Partnership and Other Acts Amendment Bill 2004

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the *Partnership and Other Acts Amendment Bill* 2004.

Policy Objective of the Legislation

The Bill ensures Queensland has the preferred legal structure for international venture capital investment.

Reasons for the Bill

In 2002 the Commonwealth Parliament enacted the *Venture Capital Act* 2002 and the *Taxation Laws Amendment (Venture Capital) Act* 2002. These Acts were introduced to assist international investment in the Australian venture capital industry by providing a taxation exemption and 'flow through' taxation treatment of the income earned by limited partnerships, including incorporated limited partnerships, used in such investment.

However, this legislative initiative, by itself, is not sufficient to attract further international venture capital investors into Queensland. Venture capital investors in foreign jurisdictions, in particular the United States of America, utilise limited partnerships with separate legal identities as their preferred investment vehicles. These investors are not comfortable with using entities such as the limited partnership currently able to be formed in Queensland or companies registered under the Commonwealth *Corporations Act 2001*. The preference for an incorporated limited partnership is reflected in the Commonwealth legislation, under which the taxation benefits are only available to limited partnerships and incorporated limited partnerships that satisfy the investment requirements under that legislation.

The current *Partnership* (*Limited Liability*) Act 1988 (*Qld*) that creates a limited partnership in Queensland does not provide for the creation of incorporated limited partnerships. The primary difference between limited partnerships currently able to be formed in Queensland and an incorporated limited partnership is that an incorporated limited partnership has a legal identity separate to that of the partners. This provides passive investors with protection from liability similar to investors in a company.

The creation of an incorporated limited partnership in conjunction with the Commonwealth legislation will create an environment in Queensland conducive to further international venture capital investment.

The Bill also makes minor and technical amendments to the *Business* Names Act 1962, Bills of Sale and Other Instruments Act 1955, Liens on Crops of Sugar Cane Act 1955 and the Motor Vehicles and Boat Securities Act 1986 to ensure that registry functions for these Acts may continue to be undertaken following the transfer of some service delivery staff of the Department of Tourism, Fair Trading and Wine Industry Development to the Department of Communities in accordance with the Smart Service Queensland initiative.

Achieving the Objective

The Bill provides for the ability to create a particular body corporate, called an incorporated limited partnership (ILP), in Queensland. The ILP must seek registration with the Australian Government Pooled Development Funds Board as either a venture capital limited partnership (VCLP) or an Australian venture capital fund of funds (AFOF), or meet the criteria of a venture capital management partnership (VCMP) prescribed under the Commonwealth *Income Tax Assessment Act 1936*.

The introduction of the Bill as legislation will ensure that Queensland maintains a nationally consistent regime within which venture capital may move into and within Australia without limitations. By aligning Queensland venture capital investment structures with international and interstate venture capital investment structures, the Bill will compliment the recent introduction of the Australian Government venture capital taxation regime.

Administrative costs

It is anticipated that these amendments will attract only a small number of large institutional investors, both Australian and international, seeking to utilise the taxation reform introduced by the Commonwealth Acts.

Projected government revenue increases after the introduction of the Bill as legislation is expected to be insignificant. Administration of the amendments will be carried out within existing budgets.

Fundamental Legislation Principles

The Bill is consistent with fundamental legislative principles.

Consultation

Consultation was carried out with all government departments interested in the proposed changes, the Australian Venture Capital Association Limited, the peak industry representative group for the venture capital industry in Australia, and Dr Keith Fletcher, Reader of Law, the University of Queensland.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 sets out the short title of the Act as the *Partnership and Other Acts Amendment Act 2004*.

Commencement

Clause 2 provides Clause **73** commences immediately after the commencement of Clause **47**. This ensures that the repeal of the *Partnership (Limited Liability) Act 1988* will occur after the amendment of that Act.

Part 2 Amendment of the Partnership Act 1891

Act Amended

Clause 3 provides that Part 2 of the Bill and Schedule 1 to the Bill amend the *Partnership Act 1891*.

Clause 4 inserts new headings for Chapter 1 and Part 1 of Chapter 1.

Clause 5 replaces the current section 2 of the *Partnership Act 1891* with a new section 2 relating to how notes in the text of the *Partnership Act 1891* are to be treated and inserts a new heading for Part 2 in relation to interpretation.

Clause 6 relocates the current section 3(2) and renumbers it as section 4(1). Section 3(1) is dealt with in Schedule 1 of the Bill.

Clause 7 inserts a new section 4(2) that confirms, in relation to an incorporated limited partnership (ILP), a reference to the "firm-name" of an ILP means the name of the ILP recorded in the register of ILPs. Clause 7 also confirms that a reference, in relation to an ILP, to the ILP or the firm is a reference to the ILP as a separate legal entity and not to the partners in that ILP.

Clause 8 inserts, after current section 5, new headings for Part 3 and the new section 5A. New section 5A provides for the application of the laws of partnership contained in the new Chapter 2 to limited partnerships and ILPs. Section 5A(1) restates the application of the partnerships laws to limited partnerships as provided for in the current section 4(2) of the *Partnership (Limited Liability) Act 1988*.

New section 5A(2) provides for the application of the partnerships laws, to be contained in the new Chapter 2 of the amended *Partnership Act 1891*, to ILPs to be formed under the new Chapter 4. Except as provided (whether expressly or by necessary implication) by the amended *Partnership Act 1891* or any other Act, the law relating to partnership does not apply in relation to an ILP, the partners in an ILP or the relationship between an ILP and its partners.

Clause 9 inserts the new heading for Chapter 2 relating to the laws for general law partnerships and a new heading for Part 1 relating to the nature of partnership. Chapter 2 consists of the major provisions from the *Partnership Act 1891* prior to amendment by this legislation.

Clause 10 omits the existing heading before current section 8 and inserts a new heading for Part 2 in relation to the relations of partners to persons dealing with them.

Clause 11 amends current section 8 by ensuring the existing rule in section 8 relating to the power of a partner to bind the firm does not apply to partners in a limited partnership or ILP. It is appropriate for the existing rule to be dis-applied in this way to give effect to the new section 5A. This Clause also amends the current section 8 technically to align the provisions structurally as an aid to the reader without changing the meaning and effect from the current language. Clause 11 continues by inserting a new provision into current section 8, creating the rule that a general partner in an ILP is the agent for that ILP. The general partner is also the agent of any other general partner in that body for the purposes of the business of that body.

Similar to current section 8(1), the acts of every general partner in an ILP in carrying on business of the kind carried on by that ILP will bind that ILP and the other general partners. The usual way of carrying on business will be determined by the usual activities of the entities that are entitled to become an ILP - a venture capital limited partnership (VCLP), an Australian venture capital fund of funds (AFOF) or a venture capital management partnership. These terms are defined in proposed section 70 in contained in Clause 42.

Clause 11 also provides that an ILP and other general partners will not be bound where two factual circumstances are present. Firstly, where the general partner does not have authority to act in the particular manner. Authority will be determined at common law by reference to the partnership agreement and any variations, and in accordance with relevant statutory powers. Secondly, the person with whom the general partner is dealing either knows that the general partner has no authority or does not know or believe the general partner to be a general partner.

Clause 12 amends current section 9(1) by ensuring that section 9(1) does not apply to an act or instrument relating to the business of an ILP. It is appropriate for the existing rule to be dis-applied in this way to give effect to the new section 5A. The clause also makes a minor change to update the drafting style of words used in section 9.

Clause 12 inserts a new provision immediately after current section 9(1) that states that an act or instrument relating to the business of an ILP, and done or executed in the name of that ILP, or in any other manner, showing an intention to bind the ILP by any person authorised to bind the ILP,

whether a general partner or not, is binding on the firm and all the general partners. This is subject to proposed section 12(3).

This Clause also inserts proposed section 9(3) which states that section 12 does not affect any general rule of law relating to the execution of deeds or negotiable instruments. This Clause also renumbers current section 9(2).

Clause 13 amends current section 10 by ensuring that section 10(1) does not apply to partners in an ILP. It is appropriate for the existing rule to be dis-applied in this way to give effect to the new section 5A. The clause inserts a new sub-section (2) to provide that, if a general partner pledges the credit of a firm other than a firm that is an ILP for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless the general partner is in fact specially authorised by the firm. The clause then replicates the current sub-section (2) as a new sub-section (3), stating the section does not affect any personal liability incurred by an individual general partner.

This proposed section does not affect any personal liability incurred by an individual general partner.

Clause 14 amends current section 11 by updating the style of words used in the text of this section, without affecting the meaning of the section, and ensures that that section 11(1) does not apply to partners in an ILP. This Clause also inserts new section 11(2) that specifically applies the rule in section 11(1) to the partners in an ILP.

Clause 15 ensures that the rule in current section 12 does not apply to partners in an ILP and confirms that liability of a deceased partner only applies to a deceased partner who was an individual.

This Clause also creates new sections 12(2) and 12(3) for the liability of general partners in an ILP by providing that every general partner in an ILP is liable jointly with the ILP for all debts and obligations of the ILP incurred while the general partner is a general partner, and, if the general partner is an individual, after the general partner's death the general partner's estate is also severally liable in a due course of administration for those debts or obligations so far as they remain unsatisfied but subject to the prior payment of the partner's separate debts.

However, a general partner in an ILP is only liable for any debts or obligations of the ILP to the extent the ILP is unable to satisfy the debts and obligations or to a greater extent provided by the partnership agreement.

Clause 16 ensures that current sections 13(1) and 13(2) do not apply to a partner in an ILP. Clause 16 inserts new section 13(3) that states, subject to new section 13(4), if by any wrongful act or omission of any general partner in an ILP acting in the ordinary course of the business of the ILP, or with its authority, loss or injury is caused to any person not being a partner in the ILP, or any penalty is incurred, the ILP is liable for the loss or injury or penalty to the same extent as the general partner so acting or omitting to act. Clause 16 also provides a Note after new section 13(3) that refers to the joint liability of general partners and an ILP in new section 12(2).

This Clause inserts new section 13(4) that states, for new section 13(3), a general partner in an ILP who commits a wrongful act or omission as a director of a body corporate under the Commonwealth *Corporations Act 2001* is not to be taken to be acting in the ordinary course of business of the ILP or with its authority only because of any 1 or more of the following:

- the general partner obtained the agreement or authority of the ILP to be appointed or to act as a director of the body corporate;
- remuneration that the general partner receives for acting as a director of the body corporate forms part of the income of the ILP;
- any other general partner in the ILP is also a director of that or any other body corporate.

Clause 17 ensures that the rule in current section 14 does not apply to partners in an ILP. Clause 17 inserts new section 14(2) for general partners in an ILP that provides that in each of the following cases involving general partners in an ILP, the ILP is liable to make good the loss mentioned in the case:

- 1 general partner acting within the scope of the general partner's apparent authority receives the money or property of a third person and misapplies it;
- an ILP in the course of its business receives money or property of a third person, and the money or property so received is misapplied by 1 or more of the general partners while it is in the custody of the ILP.

This Clause recasts both the current and new section 14(1) and 14(2) in consistent drafting format. The rule in current section 14 is unchanged.

Clause 18 ensures that the existing rule in section 15 does not apply to partners in an ILP. Clause 18 inserts a new section 15(2) in relation to the liability of general partners in an ILP and states that every general partner in an ILP is liable jointly with the other general partners in the ILP and also severally for everything for which the ILP, while the general partner is a

general partner in the ILP, becomes liable under new sections 13(3) or 14(2).

However, a general partner in an ILP is only liable for any liability of the ILP referred to in that subsection to the extent the ILP is unable to satisfy the liability or to a greater extent provided by the partnership agreement.

Clause 19 ensures that the rule in current section 16 does not apply to a partner in an ILP. Clause 19 also inserts a new section 16(3) in relation to general partners in an ILP and their position as trustee which states if a general partner in an ILP being a trustee, improperly employs trust property in the business or on account of the ILP, neither the ILP nor any other partner is liable for the trust property to the persons beneficially interested in it. However, this does not affect any liability incurred by any partner by reason of the partner's having notice of a breach of trust and does not prevent trust money from being followed and recovered from the ILP if still in its possession or under its control.

Clause 20 ensures that the rule in current section 17 does not apply to partners in a limited partnership or ILP. Clause 20 also inserts a new section 17(2) in relation to persons representing themselves as a general partner in a limited partnership and an ILP which states that everyone who by words spoken or written or by conduct represents himself or herself, or who knowingly suffers himself or herself to be represented, as a general partner in a particular firm that is a limited partnership or an ILP is liable as a general partner to anyone who has on the faith of the representation given credit to the firm. This is despite the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent general partner making the representation or suffering it to be made.

Clause 21 ensures that the rule in current section 18 does not apply to partners in a limited partnership and in an ILP. Clause 21 also inserts new section 18(2) that applies to general partners in a limited partnership and in an ILP which states an admission or representation made by any general partner in a limited partnership or ILP concerning the limited partnership's or ILP's affairs, and made in the ordinary course of its business, is evidence against the firm.

Clause 22 ensures that the rule in current section 19 does not apply to partners in a limited partnership and in an ILP. Clause 22 also inserts new section 19(2) in relation to general partners in a limited partnership and in an ILP. This states that notice to any general partner in a limited partnership or ILP who habitually acts in the business of the limited partnership or ILP, of any matter relating to affairs of the limited

partnership or ILP operates as notice to the limited partnership or ILP. An exception is in the case of a fraud on the limited partnership or ILP committed by or with the consent of that partner.

Clause 23 replaces current section 20(1) with new section 20(1) in relation to the liabilities of incoming and outgoing partners which states a person who is admitted as a partner into an existing firm other than a limited partnership or ILP does not by that admission alone become liable for anything done before the person became a partner. This does not alter the rule in current section 20(1). This Clause also:

- inserts new section 20(2) that states that a person who is admitted as a general partner into an existing limited partnership or ILP does not by that admission alone become liable for anything done before the person became a general partner.
- renumbers current section 20(2) as section 20(3) that states that a partner who retires from a firm, other than a limited partnership or ILP, does not by that retirement alone cease to be liable for partnership debts and obligations incurred before the partner's retirement. This new renumbered section 20(3) does not alter the rule in the current section 20(2).
- inserts new section 20(4) that states that a partner who retires from a limited partnership or ILP does not by that retirement alone cease to be liable for liabilities of the firm incurred before the partner's retirement for which the partner was liable.
- renumbers the current section 20(3) as section 20(5) that states that a retiring partner in a firm, other than a limited partnership or ILP, may be discharged from any existing liabilities by an agreement to that effect between the partner and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. This does not alter the rule in the current section 20(3).
- inserts new section 20(6) that states that a retiring partner in a limited partnership or ILP may be discharged from any existing liabilities by an agreement to that effect between the partner and the limited partnership or ILP and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the limited partnership or ILP.

Clause 24 ensures that current section 21 does not apply to an ILP.

Clause 25 omits the heading before current section 22 and inserts a new Part 3 heading with regard to the relations of partners to one another.

Clause 26 ensures that current section 23 does not apply in relation to an ILP and updates the drafting language of this section. This does not alter the current effect of this section.

Clause 27 inserts new section 23A in relation to partnership property of an ILP which states that all property, and rights and interests in property acquired, whether by purchase or otherwise, on account of an ILP or for the purposes and in the course of the business of the ILP, are called in the *Partnership Act 1891* 'partnership property', and must be applied by the ILP exclusively for the purposes of the ILP.

This Clause ensures that no partner in an ILP, only because of being a partner in the ILP, has any legal or beneficial interest in its partnership property.

Clause 28 ensures that current section 25 does not apply in relation to an ILP.

Clause 29 ensures that an enforcement warrant cannot issue against any property of a partnership, limited partnership or an ILP except on a judgment against the partnership, limited partnership or ILP. Clause 29 also ensures that current sections 26(2) and 26(3) do not apply to in relation to an ILP. Clause 29 updates the drafting language of the section and does not alter the effect of the existing rules.

Clause 30 ensures that current section 27 does not apply in relation to an ILP and updates the drafting language of that section. This does not alter the existing rules.

Clause 31 ensures that current section 29 does not apply in relation to an ILP and updates the drafting language of that section. This does not alter the existing rules.

Clause 32 ensures that current section 30 does not apply in relation to an ILP and updates the drafting language of that section. This does not alter the existing rules.

Clause 33 ensures that current section 31 does not apply to partners in an ILP. Clause 33 also inserts new section 31(2) that states that an ILP is, subject to the partnership agreement, bound to render true accounts and full information of all things affecting the ILP to any partner or the partner's legal representatives.

Clause 34 ensures that current section 32 does not apply in relation to an ILP.

Clause 35 ensures that current section 33 does not apply in relation to an ILP.

Clause 36 ensures that current section 34 does not apply in relation to an ILP.

Clause 37 omits the heading before current section 35 and inserts a new Part 4 heading in relation to dissolution of partnership and its consequences. Clause 37 also inserts new section 34A ensuring that Part 4 does not apply in relation to an ILP.

Clause 38 omits the heading before current section 48.

Clause 39 relocates current section 48 to the new Chapter 6, Part 1 in relation to savings and transitional provisions and renumbers this provision as new section 122.

Clause 40 relocates current section 49 to the new Chapter 6, Part 3 in relation to savings and transitional provisions and renumbers this provision as new section 124.

Clause 41 inserts a new Chapter 3 and Part 1 heading after current section 47 in relation to limited partnerships.

Clause 42 inserts a new Chapter 4 after the new Chapter 3 with new Chapter 4 and Part 1 headings for ILPs and inserts:

- proposed section 70 containing definitions for the new Chapter 4;
- a new Part 2 heading in relation to the nature and formation of an ILP after proposed section 70;
- proposed sections 71 and 72 that provide an ILP is formed on registration under the new Chapter 4 and that an ILP is a body corporate with a legal personality separate from that of the partners in it;
- proposed section 73 that requires an ILP to have at least 1 general partner, but no more than 20 general partners, and at least 1 limited partner. There is no limit on the number of limited partners. Proposed section 73 also confirms that an individual, a partnership or a body corporate may be a general or limited partner in an ILP. If a general law partnership is a general partner in an ILP, the number of partners in the general law partnership is to be counted towards the number of general partner in an ILP. If a general partner in an ILP, the number of general partners in the ILP. If a limited partnership is a general partner in an ILP, the number of general partners in the ILP. If a limited partnership is a general partner in an ILP, then the number of general partners in that limited

partnership is to be counted towards the number of general partners in the ILP. The number of limited partners in that limited partnership is not to be counted;

• proposed section 74 that requires an executed written partnership agreement between all the partners in an ILP to be in force at all times. This agreement is a contract between the ILP and each general and limited partner whereby each party agrees to observe and perform their obligations under that agreement. An ILP may execute the partnership agreement. Proposed section 74 confirms that the interests of the partners in an ILP and their rights and duties in relation to the partnership are, subject to the amended *Partnership Act 1891*, to be decided in accordance with the agreement.

This Clause also inserts a new Part 3 heading for registration of ILPs after proposed section 74 and inserts:

- proposed section 75 that allows natural persons, persons in a general law partnership, persons in a limited partnership, an ILP itself or other body corporate proposing to be partners in the proposed ILP to apply for registration of an ILP under certain circumstances. These circumstances are that the -
 - partnership is a VCLP or AFOF. Under the Commonwealth venture capital investment taxation scheme, this must either be a limited partnership or an ILP, and is only a venture capital limited partnership (VCLP) or an Australian venture capital fund of funds (AFOF) if it is registered under the Commonwealth *Venture Capital Act 2002* as a VCLP or AFOF and that registration is in force; or
 - general partner in the limited partnership or ILP, or a proposed general partner in the proposed ILP intends to apply for registration of the limited partnership, ILP or proposed ILP under the *Venture Capital Act 2002* as a VCLP or AFOF; or
 - partnership is a venture capital management partnership (VCMP). Under the Commonwealth scheme, this must either be a limited partnership or ILP. To be a VCMP, a limited partnership or ILP must be either or both a general partner in one or more VCLPs or AFOFs and only carry on activities that are related to being a general partner; or
 - the partners in the limited partnership or ILP or the proposed partners in the proposed ILP intend that the limited partnership or ILP or proposed ILP will meet the requirements set out in

section 94D of the *Income Tax Assessment Act 1936* for recognition as a VCMP;

- proposed section 76 setting out the process for applying for registration to create an ILP. An application must be made to the chief executive and will be in the approved form, signed by every partner or proposed partner in the proposed ILP or by someone on the partner's or proposed partner's behalf, accompanied by any fee prescribed under a regulation and must contain -
 - the proposed firm-name of the proposed ILP;
 - the full address of the proposed registered office in Queensland of the proposed ILP. This will be known as the 'registered office' of the proposed ILP;
 - the full name of each partner or proposed partner or, if the partner or proposed partner is a partnership, the name of the firm or, if the firm does not have a name, the full name of each partner in the firm;
 - the full address of each partner or proposed partner -
 - if an individual, his or her principal place of residence;
 - if a body corporate, its registered office of principal place of business;
 - if a partnership, it registered office or principal office;
 - the firm-name of the proposed ILP must include at the end as part of the firm-name 1 of the following -
 - 'An incorporated limited partnership';
 - 'L.P.'; and
 - 'LP'.

The application must include or be accompanied by -

- a statement in relation to each partner or proposed partner about whether the partner or proposed partner is, or is proposed to be, a general partner or limited partner;
- a statement in relation to each partner or proposed partner that is a partnership to the effect that the partner or proposed partner is a partnership;

- if the application is from a partnership that is a VCLP or AFOF, evidence that it has so registered under the Commonwealth Venture Capital Act 2002;
- if the application is from persons proposing to be partners in a VCLP or AFOF, a statement that the persons propose to be partners in a VCLP or AFOF. Proposed section 71 defines "person" to include a partnership meaning a general law, limited or incorporated limited partnership;
- if the application is from a partnership that is a VCMP, a • statement that the partnership is a VCMP;
- if the application is from persons proposing to be partners in a VCMP, a statement that the persons propose to be partners in a VCMP; and
- anything else prescribed by a regulation;
- proposed section 77 that provides the chief executive with the • discretionary power to register the proposed ILP. If the chief executive registers the proposed ILP, the firm name of the ILP is its name as recorded in the register and its registered office is its office as recorded in the register. The ILP must have the words "An incorporated limited partnership", "L.P." or "LP" as part of its firm name at the end, as recorded in the register.

The chief executive must not record in the register as the firm name of the ILP a name that could not be registered under the Business Names Act 1962 without contravention of section 9(1) of that Act.

Registration of the proposed ILP is effected when the chief executive records in the register the information contained in the application for registration (registered particulars). This is subject to the chief executive not recording the proposed firm name if it would contravene section 9(1) of the Business Names Act 1962. Registration is effected when the chief executive records in the register the information included in, or accompanied with, the application;

proposed section 78 that requires the chief executive to keep a register . of ILPs registered under proposed Chapter 4. The chief executive may keep this register in any form the chief executive considers appropriate and it may form part of the register of limited partnerships kept under proposed section 51 of the amended *Partnership Act 1891*.

Upon the payment of a fee prescribed under a regulation, the chief executive is required to make the information recorded in the register available for public inspection at Brisbane during normal office hours.

The chief executive may correct an error or omission in the register by inserting, amending or omitting an entry if the chief executive decides that correction is necessary. The chief executive may also do so on the chief executive's own initiative.

The chief executive is not permitted to omit an entry in the register unless satisfied that the whole of the entry was included in the error;

• proposed section 79 that provides any change in relation to the registered particulars of an ILP must be given to the chief executive within 7 days after the change occurs in a statement in the approved form. Each general partner in the ILP commits an offence for a contravention of this requirement and may be liable for a maximum penalty of 10 penalty units.

This statement must set out the changes to the registered particulars, contain any particulars required under a regulation and be accompanied by the fee prescribed under a regulation. The statement must be signed by all the general partners or by a general partner authorised by all the general partners to do so;

- proposed section 80 that provides the chief executive must issue to the general partners of an ILP a certificate as to the formation and registered particulars as at that time of the ILP if -
 - an ILP is registered;
 - a change in the registered particulars of an ILP is recorded in the register; or
 - an error or omission in the register in relation to an ILP is corrected.

Upon an application and fee prescribed under a regulation, the chief executive may issue to the applicant a certificate in relation to an ILP as to the formation and registered particulars as at that time of the ILP.

Such a certificate stating that an ILP was formed on the date of registration mentioned in the certificate, an ILP existed at a time mentioned in the certificate, named persons were the general partners and limited partners in an ILP at the time mentioned in the certificate and any other particular of an ILP mentioned in the certificate was recorded in the register at specified time, is evidence of that matter;

• proposed section 81 that excludes the application of the *Business Names Act 1962* so that an ILP is not required to register a business name if that name is the name of the ILP registered under the new Chapter 4. On registration of an ILP by the chief executive under proposed section 77 the name of the ILP as recorded in the register is taken to be the business name of the ILP for the *Business Names Act 1962*.

A registrar under the *Business Names Act 1962* must register the business name under that Act and maintain the registration while the ILP is registered under this Chapter.

If the name of the ILP registered under this Chapter is changed by the chief executive, a registrar under the *Business Names Act 1962* must register the change under that Act.

No fee is payable for the registration, or a change, of the name of the ILP as a business name under the *Business Names Act 1962*;

• proposed section 82 that ensures any act done in connection with the making of an application for registration under the new Chapter 4 by or for persons proposing to be the partners in a proposed ILP does not of itself create a partnership between the persons.

Clause 42 inserts a new Part 4 heading after proposed section 82 relating to the powers of ILPs and also inserts:

- proposed section 83 that sets out the powers of an ILP which are, subject to the partnership agreement, that an ILP has the legal capacity and powers of an individual and also all the powers of a body corporate including, for example, the power, whether within or outside Queensland or outside Australia -
 - to carry on the business of the ILP ; and
 - to do all things necessary or convenient to be done for, or in connection with, the carrying on of the business of the ILP including, for example, the power to -
 - enter into contracts or otherwise acquire rights or liabilities; or
 - create, confer, vary or cancel interests in the ILP; or
 - acquire, hold and dispose of real or personal property or of an interest, whether beneficial or legal, in real or personal property; or

- appoint agents and attorneys, and act as agent for other persons; or
- form, and participate in the formation of, companies or ILPs; or
- participate in partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits; or
- do any other thing it is authorised to do by or under the new Chapter 4 or the partnership agreement.

However, if a statement is made under proposed section 76 in relation to proposed registration as a VCLP or AFOF, the ILP's powers are limited to carrying on activities related to becoming registered as a VCLP or AFOF until the ILP becomes a VCLP or AFOF, or if a statement is made under proposed section 76 in relation to proposed satisfaction of the requirements for a VCMP, the ILP's powers are limited to carrying on activities related to becoming a VCMP until the ILP becomes a VCMP;

- proposed section 84 that establishes the relationships between general and limited partners and also between the ILP itself. Except as otherwise provided by the partnership agreement or agreed between the partners -
 - a general partner, the ILP or an officer, employee or agent of a general partner or of the ILP is not an agent of a limited partner; and
 - the acts of a general partner or of the ILP or of an officer, employee or agent of a general partner or of the ILP do not bind a limited partner; and
 - a limited partner is not an agent or fiduciary of a general partner or of another limited partner or of the ILP; and
 - the acts of a limited partner do not bind a general partner or another limited partner or the ILP itself.

If a general partner is a partnership, a general partner in that partnership is to be included. An agreement between 2 partners or between a partner and the ILP may be made under which -

• 1 partner acts as an agent of another partner or of the partnership and, by so acting, binds the other partner or the partnership; or

the ILP acts as an agent of a partner and, by so acting, binds the partner.

Any consent or authority that under the amended Partnership Act 1891 is required or permitted to be given by a partner or 2 or more partners or all the partners may, in the case of an ILP, be given by that partner or those partners by or under the partnership agreement either in relation to all cases, or in relation to all cases subject to stated exceptions, or in relation to any stated case or class of case. This does not limit any other way in which a consent or authority might be given.

Any consent or authority that under amended Partnership Act 1891 is required or permitted to be given by an ILP may, without limiting any other way in which it might be given, be given by a general partner or 2 or more general partners acting under the partnership agreement.

A limited partner, as limited partner, is not a proper party to any proceeding commenced in a court or tribunal by or against the ILP, other than a proceeding commenced by the ILP against the limited partner or by the limited partner against the ILP.

Clause 42 inserts a new Part 5 heading for the new Chapter 4 after proposed section 84 and also inserts:

- proposed section 85 that contains two definitions for the purposes of the new Part 5. A "related body corporate" has the meaning given by section 9 of the Commonwealth Corporations Act 2001 and a "security holder", in relation to a body, whether corporate or unincorporated, includes a holder of securities (within the meaning of "securities" given by section 92(3) of the Corporations Act) in or of the body;
- proposed section 86 that provides a limited partner in an ILP has no liability for the liabilities of the ILP or of a general partner. This, and proposed sections 92 and 93, does not prevent a contribution of capital or property made by a limited partner to the ILP being used or an obligation of a limited partner to contribute capital or property to the ILP being enforced by any person to whom the obligation is owed in satisfaction of a liability of the ILP or of a general partner.

The rules set down in proposed section 86 are subject to proposed section 87 in relation to the limited partner not to take part in the management of the business of the ILP;

- proposed section 87 that provides a limited partner must not take part in the management of the business of the ILP and states that if -
 - 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 ILP, the limited partner causes any loss or injury to any person other than a partner in the ILP (third party); and
 - 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;

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 in fact a general partner in the partnership.

A limited partner is not an agent of an ILP and the acts of a limited partner do not bind a general partner, another limited partner or the ILP itself.

However, a limited partner is not to be regarded as taking part in the management of the business of the ILP only because the limited partner or a person acting for the limited partner -

- is an employee or an independent contractor of the ILP or of a general partner or an associate of the general partner, or is an officer of a general partner that is a body corporate; or
- gives advice to, or for, the ILP or a general partner or an associate of the general partner in the proper performance of functions arising from -
 - the engagement of the limited partner in a professional capacity or a person acting on behalf of the limited partner in a professional capacity; or
 - business dealings between the limited partner, or a person acting on behalf of the limited partner, and the ILP or between the limited partner and a general partner or an associate of the general partner; or
- gives a guarantee or indemnity in relation to any liability of the ILP or of a general partner or an associate of the general partner; or
- takes any action, or participates in any action taken by any other limited partner, for the purpose of enforcing the rights, or

safeguarding the interests, of the limited partner as a limited partner; or

- if permitted by the partnership agreement -
 - calls, requisitions, convenes, chairs, participates in, postpones, adjourns or makes a record of a meeting of the partners or of the limited partners or of any of them; or
 - whether at the meeting or in writing or otherwise, requisitions, formulates, signs, approves, disapproves, proposes, moves, supports, opposes, speaks to or votes on any resolution, or an amendment to any resolution of the partners or of the limited partners or of any of them; or
- exercises a power conferred on the limited partner by proposed section 87(4) or under the partnership agreement or otherwise has, or exercises, a right to -
 - have access to and inspect the books or records of the ILP or copy any of them; or
 - examine the state or prospects of the business of the ILP or advise, or consult with, other partners in relation to the state or prospects of the business of the ILP; or
- is or acts as an officer, director, security holder, partner, agent, employee or independent contractor of an associate of the ILP; or
- gives advice to, or consults with, an associate of the ILP; or
- is or acts as a lender to, or fiduciary for, an associate of the ILP; or

to the extent authorised by the partnership agreement;

- participates on, or has or exercises any right to appoint 1 or more persons to, or remove 1 or more persons from, or to nominate 1 or more persons for appointment to or removal from, a committee that considers, approves of, consents to or disapproves of any 1 or more of the following proposals from a general partner -
 - a proposal involving a material change in the nature of the business of the ILP, including a change in, or departure from, any investment guidelines, policies or conditions relating to the business of the ILP;

- 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 a method for valuing some or all of the assets of the ILP;
- a proposal for an extension or reduction in the period in which, under the partnership agreement, investments (or particular types of investments) can be made by the partnership, or for any approval or disapproval of investments that the ILP does not otherwise have a right to make;
- a proposal relating to any actual or potential transaction or other matter involving any actual or potential conflict of interest;
- a proposal relating to any actual or potential transaction, contract, arrangement or understanding between 1 or more of the partners, or their associates, and the general partner, the ILP or any associate of the general partner or of the ILP;
- a proposal for the delegation, waiver, release or variation of an authority, right, duty or obligation of the general partner;
- a proposal for the appointment or approval under the partnership agreement of any person as a senior executive of the general partner or of an associate of the general partner; or
- nominates, selects, investigates, evaluates or negotiates with any person in connection with the removal or replacement of a general partner, or participates on a committee that proposes, considers, approves of, consents to or disapproves of any nomination, selection, appointment, change in control or ownership, suspension, replacement or removal of a general partner or an associate of a general partner; or
- 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 under Part 2 of the Commonwealth *Venture Capital Act 2002* as a VCLP or an AFOF.

Subject to the partnership agreement, a limited partner, or a person authorised by the limited partner may also at any time –

- have access to and inspect the books or records of the ILP or copy any of them; and
- examine the state or prospects of the business of the ILP and advise, or consult with, other partners in relation to the state or prospects of the business of the ILP.

The partnership agreement cannot be used to vary these rules nor can they be varied by consent of the partners whether given by or under the partnership agreement or otherwise.

No implication is to be taken to arise from proposed section 87(3) that a limited partner in an ILP is to be regarded as taking part in the management of the business of the ILP only because the limited partner or a person acting on behalf of the partner does any thing in connection with the conduct of that business that is not referred to in that proposed subsection.

For the purposes of proposed section 87, a limited partner in an ILP that is a VCMP is not to be regarded as taking part in the management of the business of the ILP only because of any act the limited partner takes in relation to the ILP in the capacity of a partner or associate of a partner in the VCMP.

A reference to a general partner in an ILP includes, if the general partner is a partnership, a partner in that partnership;

- proposed section 88 that provides interpretation assistance for proposed section 87. A reference to an associate of a partner who is a general partner includes a reference to -
 - if the general partner is a partnership, a partner in that partnership (a "*partner in the general partner*"); and
 - 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
 - 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 the partnership or any partnership in which the general partner is a general partner; and

- if the general partner or a partner in the general partner or a person covered by the two preceding paragraphs is a body corporate, a related body corporate of that body corporate; and
- 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 the three preceding paragraphs.

A reference to an associate of a partner who is a limited partner includes a reference to -

- if the limited partner is a partnership, a partner in that partnership (a "*partner in the limited partner*"); and
- 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
- if the limited partner or a partner in the limited partner or a person covered by the preceding paragraph is a body corporate, a related body corporate of that body corporate; and
- 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 the two preceding paragraphs.

A reference to an associate of an ILP includes a reference to:

- any person or partnership in which the ILP has an interest, whether as security holder or otherwise; and
- if a person or partnership covered by the preceding paragraph is a body corporate, a related body corporate of that body corporate.

For the purposes of proposed section 88, a reference to a general partner in an ILP includes, if the general partner is a partnership, a partner in that partnership. If the partnership is a limited partnership, then it is reference to the general partner in that limited partnership. If the partnership is a general law partnership then it is reference to all partners in that partnership;

• proposed section 89 that provides a difference arising as to ordinary matters connected with the business of an ILP may be decided by a majority of the general partners. This may be varied with the consent of the partners;

• proposed section 90 that provides a limited partner may, with the consent of the general partners and the agreement of the transferee, transfer the whole or a part of the limited partner's interest in the ILP. If the whole of the limited partner's interest in the ILP is transferred to the one transferee, the transferee becomes a limited partner in substitution for the transferor with all the rights and obligations of the transferor.

If only a part of the limited partner's interest in the ILP 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 that part.

A person may be admitted as a partner in an ILP without the necessity to obtain the consent of any limited partner.

These rules set down in proposed section 90 may be varied by the partnership agreement or with the consent of the partners;

• proposed section 91 that provides if a general partner becomes a limited partner, the partner remains liable for any liability of the ILP that arose before the partner became a limited partner to the extent that the partnership is unable to satisfy the liability or to the greater extent provided by the partnership agreement.

If a limited partner becomes a general partner, the partner remains not liable, subject to that limited partner participating in the management of the business of the ILP, for any liability of the ILP that arose before the partner became a general partner, subject to proposed section 87;

- proposed section 92 that provides a limited partner in an ILP may only be liable for a liability incurred by the ILP as a result of -
 - the conduct of the ILP's business outside of Queensland; or
 - acts outside of Queensland of a general partner, a limited partner or the ILP or of any officer, employee or agent of a general partner or of the ILP, in circumstances where the limited partner would be so liable if the conduct or acts occurred within Queensland;
- proposed section 93 that provides a partner in a recognised ILP may only be liable for a liability incurred by the ILP as a result of -
 - the conduct of the recognised ILP's business in Queensland; or

• the acts in Queensland of a partner in the recognised ILP or of the ILP itself or of any officer, employee or agent of such a partner or of the ILP;

if the partner would be so liable under the corresponding law if the conduct or acts happened in the place where the recognised ILP was formed.

The Governor in Council, may by regulation, declare a law of another State or another country or jurisdiction to be a corresponding law for the new Chapter 4 but only if the Minister is satisfied that under that law a limited partner in an ILP formed in accordance with new Chapter 4 and registered or otherwise recognised under that law may only be liable for a liability incurred by the ILP as a result of -

- the conduct in that State of the business of the ILP; or
- the acts in that State of a partner in the ILP or of the ILP itself or of any officer, employee or agent of a general partner in the incorporated partnership or of the ILP;

if the partner would be so liable under this chapter if the conduct or acts happened within Queensland.

The law of another country or jurisdiction, other than another State, may not be declared to be a corresponding law unless the Minister is satisfied that that law provides for the limitation of liability of particular partners in particular partnerships.

These rules are in addition to, and do not limit, any rule of law under which recognition is or may be given to a limitation of liability of a partner in a partnership;

- proposed section 93 that defines "*corresponding law*" to mean a law of another State or of another country or jurisdiction that substantially corresponds to the new Chapter 4 or a law declared by the Governor in Council by regulation in proposed section 93 to be a corresponding law for the new Chapter 4. A "*recognised ILP*" is also defined to mean an ILP formed in accordance with a corresponding law;
- proposed section 94 that provides no implication is to be taken as arising from proposed sections 92 or 93 that a limited partner has any liability, or apart from those sections would have any liability, in connection with conduct of a partnership's business or acts outside of Queensland that the limited partner would not have in connection with conduct or acts within Queensland.

Clause 42 inserts a new Part 6 heading in relation to the winding up of an ILP and also inserts:

- proposed section 95 that provides a definition for the word "*asset*" used in the new Part 6 that means, in relation to an ILP, the assets remaining after satisfaction of the liabilities of the ILP and the costs, charges and expenses of the winding up;
- proposed section 96 that provides an ILP may be wound up voluntarily in accordance with the partnership agreement or, subject to the partnership agreement, if the limited partners so resolve by special resolution. On a voluntary winding up of an ILP:
 - if the partnership agreement sets out how the assets are to be dealt with on a voluntary winding up—the assets must be dealt with in accordance with the partnership agreement; or
 - otherwise the assets are to be distributed among the partners in shares that are proportionate to their respective contributions of capital or property to the ILP.

Any person aggrieved by the operation of proposed section 96 in relation to the assets of an ILP may apply to the Supreme Court. On such an application, the Supreme Court may make any order relating to the disposal of the assets that it considers appropriate;

- proposed section 97 that provides the chief executive with the power to issue a notice to an ILP to require the ILP to show good cause why it should not be required to be wound up if the chief executive considers that -
 - the ILP has ceased to carry on business; or
 - having been registered under the new Chapter 4 on the basis that the ILP is or is intended to be a VCLP or an AFOF -
 - the ILP's registration under the Commonwealth *Venture Capital Act 2002* has been revoked; or
 - the ILP has not within 2 years after its incorporation become a VCLP or AFOF; or
 - having been registered under the new Chapter 4 on the basis that the ILP is or is intended to be a VCMP, it has ceased to meet, or has not in the period of 2 years after its incorporation met, the requirements set out in section 94D(3) of the Commonwealth *Income Tax Assessment Act 1936* for recognition as a VCMP; or
 - none of the partners is a limited partner; or

- incorporation of the ILP has been obtained by mistake or fraud; or
- the ILP exists for an illegal purpose.

If, at the end of 28 days after the chief executive gives this notice, the chief executive is satisfied that the ILP should be required to be wound up, the chief executive may publish in the gazette a certificate as to the requirement that the ILP be wound up.

The chief executive must give notice of the publication of the certificate to the ILP as soon as possible after the publication.

The chief executive must as soon as practicable after giving a notice to an ILP, record the giving of the notice in the register.

The chief executive must not publish a certificate unless satisfied that good cause has not been shown why the ILP should not be required to be wound up.

Notices under proposed section 97 must be given to the ILP by giving them to the ILP at its registered office or if notice cannot reasonably be given in this way, notices may be given by being published in a newspaper circulating generally in Queensland;

• proposed section 98 that provides a person whose interests are affected by a decision of the chief executive to publish a certificate requesting reasons why the ILP should not be wound up, may apply to the Supreme Court for review of the decision. Such an application must be made within 28 days after the certificate is published.

The operation of the certificate is suspended on the making of an application for review until the application is withdrawn or the review is decided.

In deciding an application for review, the Supreme Court may affirm the decision under review or set aside the decision under review and cancel the certificate.

The chief executive is not prevented from cancelling an already published certificate at any time after an application to the Supreme Court is made;

- proposed section 99 that provides on the winding up of an ILP required on a published certificate of the chief executive, the winding up -
 - must start -

- no later than the end of 28 days after the day on which the certificate is published unless an application to the Supreme Court to review the chief executive's decision is made; or
- if an application to the Supreme Court is made and the Supreme Court affirms the decision to publish the certificate, no later than 28 days after the application is decided; and
- must end by the day specified by the chief executive in a notice given to the partnership, not being a day earlier than 60 days after the day on which the winding up must be so started.

When the winding up is started, the chief executive may appoint a person to be the liquidator of the ILP.

If the chief executive approves, the liquidator may be a general partner in the ILP and need not be a registered liquidator under the Commonwealth *Corporations Act 2001* or give security as required under that Act.

The liquidator must publish notice of his or her appointment in the gazette within 10 days after being appointed.

In relation to the winding up, the liquidator has all the powers and duties of a liquidator appointed to wind up a company under the *Corporations Act 2001*.

Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the chief executive.

The reasonable costs of a winding up required on a published certificate of the chief executive, are payable out of the property of the ILP;

- proposed section 100 that provides for the distribution of assets of the ILP on the winding up on a chief executive's certificate. On such a winding up of an ILP -
 - if the partnership agreement sets out how the assets are to be dealt with on a winding up on a certificate of the chief executive, the assets must be dealt with in accordance with the partnership agreement; or
 - otherwise, the assets are to be distributed among the partners in shares that are proportionate to their respective contributions of capital or property to the partnership.

Any person aggrieved by the operation of this rule in relation to the assets of an ILP may apply to the Supreme Court. On an application to the Supreme Court, the Supreme Court may make any order relating to the disposal of the assets that it considers appropriate;

- proposed section 101 that provides this proposed section applies to the winding up of an ILP, other than a voluntary winding up or a winding up required on a certificate of the chief executive published under proposed section 97;
- proposed section 101 that declares to the extent that Part 5.7 of the Commonwealth *Corporations Act 2001* does not apply, the winding up of the ILP is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 5.7 of the *Corporations Act.*

Part 5.7 of the Commonwealth *Corporations Act 2001* applies as if the ILP were a Part 5.7 body within the meaning of that Act, subject to the following modifications -

- as if the words 'or in the public interest' were inserted in section 583(c)(ii) after the words 'just and equitable';
- as if section 583(d) were omitted;
- any other modifications (within the meaning of part 3 of the *Corporations (Ancillary Provisions) Act 2001)* that are prescribed under a regulation.

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the Commonwealth *Corporations Act 2001* and Part 3 of the Commonwealth *Australian Securities and Investments Commission Act 2001* as laws of Queensland in relation to any matter declared by a law of Queensland (whether with or without modification) to be an applied corporations legislation matter for the purposes of that part in relation to those Commonwealth provisions. This does not apply to any provisions that already apply to a matter as a law of the Commonwealth.

The Australian Securities and Investments Commission may perform a function conferred on it under a law applied by the preceding paragraphs -

• under an agreement or arrangement of the kind referred to in section 11(8) or (9A)(b) of the Commonwealth Australian Securities and Investments Commission Act 2001; and

• if the Commission is authorised to perform that function under section 11 of that Act.

Unless a function under a law applied by the preceding paragraphs is conferred on the Australian Securities and Investments Commission that law applies as if a reference in it to the Commission was a reference to the chief executive;

• proposed section 102 that provides an ILP must give to the chief executive a notice of the commencement of the winding up of the partnership within 7 days after the passing of a special resolution mentioned in proposed section 97, or if this is not the case, the commencement of the winding up.

An ILP must give to the chief executive a notice of the completion of the winding up of the ILP within 7 days after that completion, specifying the date on which the winding up was completed.

If the ILP does not comply with these notice provisions, each general partner in the ILP commits an offence and is liable to a maximum penalty of 10 penalty units.

The chief executive must, as soon as practicable after receiving a notice of the commencement or completion of the winding up, record the receipt of the notice in the register;

• proposed section 103 that provides the chief executive must, by gazette notice, cancel the registration of an ILP as soon as practicable after the ILP is wound up. This will occur in all forms of winding up provided by the Bill.

The chief executive must, as soon as practicable after the publication of the gazette notice, record the cancellation of the registration in the register. Registration with the chief executive is the process that leads to the incorporation of the ILP. An ILP ceases to exist on the cancellation of its registration.

Clause 42 inserts a new Part 7 heading for miscellaneous provisions and inserts:

• proposed section 104 that provides all courts must take judicial notice of the common seal of an ILP affixed to a document and, until the contrary is proved, must presume that it was properly affixed. Without limiting the ways in which an ILP may execute a document (including a deed), an ILP may execute a document -

- without using a common seal, whether it has one or not, if the document is signed by a general partner; or
- as a deed if the document is expressed to be executed as a deed and is executed with the use of a common seal or in accordance with the preceding paragraph;
- proposed section 105 that provides a person is entitled to make the assumptions in proposed section 106 in relation to dealings with an ILP and the ILP is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.

A person is entitled to make the assumptions in proposed section 106 in relation to dealings with another person who has, or purports to have, directly or indirectly acquired title to property from an ILP and the ILP and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.

The assumptions in proposed section 106 may be made even if a partner or agent of the ILP acts fraudulently, or forges a document, in connection with the dealings. A person is not entitled to make an assumption in proposed section 106 if at the time of the dealings the person knew or suspected that the assumption was incorrect;

• proposed section 106 that provides the assumptions referred to in proposed section 105. A person may assume that the partnership agreement of the ILP has been complied with.

A person may assume that anyone who appears, from information provided by the ILP that is available to the public from the register, to be a general partner in the ILP -

- is a general partner in the ILP; and
- has authority to exercise the powers and perform the duties customarily exercised or performed by a general partner in an ILP.

A person may assume that anyone who is held out by the ILP to be a general partner in, or an agent of, the ILP -

- is a general partner in the ILP or has been properly appointed as an agent of the ILP; and
- has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of partner in, or as agent of, an ILP.

A person may assume that the general partners in, and agents of, the ILP properly perform their duties to the ILP.

A person may assume that a document has been properly executed by the ILP if the document appears to have been signed in accordance with proposed section 104.

A person may assume that a document has been properly executed by the ILP if the ILP's common seal appears to have been affixed to the document.

A person may assume that a general partner in, or agent of, the ILP 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.

The assumptions that may be made under this proposed section apply for the purposes of this proposed section;

• proposed section 107 that provides any document issued for an ILP in connection with the conduct of the ILP's business must contain in legible letters the words 'An incorporated limited partnership' or 'L.P.' or 'LP' at the end as part of the firm-name of the ILP.

A person who -

- issues or authorises the issue of a document in contravention of this proposed section; or
- being a general partner in the ILP concerned, is aware that documents are being issued in contravention of this proposed section;

commits an offence with a maximum penalty of 20 penalty units.

The certificate of registration of an ILP must be displayed at all times in a conspicuous position at the registered office of the partnership. If the certificate of registration is not so displayed, each general partner in the ILP commits an offence with a maximum penalty of 20 penalty units;

• proposed section 108 that provides an ILP must keep in Queensland, at the place shown in the register as the address of the registered office of the ILP, an office to which all communications with the ILP may be addressed. If this rule is not complied with, each general partner in the ILP commits an offence with a maximum penalty of 10 penalty units.

A regulation may prescribe the hours during which the registered office is to be open and accessible to the public;

• proposed section 109 that provides an ILP that was registered under the new Chapter 4 on the basis of an intention to become a VCLP or an AFOF must, within 1 month after becoming a VCLP or AFOF, give to the chief executive a copy of a document evidencing its status as a VCLP or an AFOF.

An ILP that was registered under the new Chapter 4 on the basis of an intention to meet the requirements for recognition as a VCMP must, within 1 month after becoming a VCMP, give to the chief executive a statement that it is a VCMP.

If -

- the registration of an ILP as a VCLP or an AFOF under Part 2 of the Commonwealth *Venture Capital Act 2002* is revoked; or
- an ILP ceases to be a venture capital management partnership;

the ILP must, within 7 days after the date on which that revocation took effect or it ceased to be a VCMP, give to the chief executive a notice of that revocation or cessation, specifying the date on which it took effect.

If an ILP ceases to carry on business, the ILP must, as soon as practicable, give to the chief executive a notice of the cessation, specifying the date on which it took effect.

Each general partner in the ILP commits an offence with a maximum penalty of 10 penalty units if these obligations above are not complied with.

A copy of a document, a statement or a notice required to be given to the chief executive under this section must be accompanied by the fee prescribed under a regulation. A notice required to be given to the chief executive under this section must be in the approved form and contain any particulars required under a regulation;

• proposed section 110 that provides for the purpose of monitoring compliance with the new Chapter 4 or any regulation made for the purposes of the new Chapter 4, the chief executive may, by written notice, require an ILP to give the chief executive, within a period specified in the notice (being at least 28 days) or within the further period the chief executive allows, the information specified in the notice.

An ILP required give information to the chief executive must, within the period specified in the notice or within the further period the chief executive allows, give the information, as it is within its power to give, to the chief executive unless the ILP has a reasonable excuse. A maximum penalty for non-compliance of this rule is 60 penalty units;

- proposed section 111 that provides if the new Chapter 4 provides that a general partner, being a partnership in an ILP, is guilty of an offence that reference to the person is to be read as a reference to -
 - each general partner in the partnership; or
 - in the case of a partnership in which any partner has under the law of the place where it is formed limited liability for the liabilities of the partnership, each partner in the partnership whose liability is not so limited. This applies to limited partnerships formed under existing law.

In any proceeding against a partner for an offence against the new Chapter 4 brought in reliance on the above rule, it is a defence to the charge for the partner to prove that the partner took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Clause 43 inserts a new Chapter 5 heading in relation to general provisions after the end of proposed section 111 and inserts:

• proposed section 112 that provides a person must not disclose information gained by the person in the administration of this Act, unless the disclosure is permitted as provided for below. A contravention of this may result in a maximum penalty of 60 penalty units.

The person may disclose the information to someone else:

- to the extent necessary to perform the person's functions under this Act; or
- to a court or tribunal in the course of a legal proceeding; or
- if the disclosure is authorised under this Act or another Act; or
- if the disclosure is otherwise required or permitted by law; or
- to the extent reasonably required to enable the investigation or the enforcement of a law of Queensland or of any other State or of the Commonwealth; or

• with the written authority of the person to whom the information relates.

This rule does not limit the Freedom of Information Act 1992;

- proposed section 113 that provides a person must not state anything to the chief executive the person knows is false or misleading in a material particular. A contravention of this may result in a maximum penalty of 60 penalty units;
- proposed section 114 that provides a person must not give to the chief executive a document containing information the person knows is false or misleading in a material particular. A contravention of this may result in a maximum penalty of 60 penalty units. This rule does not apply to a person who, when giving the document -
 - informs the chief executive, to the best of the person's ability, how it is false or misleading; and
 - gives the correct information to the chief executive if the person has, or can reasonably obtain, the correct information;
- proposed section 115 that provides the chief executive may delegate the chief executive's powers under this Act to an appropriately qualified public service employee. An 'appropriately qualified' public service employee includes a public service employee with the qualifications, experience or standing appropriate to the exercise of the power. An example of standing is a person's classification in the public service;
- proposed section 116 that provides that an offence against this Act is a summary offence and a proceeding for an offence against this Act must start within the later of the following periods to end -
 - 1 year after the commission of the offence;
 - 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence;
- proposed section 117 that provides without limiting any other way of serving partners in a limited partnership, a document concerning the business of the partnership is taken to be properly served on the partners if it is left at or sent by post addressed to the registered office of the partnership for the time being shown in the register of limited partnerships.

Without limiting any other way of serving documents on an ILP, a document concerning the business of an ILP may be properly served on the ILP if it is left at, or sent by post addressed to, the registered office of the ILP for the time being shown in the register of ILPs;

- proposed section 118 that provides an entry in the register of limited partnerships of any particular fact concerning a limited partnership, including an entry stating the effect of any notice received by the chief executive -
 - is sufficient notice of the fact or the effect of the notice to all persons who afterwards deal with the firm concerned; and
 - is to have effect, for the purposes of proposed section 39(2) in relation to the rights of persons dealing with firm against apparent members of firm, as if it were an advertisement in the gazette.

An entry in the register of ILP's of any particular fact concerning an ILP, including an entry stating the effect of any notice received by the chief executive, is sufficient notice of the fact or of the effect of the notice to all persons who deal with the partnership.

- proposed section 119 that provides the chief executive with the power to approved forms for use under the amended *Partnership Act 1891*;
- proposed section 120 that provides the Governor in Council may make regulations under this Act that may prescribe -
 - the particulars to be specified in a statement or notice filed with the chief executive; or
 - matters relating to the keeping of the registered office of a limited partnership or an ILP; or
 - the fees payable under this Act; or
 - offences for contraventions of the regulation, and may fix a penalty of not more than 20 penalty units for a contravention.

Clause 44 inserts a new Chapter 6 heading after proposed section 120 in relation to savings and transitional provisions and inserts a new:

- Part 1 heading for a savings provision for Act Number 7 of 1891;
- Part 2 heading for a savings provision for Act Number 78 of 1988;
- Part 3 heading for transitional provisions for Act Number 94 of 2003;

- Part 4 heading for savings and transitional provisions for the Partnership and Other Acts Amendment Act 2004;
- proposed section 124 that provides for the continuation of limited partnerships under the existing *Partnership (Limited Liability) Act 1988*;
- proposed section 125 that provides for the continuation of the register under the existing *Partnership (Limited Liability) Act 1988*. The chief executive may issue a certificate in relation to the formation and composition of a limited partnership formed and registered before the repeal of the *Partnership (Limited Liability) Act 1988* and the certificate has effect as a certificate issued under proposed section 51;
- proposed section 126 that provides an application made or notice given to the registrar under the *Partnership (Limited Liability) Act* 1988 and not finally dealt with before the repeal of that Act may be dealt with by the chief executive under the amended *Partnership Act* 1891;
- proposed section 127 that provides regulations in force under the *Partnership (Limited Liability) Act 1988* immediately before the repeal of that Act are taken to have been made under this Act and may amended or repealed accordingly. A regulation mentioned in force expires on 31 March 2005. This is despite the operation of Part 7 of the *Statutory Instruments Act 1992*;
- proposed section 128 that provides despite the repeal of the *Partnership (Limited Liability) Act 1988*, a form prescribed for use under section 7(1) or 8(3) of that Act immediately before the repeal may continue to be used, with necessary changes, for the purpose for which it was prescribed for a period of 3 months after the commencement of proposed section 128;
- proposed section 129 that provides the relation between members of any company mentioned in section 5(2)(a), as in force immediately before the commencement of proposed section 129, is not a partnership within the meaning of the amended *Partnership Act 1891*;
- proposed section 130 that provides the liability of a person arising under the *Partnership Act 1891* as in force before the commencement of this proposed section is unaffected by the definition *liability* as inserted by the *Partnership and Other Acts Amendment Act 2004*;
- proposed section 131 that provides that a reference in an Act or document to the *Partnership (Limited Liability) Act 1988* may, if the

context permits, be taken to be a reference to the amended *Partnership Act 1891*.

Clause 45 inserts new heading for the Schedule to the amended *Partnership Act 1891* in relation to the Dictionary.

Clause 46 inserts a new Dictionary.

Part 3 Amendment of Partnership (Limited Liability) Act 1988

Clause 47 provides that Part 3 of the Bill and the Schedule 2 to the Bill amend the *Partnership (Limited Liability) Act 1988*.

Clause 48 omits the current definitions of "general partner", "limited partner" and the definition of "liability" so they can be relocated to the new Dictionary in the Schedule.

Clause 49 relocates the amended Part 2 of the *Partnership (Limited Liability)* Act 1988 to Part 2 of Chapter 3 of the *Partnership Act 1891* and renumbers those sections accordingly and also relocates:

- the amended Part 3 of the *Partnership (Limited Liability) Act 1988* to Part 3 of Chapter 3 of the *Partnership Act 1891* and renumbers those sections accordingly;
- the amended Part 4 of the *Partnership (Limited Liability) Act 1988* to Part 4 of Chapter 3 of the *Partnership Act 1891* and renumbers those sections accordingly and relocates the amended Part 5 of the *Partnership (Limited Liability) Act 1988*, other than current section 27, to Part 5 of Chapter 3 of the *Partnership Act 1891* and renumbers those sections accordingly;
- current section 27 of the *Partnership (Limited Liability) Act 1988* to Part 2 of the new Chapter 6 of the *Partnership Act 1891* and renumbers it accordingly.

Part 4 Minor amendments and repeal

Division 1 Amendment of the *Bills of Sale and Other Instruments Act 1955*

Clause 50 provides that Division 1 of Part 4 of the Bill amends the *Bills of Sale and Other Instruments Act 1955*. This is unrelated to proposed amendments to the partnership legislation.

Clause 51 amends the definition of "*official*" to mean the chief executive, an officer or employee of the department, or a public service employee to whom the chief executive delegates powers for the *Bills of Sale and Other Instruments Act 1955*.

Clause 52 amends current section 13(1)(a) of the *Bills of Sale and Other Instruments Act 1955* to allow the inspection of the register under the *Bills of Sale and Other Instruments Act 1955* at an office of the department, or an office of another department, prescribed under a regulation when the office is open to the public.

Clause 53 amends current section 38 of the *Bills of Sale and Other Instruments Act 1955* so that "officer or employee of the department" reads as "public service employee".

Division 2 Amendment of the *Business Names Act* 1962

Clause 54 provides that Division 2 of Part 4 of the Bill amends the *Business* Names Act 1962. This is unrelated to proposed amendments to the partnership legislation.

Clause **55** amends current section 4C of the *Business Names Act 1962* by removing the words "officer of the department" and replacing them with "public service employee". Clause 55 also replaces the words "the department" in the definition of "appropriately qualified" with "public service".

Division 3 Amendment of the *Electronic Transactions* (*Queensland*) *Act 2001*

Clause 56 provides that Division 3 of Part 4 of the Bill amends the *Electronic Transactions (Queensland) Act 2001.*

Clause 57 makes a consequential amendment to the reference to the *Partnership (Limited Liability) Act 1988* in Schedule 1 of the *Electronic Transactions (Queensland) Act 2001.*

Division 4 Amendment of the *Liens on Crops of Sugar Cane Act 1931*

Clause 58 provides that Division 4 of Part 4 of the Bill amends the *Liens on Crops of Sugar Cane Act 1931*. This is unrelated to proposed amendments to the partnership legislation.

Clause 59 replaces the current definition of "*official*" with a new definition that states *official*" means the chief executive, an officer or employee of the department, or a public service employee to whom the chief executive delegates powers for the *Liens on Crops of Sugar Cane Act 1931*.

Clause 60 inserts the words ', or an office of another department,' after the words 'at an office of the department' in section 7C(1)(a) of the Liens on Crops of Sugar Cane Act 1931.

Clause 61 replaces the words 'officer or employee of the department' with 'public service employee' in section 23D(1) of the Liens on Crops of Sugar Cane Act 1931.

Division 5 Amendment of the *Local Government Act* 1993

Clause 62 provides that Division 5 of Part of the Bill amends the *Local Government Act 1993*.

Clause 63 makes a consequential amendment in the definition of "*limited partner*" in the Schedule to the *Local Government Act 1993*.

Division 6 Amendment of the *Motor Vehicles and Boats Securities Act 1986*

Clause 64 provides that Division 6 of Part 4 of the Bill amends the *Motor Vehicles and Boats Securities Act 1986.* This is unrelated to proposed amendments to the partnership legislation.

Clause 65 replaces the words 'an officer or employee of the department' with 'a public service employee' in section 21(1) of the Motor Vehicles and Boats Securities Act 1986.

Clause 66 replaces the words 'an officer or employee of the department' with 'a public service employee' in section 21A of the Motor Vehicles and Boats Securities Act 1986.

Clause 67 inserts the words ', or an office of another department, prescribed under a regulation' after 'office of the department' in section 23 of the Motor Vehicles and Boats Securities Act 1986.

Clause 68 replaces the words 'An officer or employee of the department,' with 'A public service employee' section 32(1) in the Motor Vehicles and Boats Securities Act 1986. Clause 68 also replaces the words 'an officer or employee' with 'a public service employee' in section 32(2) of the Motor Vehicles and Boats Securities Act 1986.

Division 7 Amendment of the Supreme Court of Queensland Act 1991

Clause 69 provides that Division 7 of Part 4 of the Bill amends the *Supreme Court Act of Queensland 1991*.

Clause 70 makes a consequential amendment to section 89(2) of the *Supreme Court Act of Queensland 1991*.

Division 8 Amendment of the Workers' Compensation and Rehabilitation Act 2003

Clause 71 provides that Division 8 of Part 4 of the Bill amends the *Workers Compensation and Rehabilitation Act 2003*.

Clause 72 makes a consequential amendment to Schedule 6 of the *Workers Compensation and Rehabilitation Act* 2003.

Division 9 Repeal of the Partnership (Limited Liability) Act 1988

Clause 73 repeals the Partnership (Limited Liability) Act 1988.

Schedule 1 Minor and consequential amendments of *Partnership Act 1891*

Schedule 1 of the Bill makes minor and consequential amendments to the *Partnership Act 1891*.

Schedule 2 Minor and consequential amendments of *Partnership (Limited Liability) Act 1988*

Schedule 2 of the Bill makes minor and consequential amendments to the *Partnership (Limited Liability) Act 1988.*

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