ASIC Act* means the *Australian Securities and Investments Commission Act 2001* (Commonwealth).

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



#### **Subdivision 4 — Winding up generally**

##### **67. Notice of winding up**

- (1) An incorporated limited partnership must ensure that a notice of the commencement of the winding up of the partnership is lodged with the Commissioner within 7 days after —
  - (a) the day on which a special resolution referred to in section 54(1)(b) is passed; or
  - (b) otherwise, the day on which the winding up is commenced.
- (2) An incorporated limited partnership must ensure that a notice of the completion of the winding up of the partnership is lodged with the Commissioner within 7 days after the day on which the winding up is completed, specifying the day on which the winding up was completed.
- (3) The Commissioner must, as soon as practicable after receiving a notice under subsection (1) or (2), record the receipt of the notice in the register.
- (4) The Commissioner must, as soon as practicable after receiving a notice under subsection (2), record in the register —
  - (a) the winding up; and
  - (b) the day on which the winding up took effect, being the day specified in the notice as the day on which the winding up was completed.
- (5) If subsection (1) is not complied with, each general partner in the incorporated limited partnership when the special resolution was passed or the winding up commenced, as the case requires, commits an offence.

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

- (6) If subsection (2) is not complied with, each partner in the incorporated limited partnership immediately before the winding up was completed commits an offence.

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

**68. No notice of winding up**

- (1) Subsection (2) applies if —
- (a) section 67(2) is not complied with; and
  - (b) the Commissioner is satisfied that an incorporated limited partnership has been wound up.
- (2) The Commissioner may give the incorporated limited partnership a notice informing the incorporated limited partnership that, if it does not satisfy the Commissioner, within 28 days after the day on which the notice is given, that the incorporated limited partnership has not been wound up, the winding up of the incorporated limited partnership will be recorded in the register.
- (3) The Commissioner must, as soon as practicable after giving a notice to an incorporated limited partnership under subsection (2), record the giving of the notice in the register.
- (4) If, after the expiry of 28 days after the day on which a notice is given to an incorporated limited partnership under subsection (2), the Commissioner is still satisfied that the incorporated limited partnership has been wound up, the Commissioner may record in the register —
- (a) the winding up; and
  - (b) the day on which the winding up took effect, being the day on which the record is made.
- (5) If, at any time within 28 days after the day on which a notice is given to an incorporated limited partnership under subsection (2), the Commissioner becomes satisfied that the

incorporated limited partnership has not been wound up, the Commissioner must —

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

### **Division 7 — Cancellation of registration**

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

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

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

#### **70. Notice of cancellation**

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

#### **71. Effect of cancellation**

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

### **Division 8 — Miscellaneous**

#### **72. Entitlement to make assumptions**

- (1) A person is entitled to make the assumptions in section 73 in relation to dealings with an incorporated limited partnership.

- (2) The incorporated limited partnership is not entitled to assert in proceedings in relation to the dealings that any of the assumptions in section 73 are incorrect.
- (3) A person is entitled to make the assumptions in section 73 in relation to dealings with another person (the *other person*) who has, or purports to have, directly or indirectly acquired title to property from an incorporated limited partnership.
- (4) The incorporated limited partnership and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions in section 73 are incorrect.
- (5) The assumptions in section 73 may be made even if a partner or agent of the incorporated limited partnership acts fraudulently, or forges a document, in connection with the dealings.
- (6) A person is not entitled to make an assumption in section 73 if, at the time of the dealings, they knew or suspected that the assumption was incorrect.

**73. Assumptions that can be made**

- (1) A person may assume that the partnership agreement of an incorporated limited partnership has been complied with.
- (2) A person may assume that anyone who appears, from information that is available to the public from the register, to be a general partner in an incorporated limited partnership —
  - (a) is a general partner in the incorporated limited partnership; and
  - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a general partner in an incorporated limited partnership.
- (3) A person may assume that anyone who is held out by an incorporated limited partnership to be a general partner in, or an agent of, the incorporated limited partnership —

- (a) is a general partner in the incorporated limited partnership or has been appointed as an agent of the incorporated limited partnership, as the case requires; and
  - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a general partner in, or agent of, an incorporated limited partnership, as the case requires.
- (4) A person may assume that a general partner in, or an agent of, an incorporated limited partnership properly performs their duties to the incorporated limited partnership.
- (5) A person may assume that a document has been executed by an incorporated limited partnership if —
  - (a) the incorporated limited partnership's common seal appears to have been attached to the document; or
  - (b) the document appears to have been signed in accordance with section 75.
- (6) A person may assume that a general partner in, or agent of, an incorporated limited partnership who has authority to issue a document or certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.
- (7) Without limiting the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

**74. Common seal**

- (1) The common seal of an incorporated limited partnership must be kept in the custody that the partnership directs and must not be used except as authorised by it.
- (2) All courts must take judicial notice of the common seal of an incorporated limited partnership attached to a document and,

until the contrary is proved, must presume that it was attached in accordance with this section.

**75. Execution**

Without limiting the ways in which an incorporated limited partnership may execute a document (including a deed), an incorporated limited partnership may execute a document —

- (a) if the document is signed by a general partner — without using a common seal (whether it has one or not); or
- (b) if the document is expressed to be executed as a deed and is executed with the use of a common seal or under paragraph (a) — as a deed.

**76. Enforcing judgments**

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

**77. Proper party to proceeding**

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

- (a) the incorporated limited partnership against the limited partner; or
- (b) the limited partner against the incorporated limited 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.

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

**80. Reinstatement of registration**

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



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

**81. Entry in register constitutes notice**

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

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

**Division 2 — Certificates of registration**

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

- (1) The Commissioner must issue to the general partners of a limited partnership or incorporated limited partnership a certificate as to its formation and its registered particulars as at the time of —
  - (a) registering the limited partnership or incorporated limited partnership; or
  - (b) recording a change in its registered particulars.
- (2) The Commissioner may, on application, issue to the applicant a certificate in relation to a limited partnership or incorporated limited partnership as to its formation and its registered particulars as at the time of the application.

- (3) A certificate under this section must be in the form approved by the Commissioner.
- (4) A certificate under this section —
  - (a) as to the formation of a limited partnership or incorporated limited partnership is conclusive evidence that the partnership was formed on the day of registration referred to in the certificate; and
  - (b) as to the registered particulars as at a specified time of the partnership is (unless the contrary is established) conclusive evidence that the partnership existed at that time; and
  - (c) as to the general partners and limited partners in a limited partnership or incorporated limited partnership as at a specified time is (unless the contrary is established) conclusive evidence of the general partners and limited partners as at that time; and
  - (d) as to any other particular of a limited partnership or incorporated limited partnership recorded in the register as at a specified time is (unless the contrary is established) conclusive evidence of that particular as at that time.

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

- (1) The certificate of registration of a limited partnership or incorporated limited partnership, or a copy of that certificate, must be displayed in a conspicuous position —
  - (a) in the registered office of the partnership; or
  - (b) if there is no registered office of the partnership — in the principal office in this State of the partnership.
- (2) If subsection (1) is not complied with, each general partner in the partnership commits an offence.

Penalty for this subsection: a fine of \$3 000.

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

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

- (1) If any change occurs in relation to the registered particulars of a limited partnership or incorporated limited partnership, every general partner in the partnership must ensure that a notice setting out the changed particulars is lodged with the Commissioner within 7 days after the day on which the change occurs.
- (2) If subsection (1) is not complied with, each general partner in the partnership commits an offence.  
Penalty for this subsection: a fine of \$1 500.
- (3) The notice must be in the form approved by the Commissioner and contain all the particulars that are required by the form or prescribed.
- (4) The notice must be signed by all the general partners or by a general partner authorised by all the general partners for the purposes of this section.
- (5) In the case of a limited partnership, if the change relates to the admission of a limited partner or a change in the agreed contribution of a limited partner, the notice must also be signed —
  - (a) by the limited partner concerned; or
  - (b) if that limited partner is a limited partnership, by —
    - (i) all the general partners in the limited partnership;  
or
    - (ii) a general partner in the limited partnership authorised by all the general partners in the limited partnership for the purposes of this section.

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

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

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

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

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

**Division 4 — Restrictions on members**

**87. Terms used**

In this Division —

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

- (a) to make, or to participate in making, decisions that affect the whole, or a substantial part, of the business of the partnership; or
- (b) to exercise the capacity to affect significantly the partnership's financial standing; or
- (c) to communicate instructions or wishes (other than advice given in the proper performance of functions attaching to a professional capacity or a business relationship with the partners or the partnership) to the partners of the partnership —

- (i) knowing that the partners are accustomed to act in accordance with the instructions or wishes; or
- (ii) intending that the partners will act in accordance with the instructions or wishes.

**88. Restrictions on insolvents**

- (1) In this section —

***insolvent*** means —

- (a) in relation to an individual — an insolvent under administration as defined in the Corporations Act section 9; and
  - (b) in relation to a body corporate — an externally-administered body corporate as defined in the Corporations Act section 9; and
  - (c) in relation to a partnership — a partnership that has an insolvent general partner.
- (2) An insolvent must not, except with the leave of the Commissioner —
- (a) be a general partner in a limited partnership or incorporated limited partnership; or
  - (b) manage a limited partnership or manage an incorporated limited partnership.

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

**89. Restrictions on convicted persons**

- (1) In this section —

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

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

- (a) the period of 5 years after the person's conviction; or
- (b) if the person served time in prison in respect of their conviction — the period of 5 years after their release from prison.

- (2) A convicted person must not, except with the leave of the Commissioner —

- (a) be a general partner in a limited partnership or incorporated limited partnership during the prescribed period; or
- (b) manage a limited partnership or manage an incorporated limited partnership during the prescribed period.

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

**90. Restrictions on disqualified persons**

- (1) In this section —

***disqualified person*** means a person who —

- (a) has been convicted of an offence, whether before, on or after the day on which this section comes into operation and whether in this State or elsewhere, and is in prison serving a sentence of imprisonment; or
- (b) has been convicted of an offence under this Act that is prescribed; or
- (c) is disqualified from managing corporations under the Corporations Act; or
- (d) is disqualified in prescribed circumstances from —
  - (i) being a general partner in a limited partnership or incorporated limited partnership; or
  - (ii) managing a limited partnership or incorporated limited partnership.

- (2) A disqualified person must not, except with the leave of the Commissioner —
- (a) be a general partner in a limited partnership or incorporated limited partnership; or
  - (b) manage a limited partnership or incorporated limited partnership.

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

**91. Contravention does not affect liability**

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

**92. Leave of Commissioner**

- (1) An application for leave for the purposes of section 88, 89 or 90 must be —
- (a) made in writing; and
  - (b) lodged with the Commissioner.
- (2) The application may request that the Commissioner grant leave with effect from a day specified in the application.
- (3) The application must be made at least 21 days before any day specified in the application under subsection (2).
- (4) On an application under subsection (1), the Commissioner may, by notice to the applicant —
- (a) grant leave subject to any condition or limitation the Commissioner considers appropriate, including a limitation on the period for which leave is granted; or
  - (b) refuse to grant leave.

- (5) A person who contravenes any condition or limitation imposed under subsection (4) commits an offence.

Penalty for this subsection: a fine of \$10 000.

**93. Revoking leave of Commissioner**

- (1) The Commissioner may at any time revoke leave granted under section 92(4) by notice to the person granted leave.
- (2) Nothing in section 96 prevents the Commissioner from revoking leave at any time after an application for review is made under that section.

**Division 5 — Reviews**

**94. Terms used**

In this Division —

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

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

**95. Reviewable decisions**

- (1) For the purposes of this Division —
- (a) a decision of the Commissioner to do something referred to in column 1 in the Table is a reviewable decision; and
- (b) a person referred to in column 2 of the Table is an affected person in relation to the corresponding reviewable decision referred to in column 1 of the Table.



**Table**

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

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

**96. Review of reviewable decisions**

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

**Division 6 — Offences**

**97. Giving false or misleading information**

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

Penalty: a fine of \$10 000.

**98. Offences by partnership**

- (1) This section applies if this Act provides that a general partner in a limited partnership or incorporated limited partnership commits an offence.
- (2) If the general partner is a partnership (including an external partnership) the reference to the general partner is to be read as a reference —
- (a) if the partnership is one in which any partner has under the law of the place where it is formed limited liability for the liabilities of the partnership — to each partner in the partnership whose liability is not so limited; or
  - (b) otherwise — to each partner in the partnership.

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

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

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

**Division 7 — Miscellaneous**

**100. How notices may be given**

- (1) A notice under this Act must be given in writing.
- (2) A notice under this Act may be given to a limited partnership or incorporated limited partnership —
  - (a) by leaving it at or sending it by pre-paid post to the partnership's registered office; or
  - (b) if it is not reasonably practicable to serve notice under paragraph (a) — by publishing it in a manner the Commissioner considers appropriate.
- (3) A notice under this Act may be given to the partners in a limited partnership or incorporated limited partnership —
  - (a) by leaving it at or sending it by pre-paid post to the partnership's registered office; or
  - (b) if it is not reasonably practicable to give notice under paragraph (a) — by publishing it in a manner the Commissioner considers appropriate.

**101. How consent may be given**

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

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

**102. Registered office**

- (1) A limited partnership or incorporated limited partnership must keep at its registered office an office to which all communications with the partnership may be addressed.
- (2) If subsection (1) is not complied with, each general partner in the limited partnership or incorporated limited partnership commits an offence.

Penalty for this subsection: a fine of \$3 000.

**103. Service**

- (1) A document concerning the business of a limited partnership or incorporated limited partnership may be served on the partners in the partnership by leaving it at, or by sending it by post addressed to —
  - (a) the registered office of the partnership; or

- (b) if there is no registered office of the partnership — the principal office in this State of the partnership.
- (2) This section does not affect any other method of serving documents on a limited partnership or incorporated limited partnership.
- (3) This section does not apply to a document relating to proceedings before a court or the State Administrative Tribunal.

**104. Lodgment of documents**

- (1) A document is not lodged under this Act unless —
  - (a) all information required to be provided in or with the document is provided; and
  - (b) the prescribed fee (if any) has been paid.
- (2) The Commissioner may reject a document lodged with the Commissioner if the Commissioner considers that the document —
  - (a) contains matter contrary to law; or
  - (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or
  - (c) because of an omission or misdescription, is incomplete; or
  - (d) does not comply with the requirements of this Act; or
  - (e) contains any error, alteration or erasure; or
  - (f) if the document is in electronic form — is not readily accessible so as to be useable by the Commissioner.
- (3) If the Commissioner rejects a document under subsection (2), the Commissioner may request —
  - (a) that the document be appropriately amended; or
  - (b) that a fresh document be lodged in its place; or

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

**105. Signing of documents**

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

**106. Business documents**

- (1) In this section —  
*business document* includes any letter, notice, publication, written offer, contract, order for goods or services, invoice, bill

of exchange, promissory note, cheque, negotiable instrument, endorsement, letter of credit, receipt or statement of account.

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

- (b) the general partner knows that the business document contravenes subsection (2) or (4).

Penalty for this subsection: a fine of \$3 000.

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

- (1) A partner in a limited partnership or incorporated limited partnership or a person authorised by the partner may at any time —
  - (a) have access to, inspect and copy any of the accounts and financial records of the partnership; and
  - (b) examine the state and prospects of the partnership business; and
  - (c) advise and consult with other partners regarding the matters referred to in paragraphs (a) and (b).
- (2) The application of this section may be varied in relation to a limited partnership or incorporated limited partnership by a partnership agreement or with the consent of the partners in the limited partnership or incorporated limited partnership.

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

**108. Application of Fair Trading Act**

- (1) The Fair Trading Act sections 60 and 61, Part 6 (other than section 77 and Division 4A), section 112 (other than subsection (3)(c)(ii), (da) and (f)) and sections 113, 114 and 115 apply, with any modifications that are necessary for the purposes of this Act, as if those provisions were a part of this Act.
- (2) For the purposes of subsection (1), the Fair Trading Act is to be read as if —
  - (a) a reference to “this Act” were a reference to this Act; and



- (b) a reference in Part 6 (other than Division 4A) to an authorised person were a reference to an authorised person as defined in section 3; and
- (c) a reference in Part 6 to “this Part” were a reference to this section; and
- (d) the words “or another Act” or “or another Act that confers functions on the Commissioner” in Part 6 were deleted; and
- (e) the words “or 4A” in section 88(1) were deleted; and
- (f) section 89(2A) were deleted; and
- (g) the words “or 88E” in section 89(2) were deleted; and
- (h) section 89(5A) were deleted.

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

- (1) If this Act is a prescribed Act for the purposes of the *Criminal Procedure Act 2004* Part 2, this section applies in relation to the service of an infringement notice under that Part by an authorised officer in relation to an alleged offence under this Act.
- (2) The infringement notice must be served within —
  - (a) 21 days after the day on which the authorised officer is satisfied that there is sufficient evidence to support the allegation of the offence; and
  - (b) 6 months after the alleged offence is believed to have been committed.
- (3) The *Criminal Procedure Act 2004* Part 2 is modified to the extent necessary to give effect to this section.

**Division 9 — Regulations and orders**

**110. Regulations**

- (1) The Governor may make regulations prescribing matters —
  - (a) required or permitted to be prescribed by this Act; or
  - (b) necessary or convenient to be prescribed for giving effect to this Act.
- (2) Regulations may be made for or in relation to any of the following —
  - (a) the conduct and regulation of registration under this Act;
  - (b) the manner in which a limited partnership or incorporated limited partnership must keep accounts and financial records;
  - (c) the matters in respect of which fees may be charged, the amounts of those fees and persons liable for payment of those fees;
  - (d) information or copies of records or documents required to be provided to the Commissioner by a limited partnership or incorporated limited partnership;
  - (e) the form in which any record required under this Act to be kept must be kept;
  - (f) the hours during which the registered office of a limited partnership or incorporated limited partnership must be open and accessible to the public;
  - (g) the lodgment of annual returns by a limited partnership or incorporated limited partnership;
  - (h) the manner in which a person may apply for leave under section 92;
  - (i) the method by which documents may be lodged with the Commissioner.

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

Regulations may prescribe a model limited partnership agreement.

**112. Regulations relating to Corporations Act**

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

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

**113. Orders declaring corresponding law**

- (1) The Governor may, by order published in the *Gazette*, declare a law of another State, a Territory or another country or jurisdiction to be a corresponding law for the purposes of this Act in relation to either or both of the following —
  - (a) limited partnerships;
  - (b) incorporated limited partnerships.
- (2) The law of another country or jurisdiction (other than another State or a Territory) cannot be declared to be a corresponding law unless the Minister has certified to the Governor that the law provides for the limitation of liability of certain partners in certain partnerships or legal entities in the nature of incorporated limited partnerships.
- (3) The law of another State or a Territory cannot be declared to be a corresponding law unless the Minister has certified to the Governor that —

- (a) the provisions of the law are similar to the provisions of this Act; and
  - (b) under that law the limitation of liability of limited partners in a limited partnership formed under this Act extends to any liability incurred in connection with the conduct of the partnership's business in that State or Territory, or will so extend if this Act is declared to be a corresponding law under that law.
- (4) This section is additional to, and does not detract from, any rule of law under which recognition is or may be given to a limitation of liability of a partner in a partnership (including an external partnership).

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

### **114. Terms used**

In this Part —

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

***existing limited partnership*** —

- (a) means a partnership that, immediately before commencement day, was registered as a limited partnership under the repealed Act; and
- (b) includes a partnership that, immediately before commencement day, had sent or delivered a statement in accordance with the repealed Act section 8;

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

### **115. Written laws repealed**

- (1) The *Limited Partnerships Act 1909* is repealed.
- (2) The *Limited Partnerships Rules 1909* are repealed.

### **116. Existing limited partnerships**

- (1) An existing limited partnership is taken to be a limited partnership under this Act.
- (2) An existing limited partnership must, not later than 90 days after commencement day, lodge with the Commissioner a statement that —
  - (a) is in the form approved by the Commissioner; and
  - (b) is signed by each partner; and
  - (c) contains each of the matters set out in subsection (3).

- (3) A statement lodged under subsection (2) must contain, in relation to the existing limited partnership, each of the following matters —
- (a) the address of the principal office in this State of the partnership;
  - (b) the name of each partner, being —
    - (i) if the partner is an individual — their full name; or
    - (ii) if the partner is a body corporate — its corporate name; or
    - (iii) if the partner is a partnership — the firm name or, if the partnership does not have a firm name, the full name of each partner in the partnership;
  - (c) the address of each partner, being —
    - (i) if the partner is an individual — their principal place of residence; or
    - (ii) if the partner is a body corporate — its registered office as defined in the Corporations Act section 9; or
    - (iii) if the partner is a partnership — its principal office;
  - (d) a statement in relation to each partner as to —
    - (i) whether they are a general partner or a limited partner; and
    - (ii) whether they are an individual, body corporate or partnership;
  - (e) in relation to each limited partner —
    - (i) a statement of their agreed contribution; and
    - (ii) a statement to the effect that their liability to contribute is limited to their agreed contribution; and

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

**117. Existing register**

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

**118. Existing statements**

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

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- (2) The Registrar must —
  - (a) in relation to an existing statement received before commencement day — comply with the repealed Act sections 13 and 14; and
  - (b) in relation to an existing statement received on or after commencement day — provide the statement to the Commissioner.
- (3) The Commissioner must, in relation to a statement provided by the Registrar under subsection (2)(b) —
  - (a) record in the register the particulars contained in the statement; and
  - (b) issue to the general partners of the partnership that lodged the statement a certificate as to its formation and its registered particulars as at the time of recording in the register the particulars contained in the statement.
- (4) Section 84(1) does not apply in relation to any changed particulars contained in an existing statement.

**119. Time limit under section 99**

Section 99 does not apply to an offence committed under the repealed Act.

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

- (1) Subsection (2) applies to a person (a *relevant person*) who at the beginning of commencement day —
  - (a) is a person to whom section 88, 89 or 90 applies; and
  - (b) is a general partner in or manages a limited partnership.
- (2) The relevant person is taken to have been granted leave under section 92(4) for the period of 6 months beginning on commencement day.



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

**121. Transitional regulations**

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

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

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

### **122. *Partnership Act 1895* amended**

- (1) This Part amends the *Partnership Act 1895*.
- (2) In section 3 insert in alphabetical order:

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

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

- (3) In section 4 delete “This” and insert:
  - (1) Subject to subsections (2) and (3), this
  - (4) At the end of section 4 insert:
    - (2) This Act applies to a limited partnership to the extent and with the modifications set out in the *Limited Partnerships Act 2016* section 6.
    - (3) This Act applies to an incorporated limited partnership to the extent and with the modifications set out in the *Limited Partnerships Act 2016* sections 8 and 9.
- (5) In section 7(1) delete “Partnership” and insert:

Subject to subsection (3), partnership

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- (6) After section 7(2) insert:
- (3) Partnership does not include the relation which subsists between —
- (a) the partners in an incorporated limited partnership; or
  - (b) an incorporated limited partnership and its partners.

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**Notes**

<sup>1</sup> [This is a compilation of the \*Limited Partnerships Act 2016\*. The following table contains information about that Act.](#)

**Compilation table**

<b><u>Short title</u></b>	<b><u>Number and year</u></b>	<b><u>Assent</u></b>	<b><u>Commencement</u></b>
<a href="#">Limited Partnerships Act 2016</a>	<a href="#">54 of 2016</a>	<a href="#">29 Nov 2016</a>	<a href="#">s. 1 and 2: 29 Nov 2016 (see s. 2(a)); Act other than s. 1 and 2: 1 Feb 2017 (see s. 2(b) and Gazette 31 Jan 2017 p. 1093)</a>