



Queensland

Partnership and Other Acts Amendment Act 2004

Act No. 29 of 2004



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Queensland

Partnership and Other Acts Amendment Act 2004

Act No. 29 of 2004

An Act to amend the *Partnership Act 1891*, and for other
purposes

[Assented to 12 October 2004]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Partnership and Other Acts Amendment Act 2004*.

2 Commencement

- (1) Section 73¹ commences immediately after the commencement of section 47.²
- (2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

Part 2 Amendment of Partnership Act 1891

3 Act amended in pt 2 and sch 1

This part and schedule 1 amend the *Partnership Act 1891*.

4 Insertion of new ch 1 and pt 1 hdgs

Before section 1—

insert—

1 Section 73 (Repeal)

2 Section 47 (Act amended in pt 3 and sch 2)

‘Chapter 1 Preliminary

‘Part 1 Citation’.

5 Replacement of s 2 (Commencement of Act)

Section 2—

omit, insert—

‘2 Notes in text

‘A note in the text of this Act is part of the Act.

‘Part 2 Interpretation’.

6 Amendment of s 3 (Interpretation clause)

(1) Section 3(2), ‘(2)’—

omit.

(2) Section 3(2), as amended—

relocate and renumber as section 4(1).

7 Insertion of new s 4

After section 3—

insert—

‘4 Meaning of *firm* and *firm-name*

‘(2) However, in relation to an incorporated limited partnership, the firm-name of the incorporated limited partnership is the name of the incorporated limited partnership recorded in the register.

‘(3) In this Act, a reference, in relation to an incorporated limited partnership, to the incorporated limited partnership or the firm is a reference to the incorporated limited partnership as a

separate legal entity and not to the partners in that partnership.’.

8 Insertion of new ch 1, pt 3

After section 5—

insert—

‘Part 3 Application

‘5A Application of laws of partnership to limited partnerships and incorporated limited partnerships

- ‘(1) Chapter 2 applies to limited partnerships, subject to chapter 3.
- ‘(2) Except as provided (whether expressly or by necessary implication) by this Act or any other Act, the law relating to partnership does not apply in relation to—
 - (a) an incorporated limited partnership; or
 - (b) the partners in an incorporated limited partnership; or
 - (c) the relationship between an incorporated limited partnership and its partners.’.

9 Insertion of new ch 2 and pt 1 hdgs

Before section 6—

insert—

‘Chapter 2 Partnerships generally

‘Part 1 Nature of partnership’.

10 Replacement of hdg

Heading before section 8—

omit, insert—

‘Part 2 Relations of partners to persons dealing with them’.

11 Amendment of s 8 (Power of partner to bind the firm)

(1) Section 8, after ‘Every partner’—

insert—

‘in a partnership, other than a firm that is a limited partnership or incorporated limited partnership.’.

(2) Section 8, from ‘unless’—

omit, insert—

‘unless—

- (a) the partner so acting has in fact no authority to act for the firm in the particular matter; and
- (b) the person with whom the partner is dealing either knows that the partner has no authority, or does not know or believe the partner to be a partner.’.

(3) Section 8—

insert—

‘(2) Every general partner in a limited partnership or incorporated limited partnership is an agent of the partnership and of the other general partners for the purpose of the business of the partnership, and the acts of every general partner who does any act for carrying on in the usual way business of the kind carried on by the partnership of which the partner is a member bind the partnership and the other general partners unless—

- (a) the general partner so acting has in fact no authority to act for the partnership in the particular matter; and
- (b) the person with whom the general partner is dealing either knows that the general partner has no authority, or

does not know or believe the general partner to be a general partner.’.

12 Amendment of s 9 (Partners bound by acts on behalf of firm)

- (1) Section 9(1), ‘the firm’, first mention—

omit, insert—

‘a firm, other than an incorporated limited partnership,’.

- (2) Section 9(1), ‘thereto authorised’—

omit, insert—

‘authorised to bind the firm’.

- (3) Section 9(2)—

omit, insert—

‘(2) An act or instrument relating to the business of a firm that is an incorporated limited partnership, and done or executed in the firm-name, or in any other manner, showing an intention to bind the firm by any person authorised to bind the firm, whether a general partner or not, is (subject to section 12(3)) binding on the firm and all the general partners.

‘(3) This section does not affect any general rule of law relating to the execution of deeds or negotiable instruments.’.

13 Amendment of s 10 (Partner using credit of firm for private purposes)

- (1) Section 10(1), ‘Where’—

omit, insert—

‘If’.

- (2) Section 10(1), ‘the firm’, first mention—

omit, insert—

‘a firm, other than an incorporated limited partnership,’.

- (3) Section 10(2)—

omit, insert—

- ‘(2) If a general partner pledges the credit of a firm that is an incorporated limited partnership 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.
- ‘(3) This section does not affect any personal liability incurred by an individual general partner.’.

14 Amendment of s 11 (Effect of notice that firm will not be bound by acts of partner)

- (1) Section 11, ‘shall’—
omit, insert—
‘is to’.
- (2) Section 11, ‘the firm’, first mention—
omit, insert—
‘a firm, other than a firm that is an incorporated limited partnership’.
- (3) Section 11, ‘with respect to’—
omit, insert—
‘in relation to’.
- (4) Section 11—
insert—
- ‘(2) If it has been agreed by the partners in an incorporated limited partnership that any restrictions are to be placed on the power (if any) of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm in relation to persons having notice of the agreement.’.

15 Amendment of s 12 (Liability of partners)

- (1) Section 12, after ‘a firm’—
insert—
‘, other than an incorporated limited partnership,’.

- (2) Section 12, after ‘partner, and’—
insert—
‘, if the partner is an individual,’.
- (3) Section 12, ‘such’—
omit, insert—
‘those’.
- (4) Section 12—
insert—
- ‘(2) Every general partner in an incorporated limited partnership is liable jointly with the incorporated limited partnership for all debts and obligations of the partnership 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.
- ‘(3) Despite subsection (2), a general partner in an incorporated limited partnership is only liable for any debts or obligations of the incorporated limited partnership—
- (a) to the extent the incorporated limited partnership is unable to satisfy the debts and obligations; or
- (b) to a greater extent provided by the partnership agreement.’.

16 Amendment of s 13 (Liability of the firm for wrongs)

- (1) Section 13(1), after ‘any partner’—
insert—
‘in a firm, other than an incorporated limited partnership,’.
- (2) Section 13(1), ‘therefor’—
omit, insert—
‘for the loss, injury or penalty’.

(3) Section 13(2), after ‘a partner’—

insert—

‘in a firm, other than an incorporated limited partnership.’.

(4) Section 13—

insert—

‘(3) Subject to subsection (4), if by any wrongful act or omission of any general partner in an incorporated limited partnership acting in the ordinary course of the business of the incorporated limited partnership, or with its authority, loss or injury is caused to any person not being a partner in the incorporated limited partnership, or any penalty is incurred, the incorporated limited partnership is liable for the loss or injury or penalty to the same extent as the general partner so acting or omitting to act.

Note—

See section 12(2) about joint liability of general partners and the incorporated limited partnership.

‘(4) For subsection (3), a general partner in an incorporated limited partnership who commits a wrongful act or omission as a director of a body corporate under the Corporations Act is not to be taken to be acting in the ordinary course of business of the incorporated limited partnership or with its authority only because of any 1 or more of the following—

- (a) the general partner obtained the agreement or authority of the incorporated limited partnership to be appointed or to act as a director of the body corporate;
- (b) remuneration that the general partner receives for acting as a director of the body corporate forms part of the income of the incorporated limited partnership;
- (c) any other general partner in the incorporated limited partnership is also a director of that or any other body corporate.’.

17 Replacement of s 14 (Misapplication of money or property received for or in custody of the firm)

Section 14—

omit, insert—

‘14 Misapplication of money or property received for or in custody of the firm

‘(1) In each of the following cases involving the partners of a firm, other than an incorporated limited partnership, the firm is liable to make good the loss mentioned in the case—

- (a) 1 partner acting within the scope of the partner’s apparent authority receives the money or property of a third person and misapplies it;
- (b) a firm 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 partners while it is in the custody of the firm.

‘(2) In each of the following cases involving general partners in an incorporated limited partnership, the incorporated limited partnership is liable to make good the loss mentioned in the case—

- (a) 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;
- (b) an incorporated limited partnership 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 incorporated limited partnership.’.

18 Amendment of s 15 (Liability for wrongs joint and several)

(1) Section 15, after ‘Every partner’—

insert—

‘in a firm, other than an incorporated limited partnership.’.

- (2) Section 15, ‘while he or she is a partner therein’—
omit, insert—
‘, while he or she is a partner in the firm.’
- (3) Section 15—
insert—
- ‘(2) Every general partner in an incorporated limited partnership is liable jointly with the other general partners in the incorporated limited partnership and also severally for everything for which the incorporated limited partnership, while the general partner is a general partner in the incorporated limited partnership, becomes liable under section 13(3) or 14(2).³
- ‘(3) Despite subsection (2), a general partner in an incorporated limited partnership is only liable for any liability of the incorporated limited partnership referred to in the subsection—
- (a) to the extent the incorporated limited partnership is unable to satisfy the liability; or
- (b) to a greater extent provided by the partnership agreement.’.

19 Amendment of s 16 (Improper employment of trust property for partnership purposes)

- (1) Section 16(1), after ‘If a partner’—
insert—
‘in a firm, other than an incorporated limited partnership’.
- (2) Section 16(1), ‘therein’—
omit, insert—
‘in it’.

³ Section 13 (Liability of the firm for wrongs) or 14 (Misapplication of money or property received for or in custody of the firm)

- (3) Section 16(2)(a) and (b), ‘this section’—
omit, insert—
‘subsection (1)’.
- (4) Section 16—
insert—
- ‘(3) If a general partner in an incorporated limited partnership, being a trustee, improperly employs trust property in the business or on the account of the partnership, neither the partnership nor any other partner is liable for the trust property to the persons beneficially interested in it.
- ‘(4) However—
- (a) subsection (3) does not affect any liability incurred by any partner in the incorporated limited partnership by reason of the partner’s having notice of a breach of trust; and
- (b) nothing in subsection (3) prevents trust money from being followed and recovered from the incorporated limited partnership if still in its possession or under its control.’.

20 Amendment of s 17 (Persons liable by ‘holding out’)

- (1) Section 17(1), after ‘particular firm’—
insert—
‘that is a firm other than a limited partnership or incorporated limited partnership’.
- (2) Section 17(1), ‘any such’—
omit, insert—
‘the’.
- (3) Section 17(2), ‘However, where’—
omit, insert—
‘If’.

- (4) Section 17(2), ‘thereof’—
omit, insert—
‘of that name’.
- (5) Section 17(2), after ‘liable’—
insert—
‘under subsection (1) or (2)’.
- (6) Section 17(2), as amended—
renumber as section 17(3).
- (7) Section 17—
insert—
- ‘(2) 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 incorporated limited partnership is liable as a general partner to anyone who has on the faith of the representation given credit to the firm, whether 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.’.

21 Amendment of s 18 (Admissions and representations of partners)

- (1) Section 18, after ‘any partner’—
insert—
‘in a firm other than a limited partnership or incorporated limited partnership’.
- (2) Section 18—
insert—
- ‘(2) An admission or representation made by any general partner in a limited partnership or incorporated limited partnership concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.’.

22 Amendment of s 19 (Notice to acting partner to be notice to the firm)

- (1) Section 19, after ‘any partner’—

insert—

‘in a firm, other than a limited partnership or incorporated limited partnership.’.

- (2) Section 19—

insert—

- ‘(2) Notice to any general partner in a limited partnership or incorporated limited partnership who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.’.

23 Replacement of s 20 (Liabilities of incoming and outgoing partners)

Section 20—

omit, insert—

‘20 Liabilities of incoming and outgoing partners

- ‘(1) A person who is admitted as a partner into an existing firm, other than a limited partnership or incorporated limited partnership, does not by that admission alone become liable for anything done before the person became a partner.
- ‘(2) A person who is admitted as a general partner into an existing limited partnership or incorporated limited partnership does not by that admission alone become liable for anything done before the person became a general partner.
- ‘(3) A partner who retires from a firm, other than a limited partnership or incorporated limited partnership, does not by that retirement alone cease to be liable for partnership debts and obligations incurred before the partner’s retirement.
- ‘(4) A partner who retires from a limited partnership or incorporated limited partnership 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.

- '(5) A retiring partner in a firm, other than a limited partnership or incorporated limited partnership, 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.
- '(6) A retiring partner in a limited partnership or incorporated limited partnership may be discharged from any existing liabilities by an agreement to that effect between the partner and the firm 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.'

24 Amendment of s 21 (Revocation of continuing guaranty by change in firm)

- (1) Section 21, 'in respect of'—
omit, insert—
'in relation to'.
- (2) Section 21—
insert—
- '(2) This section does not apply in relation to an incorporated limited partnership.'

25 Replacement of hdg

Heading before section 22—

omit, insert—

'Part 3 Relations of partners to one another'.

26 Amendment of s 23 (Partnership property)

- (1) Section 23, heading, after 'property'—

insert—

‘of firms other than incorporated limited partnerships’.

- (2) Section 23(1), from ‘partnership business’ to ‘must be held’—

omit, insert—

‘partnership business (*partnership property*) must be held’.

- (3) Section 23(2), ‘shall’—

omit, insert—

‘is to’

- (4) Section 23(2), ‘thereof’—

omit, insert—

‘of the estate or interest’.

- (5) Section 23(2), ‘thereto applicable’—

omit, insert—

‘applying to the estate or interest’.

- (6) Section 23(3), ‘Where’—

omit, insert—

‘If’.

- (7) Section 23—

insert—

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

27 Insertion of new s 23A

After section 23—

insert—

‘23A Partnership property of incorporated limited partnership

- ‘(1) All property, and rights and interests in property, acquired, whether by purchase or otherwise, on account of an incorporated limited partnership, or for the purposes and in the course of the business of the partnership, are called in this

Act partnership property, and must be applied by the partnership exclusively for the purposes of the partnership.

- ‘(2) No partner in an incorporated limited partnership, only because of being a partner in the partnership, has any legal or beneficial interest in its partnership property.’.

28 Amendment of s 25 (Conversion into personal estate of land held as partnership property)

- (1) Section 25, ‘Where’—

omit, insert—

‘If’.

- (2) Section 25, ‘it shall,’—

omit.

- (3) Section 25, after ‘appears,’—

insert—

‘it is to’.

- (4) Section 25—

insert—

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

29 Amendment of s 26 (Procedure against partnership property for a partner’s separate judgment debt)

- (1) Section 26(1), from ‘After’ to ‘shall not’—

omit, insert—

‘An enforcement warrant can not’.

- (2) Section 26(2), ‘by summons’—

omit.

- (3) Section 26(2), ‘thereon’—

omit, insert—

‘on the judgment debt’.

- (4) Section 26(2), ‘in respect of’—
omit, insert—
‘in relation to’.
- (5) Section 26(3), ‘shall be’—
omit, insert—
‘are’.
- (6) Section 26—
insert—
- ‘(4) Subsections (2) and (3) do not apply in relation to an incorporated limited partnership.’.

30 Amendment of s 27 (Rules as to interests and duties of partners subject to special agreement)

- (1) Section 27, ‘shall be determined’—
omit, insert—
‘must be decided’.
- (2) Section 27(b), ‘in respect of’—
omit, insert—
‘in relation to’.
- (3) Section 27(f), ‘shall be’—
omit, insert—
‘is’.
- (4) Section 27(i), ‘when’—
omit, insert—
‘if’.
- (5) Section 27—
insert—
- ‘(2) This section does not apply in relation to an incorporated limited partnership.’.

31 Amendment of s 29 (Retirement from partnership at will)

- (1) Section 29(1) and (2), ‘Where’—
omit, insert—
‘If’.
- (2) Section 29—
insert—
- ‘(3) This section does not apply in relation to an incorporated limited partnership.’.

32 Amendment of s 30 (Where partnership for term is continued over, continuance on old terms presumed)

- (1) Section 30, heading, ‘Where’—
omit, insert—
‘If’.
- (2) Section 30(1), ‘Where’—
omit, insert—
‘If’.
- (3) Section 30(2), from ‘such’ to ‘therein’—
omit, insert—
‘those of them who habitually acted in the business’.
- (4) Section 30—
insert—
- ‘(3) This section does not apply in relation to an incorporated limited partnership.’.

33 Amendment of s 31 (Duty of partners to render accounts etc.)

- (1) Section 31, after ‘Partners’—
insert—
‘in a firm, other than an incorporated limited partnership.’.

(2) Section 31—

insert—

‘(2) An incorporated limited partnership is, subject to the partnership agreement, bound to render true accounts and full information of all things affecting the partnership to any partner or the partner’s legal representatives.’.

34 Amendment of s 32 (Accountability of partners for private profits)

(1) Section 32(2), ‘thereof’—

omit, insert—

‘of the partnership’.

(2) Section 32—

insert—

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

35 Amendment of s 33 (Duty of partner not to compete with firm)

Section 33—

insert—

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

36 Amendment of s 34 (Rights of assignee of share in partnership)

(1) Section 34(2), ‘as respects’—

omit, insert—

‘in relation to’.

(2) Section 34—

insert—

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

37 Replacement of hdg

Heading before section 35—

omit, insert—

‘Part 4 Dissolution of partnership and its consequences

‘34A Part does not apply to incorporated limited partnerships

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

38 Omission of hdg

Heading before section 48—

omit.

39 Relocation and renumbering of s 48

Section 48—

relocate to chapter 6, part 1 and *renumber* as section 121.

40 Relocation and renumbering of s 49

Section 49—

relocate to chapter 6, part 3 and *renumber* as section 123.

41 Insertion of new ch 3 and pt 1 hdgs

After section 47—

insert—

‘Chapter 3 Limited partnerships

‘Part 1 Preliminary’.

42 Insertion of new ch 4

After chapter 3—

insert—

‘Chapter 4 Incorporated limited partnerships

‘Part 1 Preliminary

‘70 Definitions for ch 4

‘In this chapter—

AFOF means an AFOF within the meaning of the *Venture Capital Act 2002* (Cwlth).

fee includes tax.

person includes a partnership.

register means the register of incorporated limited partnerships kept under section 78.

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

VCLP means a VCLP within the meaning of the *Venture Capital Act 2002* (Cwlth).

VCMP means a venture capital management partnership.

venture capital management partnership means a venture capital management partnership within the meaning of the *Income Tax Assessment Act 1936* (Cwlth), section 94D(3).

‘Part 2 **Nature and formation of incorporated limited partnerships**

‘71 Partnership is formed on registration

‘An incorporated limited partnership is formed on registration under this chapter.

‘72 Partnership is separate legal entity

- ‘(1) An incorporated limited partnership—
- (a) is a body corporate with legal personality separate from that of the partners in it and with perpetual succession; and
 - (b) may have a common seal; and
 - (c) may sue and be sued in its firm-name.
- ‘(2) An incorporated limited partnership’s common seal must be kept in the custody of a person nominated by the partnership and may be used only as authorised by the partnership.

‘73 Partners in an incorporated limited partnership

- ‘(1) An incorporated limited partnership must have—
- (a) at least 1 general partner but no more than 20 general partners; and
 - (b) at least 1 limited partner.

Note—

There is no limit on the number of limited partners.

- ‘(2) Any of the following may be a general partner or a limited partner—
- (a) an individual;
 - (b) a partnership;
 - (c) a body corporate.

- ‘(3) For subsection (1)(a), if a general partner is a partnership and no partner in the partnership has, under the relevant law, limited liability, the number of partners in the partnership is to be counted.
- ‘(4) Also for subsection (1)(a), if a general partner is a partnership and any partner in the partnership has, under the relevant law, limited liability—
- (a) the number of partners in the partnership who do not have limited liability is to be counted; and
 - (b) the number of partners in the partnership who do have limited liability is not to be counted.
- ‘(5) In this section—
- limited liability* means limited liability for the liabilities of the partnership.
- relevant law*, for a partnership, means the law of the place where the partnership is formed.

‘74 **Partnership agreement**

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

- (c) be accompanied by any fee prescribed under a regulation.
- ‘(2) Without limiting what the application may include, the application must include the following general information—
- (a) the proposed firm-name of the proposed incorporated limited partnership;
 - (b) the full address of the proposed registered office in Queensland of the proposed incorporated limited partnership;
 - (c) 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;
 - (d) the full address of each partner or proposed partner, as follows—
 - (i) if the partner or proposed partner is an individual—his or her principal place of residence;
 - (ii) if the partner or proposed partner is a body corporate—its registered office or principal place of business;
 - (iii) if the partner or proposed partner is a partnership—its registered office or principal place of business.
- ‘(3) The firm-name of the partnership must include at the end as part of the firm-name 1 of the following—
- (a) ‘An incorporated limited partnership’;
 - (b) ‘L.P.’;
 - (c) ‘LP’.
- ‘(4) Also, the application must include, or be accompanied by, the following additional information—
- (a) a statement in relation to each partner or proposed partner as to whether the partner or proposed partner is, or is proposed to be, a general partner or a limited partner;

- (b) 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;
- (c) for an application by a partnership that is a VCLP or an AFOF—evidence of its registration under the *Venture Capital Act 2002* (Cwlth);
- (d) for an application by persons proposing to be the partners in a VCLP or an AFOF—a statement that the persons propose to be the partners in a VCLP or an AFOF;

Note—

Person is defined in section 70 to include a partnership.

- (e) for an application by a partnership that is a VCMP—a statement that the partnership is a VCMP;
- (f) for an application by persons proposing to be the partners in a VCMP—a statement that the persons propose to be the partners in a VCMP;
- (g) anything else prescribed under a regulation.

‘77 Registration of incorporated limited partnership

- ‘(1) If an application for registration of an incorporated limited partnership has been made under section 76, the chief executive may register the incorporated limited partnership.
- ‘(2) If the chief executive registers an incorporated limited partnership—
 - (a) the firm-name of the partnership is its name as recorded in the register; and
 - (b) the registered office of the partnership is its office as recorded in the register.
- ‘(3) An incorporated limited partnership must have as part of its firm-name the words ‘An incorporated limited partnership’ or ‘L.P.’ or ‘LP’, as recorded in the register, at the end of its firm-name.
- ‘(4) However, the chief executive must not record in the register as the firm-name of an incorporated limited partnership a name

that could not be registered under the *Business Names Act 1962* without contravention of section 9(1)⁴ of that Act.

- ‘(5) Subject to subsection (4), registration is effected when the chief executive records in the register the details of information included in, or accompanying, the application for registration (the *registered particulars*) that may be prescribed under a regulation.

‘78 Register of incorporated limited partnerships

- ‘(1) The chief executive must keep a register of incorporated limited partnerships registered under this chapter.
- ‘(2) The register may be kept in any form the chief executive considers appropriate and may form part of the register of limited partnerships kept under section 51.
- ‘(3) The chief executive must make the information recorded in the register available for public inspection, on payment of the fee prescribed under a regulation, at an office of a department at Brisbane during normal office hours.
- ‘(4) The chief executive may, on application or on the chief executive’s own initiative, correct any error or omission in the register by—
- (a) inserting an entry; or
 - (b) amending an entry; or
 - (c) omitting an entry;
- if the chief executive decides that the correction is necessary.
- ‘(5) The chief executive must not omit an entry in the register unless satisfied that the entire entry was included in error.

‘79 Changes in registered particulars

- ‘(1) If any change happens in relation to the registered particulars of an incorporated limited partnership, a statement setting out

4 *Business Names Act 1962*, section 9 (Restriction on registration of business names that are undesirable etc.)

the changed particulars must be given to the chief executive within 7 days after the change happens.

- ‘(2) The statement must be signed by all the general partners, or by a general partner authorised by all the general partners for this section.
- ‘(3) The statement must—
 - (a) be in the approved form; and
 - (b) contain any particulars required under a regulation; and
 - (c) be accompanied by the fee prescribed under a regulation.
- ‘(4) If subsection (1) is not complied with, each general partner in the incorporated limited partnership commits an offence.

Maximum penalty for subsection (4)—10 penalty units.

‘80 Certificates of registration etc.

- ‘(1) The chief executive, if—
 - (a) registering an incorporated limited partnership; or
 - (b) recording a change in the registered particulars of an incorporated limited partnership; or
 - (c) correcting an error or omission in the register in relation to an incorporated limited partnership;must issue to the general partners a certificate as to the formation and registered particulars as at that time of the incorporated limited partnership.
- ‘(2) The chief executive may, on application accompanied by the fee prescribed under a regulation, issue to the applicant a certificate in relation to an incorporated limited partnership as to the formation and registered particulars as at that time of the incorporated limited partnership.
- ‘(3) A certificate under this section stating any of the following matters is evidence of the matter stated—
 - (a) an incorporated limited partnership was formed on the date of registration mentioned in the certificate;

- (b) an incorporated limited partnership existed at a time mentioned in the certificate;
- (c) named persons were the general partners and limited partners in an incorporated limited partnership at a time mentioned in the certificate;
- (d) any other particular of an incorporated limited partnership mentioned in the certificate was recorded in the register at a stated time.

‘81 Registration of firm-name under the Business Names Act 1962

- ‘(1) The *Business Names Act 1962* does not apply so as to require an incorporated limited partnership to apply to register a business name if that name is the firm-name of the partnership as recorded in the register.
- ‘(2) On registration of an incorporated limited partnership by the chief executive under section 77, the firm-name of the partnership as recorded in the register is taken to be the business name of the incorporated limited partnership for the *Business Names Act 1962*.
- ‘(3) A registrar under the *Business Names Act 1962* must register the business name under that Act and maintain the registration while the incorporated limited partnership is registered under this Act.
- ‘(4) If the firm-name of the partnership registered under this chapter is changed by the chief executive, a registrar under the *Business Names Act 1962* must record the change under that Act.
- ‘(5) No fee is payable for the registration, or a change, of the firm-name as a business name under the *Business Names Act 1962*.

‘82 Acts preparatory to registration do not constitute partnership

‘Any act done in connection with the making of an application for registration under this chapter by or for persons proposing to be the partners in a proposed incorporated limited

partnership does not of itself create a partnership between the persons.

‘Part 4 Powers of incorporated limited partnerships

‘83 Powers of partnership

- ‘(1) An incorporated limited partnership 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—
- (a) to carry on the business of the partnership; and
 - (b) to do all things necessary or convenient to be done in connection with the carrying on of the business of the partnership including, for example, the power to—
 - (i) enter into contracts or otherwise acquire rights or liabilities; or
 - (ii) create, confer, vary or cancel interests in the partnership; or
 - (iii) acquire, hold and dispose of real or personal property or of an interest, whether beneficial or legal, in real or personal property; or
 - (iv) appoint agents and attorneys, and act as agent for other persons; or
 - (v) form, and participate in the formation of, companies or incorporated limited partnerships; or
 - (vi) participate in partnerships, trusts, unincorporated joint ventures and other arrangements for the sharing of profits; or
 - (vii) do any other thing it is authorised to do by or under this chapter or the partnership agreement.
- ‘(2) The powers of an incorporated limited partnership may be limited by the partnership agreement.

- ‘(3) If a statement is made under section 76(4)(d), despite subsections (1) and (2), the incorporated limited partnership’s powers are limited to carrying on activities related to becoming registered as a VCLP or AFOF until the incorporated limited partnership becomes a VCLP or AFOF.
- (4) If a statement is made under section 76(4)(f), despite subsections (1) and (2), the incorporated limited partnership’s powers are limited to carrying on activities related to becoming a VCMP until the incorporated limited partnership becomes a VCMP.

‘84 Relationship of partners to others and between themselves

- ‘(1) Other than as provided by the partnership agreement or agreed between the partners—
 - (a) a general partner, the incorporated limited partnership or an officer, employee or agent of a general partner or of the incorporated limited partnership is not an agent of a limited partner; and
 - (b) the acts of a general partner or of the incorporated limited partnership or of an officer, employee or agent of a general partner or of the incorporated limited partnership do not bind a limited partner; and
 - (c) a limited partner is not an agent of, or a fiduciary for—
 - (i) a general partner; or
 - (ii) another limited partner; or
 - (iii) the incorporated limited partnership; and
 - (d) the acts of a limited partner do not bind a general partner or another limited partner or the incorporated limited partnership itself.
- ‘(2) A reference in subsection (1) to a general partner includes, if the general partner is a partnership, a partner in that partnership.
- ‘(3) Nothing in subsection (1) stops the making of, or limits or restricts, an agreement between 2 partners or between a

partner and the incorporated limited partnership under which—

- (a) 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
 - (b) the partnership acts as an agent of a partner and, by so acting, binds the partner.
- ‘(4) Any consent or authority that under this Act 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 incorporated limited partnership, 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.
- (5) Subsection (4) does not limit any other way in which a consent or authority might be given.
- ‘(6) Any consent or authority that under this Act is required or permitted to be given by an incorporated limited partnership may, without limiting any other way in which it might be given, be given by a general partner or 2 or more general partners acting under the partnership agreement.
- ‘(7) A limited partner, as 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 the incorporated limited partnership against the limited partner or by the limited partner against the incorporated limited partnership.

‘Part 5 Liability and powers of limited partners

‘85 Definitions for pt 5

‘In this part—

related body corporate has the meaning given by section 9 of the Corporations Act.

security holder, in relation to a body, whether corporate or unincorporated, includes a holder of securities (within the meaning of the Corporations Act, section 92(3)) in or of the body.

‘86 Limitation of liability of limited partners

- ‘(1) A limited partner has no liability for the liabilities of the incorporated limited partnership or of a general partner.
- ‘(2) Nothing in subsection (1) or section 92 or 93⁵ stops—
 - (a) a contribution of capital or property made by a limited partner to the incorporated limited partnership being used; or
 - (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; in satisfaction of a liability of the partnership or of a general partner.
- ‘(3) This section is subject to section 87.⁶

‘87 Limited partner not to take part in the management of the incorporated limited partnership

- ‘(1) A limited partner must not take part in the management of the business of the incorporated limited partnership.
- ‘(2) 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

5 Section 92 (Liability for conduct or acts outside the State) or 93 (Recognised incorporated limited partnerships under corresponding laws)

6 Section 87 (Limited partner not to take part in the management of the incorporated limited partnership)

other than a partner in the partnership (a *third party*);
and

- (b) at the time of the act or omission the third party had reasonable grounds to believe that the limited partner was a general partner in the partnership;

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.

Note—

A limited partner is not an agent of an incorporated limited partnership and the acts of a limited partner do not bind a general partner, another limited partner or the partnership itself. See section 84(1).

- (3) A limited partner is not to be regarded as taking part in the management of the business of the incorporated limited partnership only because the limited partner or a person acting for the limited partner—
- (a) is an employee or an independent contractor of the partnership 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
- (b) gives advice to, or for, the partnership or a general partner or an associate of the general partner in the proper performance of functions arising from—
- (i) 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
- (ii) business dealings between the limited partner, or a person acting on behalf of the limited partner, and the partnership or between the limited partner and a general partner or an associate of the general partner; or
- (c) gives a guarantee or indemnity in relation to any liability of the partnership or of a general partner or an associate of the general partner; or
- (d) 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
- (e) if permitted by the partnership agreement—
 - (i) calls, requisitions, convenes, chairs, participates in, postpones, adjourns or makes a record of a meeting of the partners or of the limited partners or of any of them; or
 - (ii) 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
 - (f) exercises a power conferred on the limited partner by subsection (4) or under the partnership agreement or otherwise has, or exercises, a right to—
 - (i) have access to and inspect the books or records of the partnership or copy any of them; or
 - (ii) examine the state or prospects of the business of the partnership or advise, or consult with, other partners in relation to the state or prospects of the business of the partnership; or
 - (g) is or acts as an officer, director, security holder, partner, agent, employee or independent contractor of an associate of the partnership; or
 - (h) gives advice to, or consults with, an associate of the partnership; or
 - (i) is or acts as a lender to, or fiduciary for, an associate of the partnership; or
 - (j) 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—

- (i) 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;
 - (ii) 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 partnership;
 - (iii) 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 partnership does not otherwise have a right to make;
 - (iv) a proposal relating to any actual or potential transaction or other matter involving any actual or potential conflict of interest;
 - (v) a proposal relating to any actual or potential transaction, contract, arrangement or understanding between 1 or more of the partners, or their associates, and the general partner, the partnership or any associate of the general partner or of the partnership;
 - (vi) a proposal for the delegation, waiver, release or variation of an authority, right, duty or obligation of the general partner;
 - (vii) a proposal for the appointment or approval under the partnership agreement of any person as a senior executive of the general partner or of an associate of the general partner; or
- (k) 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

- (l) 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 the *Venture Capital Act 2002* (Cwlth), part 2 as a VCLP or an AFOF.
- ‘(4) Subject to the partnership agreement, a limited partner or a person authorised by the limited partner may at any time—
- (a) have access to and inspect the books or records of the partnership or copy any of them; and
 - (b) examine the state or prospects of the business of the partnership and advise, or consult with, other partners in relation to the state or prospects of the business of the partnership.
- ‘(5) The provisions of this section may not be varied by the partnership agreement or with the consent of the partners, whether given by or under the partnership agreement or otherwise.

Note—

Section 84(4)⁷ enables partners to give consent by or under the partnership agreement.

- ‘(6) No implication is to be taken to arise from subsection (3) that a limited partner in an incorporated limited partnership is to be regarded as taking part in the management of the business of the partnership 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 subsection.
- ‘(7) For the purposes of this section, a limited partner in an incorporated limited partnership that is a VCMP is not to be regarded as taking part in the management of the business of the incorporated limited partnership only because of any act the limited partner takes in relation to the incorporated limited

⁷ Section 85 (Relationship of partners to others and between themselves)

partnership in the capacity of a partner or associate of a partner in the VCMP.

- ‘(8) In this section, a reference to a general partner in an incorporated limited partnership includes, if the general partner is a partnership, a partner in that partnership.

‘88 Definitions, etc. applicable to s 87

‘(1) In section 87—

- (a) a reference to an associate of a general partner includes a reference to—
- (i) if the general partner is a partnership, a partner in that partnership (a *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 the partnership or any partnership in which the general 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) a reference to an associate of a limited partner includes a reference to—

- (i) if the limited partner is a partnership, a partner in that partnership (a *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) a reference to an associate of an incorporated limited partnership includes a reference to—
- (i) any person or partnership in which the incorporated limited partnership has an interest, whether as security holder or otherwise; and
 - (ii) if a person or partnership covered by subparagraph (i) is a body corporate, a related body corporate of that body corporate.
- ‘(2) In this section, a reference to a general partner in an incorporated limited partnership includes, if the general partner is a partnership, a partner in that partnership.

‘89 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 provision made by subsection (1) may be varied by the partnership agreement or with the consent of the partners.

‘90 Change in partners

- ‘(1) 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 incorporated limited partnership.
- ‘(2) If the limited partner’s entire interest in the incorporated limited partnership is transferred to the 1 transferee, the transferee becomes a limited partner in substitution for the transferor with all the rights and obligations of the transferor.
- ‘(3) 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 that part.
- ‘(4) A person may be admitted as a partner in an incorporated limited partnership without the necessity to obtain the consent of any limited partner.
- ‘(5) The provision made by subsections (1) to (4) may be varied by the partnership agreement or with the consent of the partners.

‘91 Change in status of partners

- ‘(1) If a general partner becomes a limited partner, the partner remains liable for any liability of the incorporated limited partnership that arose before the partner became a limited partner to the extent that the partnership is unable to satisfy the liability or to the greater extent provided by the partnership agreement.
- ‘(2) If a limited partner becomes a general partner, the partner remains not liable (subject to section 87(2)) for any liability of the incorporated limited partnership that arose before the partner became a general partner.

Note—

Section 87(2) imposes liability in particular circumstances on a limited partner who takes part in the management of the business of the incorporated limited partnership.

‘92 Liability for conduct or acts outside the State

‘A limited partner in an incorporated limited partnership may only be liable for a liability incurred by the partnership as a result of—

- (a) the conduct of the incorporated limited partnership’s business outside the State; or
- (b) acts outside the State of a general partner, a limited partner or the incorporated limited partnership or of any officer, employee or agent of a general partner or of the incorporated limited partnership;

if the limited partner would be so liable if the conduct or acts occurred within the State.

Note—

Section 87(2) imposes liability in particular circumstances on a limited partner who takes part in the management of the business of the incorporated limited partnership.

‘93 Recognised incorporated limited partnerships under corresponding laws

‘(1) A partner in a recognised incorporated limited partnership may only be 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 in this State of a partner in the recognised incorporated limited partnership or of the partnership itself or of any officer, employee or agent of a partner in the partnership or of the partnership;

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

‘(2) Subject to subsections (3) and (4), the Governor in Council may, by regulation, declare a law of another State or another country or jurisdiction to be a corresponding law for this chapter.

‘(3) The law of another State may be declared to be a corresponding law only if the Minister is satisfied that under

that law a limited partner in an incorporated limited partnership formed under this chapter and registered or otherwise recognised under that law may only be liable for a liability incurred by the partnership as a result of—

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

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

- ‘(4) 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.
- ‘(5) This section is in addition to, and does 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.
- ‘(6) In this section—

corresponding law means—

- (a) a law of another State or of another country or jurisdiction that substantially corresponds to this chapter; or
- (b) a law declared under subsection (2) to be a corresponding law for this chapter.

recognised incorporated limited partnership means a partnership formed under a corresponding law.

‘94 **Effect of ss 92 and 93**

‘No implication is to be taken to arise from section 92 or 93 that a limited partner has any liability, or apart from that section would have any liability, in connection with conduct of a partnership’s business or acts outside the State that the

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

‘97 **Winding up on chief executive’s certificate**

- ‘(1) The chief executive may, by notice given to the incorporated limited partnership, require an incorporated limited partnership to show good cause why it should not be required to be wound up if the chief executive considers—
 - (a) that the partnership has ceased to carry on business; or
 - (b) that, having been registered under this chapter on the basis that the partnership is or is intended to be a VCLP or an AFOF—
 - (i) the partnership’s registration under the *Venture Capital Act 2002* (Cwlth), part 2 has been revoked; or
 - (ii) the partnership has not within 2 years after its incorporation become a VCLP or an AFOF; or
 - (c) that, having been registered under this chapter on the basis that the partnership 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 the *Income Tax Assessment Act 1936* (Cwlth), section 94D(3) for recognition as a VCMP; or
 - (d) that none of the partners is a limited partner; or
 - (e) that incorporation of the partnership has been obtained by mistake or fraud; or
 - (f) that the partnership exists for an illegal purpose.
- ‘(2) If, at the end of 28 days after the notice is given under subsection (1), the chief executive is satisfied that the incorporated limited partnership should be required to be wound up, the chief executive may publish in the gazette a

certificate as to the requirement that the incorporated limited partnership be wound up.

- ‘(3) The chief executive must give notice of the publication of the certificate to the incorporated limited partnership as soon as possible after the publication.
- ‘(4) The chief executive must, as soon as practicable after giving a notice to an incorporated limited partnership, record the giving of the notice in the register.
- ‘(5) The chief executive must not publish a certificate under subsection (2) unless satisfied that good cause has not been shown why the incorporated limited partnership should not be required to be wound up.
- ‘(6) A notice under subsection (1) or (3) must be given to the incorporated limited partnership—
 - (a) by being given to the incorporated limited partnership at its registered office; or
 - (b) if notice can not reasonably be given under paragraph (a), by being published in a newspaper circulating generally in the State.

‘98 Review of certificate

- ‘(1) A person whose interests are affected by a decision of the chief executive to publish a certificate under section 97(2) may apply to the Supreme Court for review of the decision.
- ‘(2) An application under subsection (1) must be made within 28 days after the certificate is published.
- ‘(3) 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.
- ‘(4) In deciding an application for review, the Supreme Court may—
 - (a) affirm the decision under review; or
 - (b) set aside the decision under review and cancel the certificate.

- ‘(5) Nothing in this section stops the chief executive cancelling a certificate published under section 97(2) at any time after an application is made under subsection (1).

‘99 Procedure for winding up on certificate

- ‘(1) A winding up of an incorporated limited partnership required on a certificate of the chief executive published under section 97(2)—
- (a) must start—
 - (i) no later than the end of 28 days after the day on which the certificate is published unless an application is made under section 98(1); or
 - (ii) if an application is made under section 98(1) and the Supreme Court affirms the decision to publish the certificate—no later than 28 days after the application is decided; and
 - (b) must end by the day stated 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.
- ‘(2) When the winding up is started, the chief executive may appoint a person to be the liquidator of the incorporated limited partnership.
- ‘(3) If the chief executive approves, the liquidator may be a general partner in the incorporated limited partnership and need not be a registered liquidator under the Corporations Act or give security as required under that Act.
- ‘(4) The liquidator must publish notice of his or her appointment in the gazette within 10 days after being appointed.
- ‘(5) 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.
- ‘(6) Any vacancy occurring in the office of liquidator is to be filled by a person appointed by the chief executive.
- ‘(7) The reasonable costs of a winding up required on a certificate of the chief executive published under section 97(2) are

payable out of the property of the incorporated limited partnership.

‘100 Distribution of assets on winding up required on chief executive’s certificate

- ‘(1) On a winding up of an incorporated limited partnership required on a certificate of the chief executive published under section 97(2)—
- (a) 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
 - (b) 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.
- ‘(2) Any person aggrieved by the operation of this section in relation to the assets of an incorporated limited partnership may apply to the Supreme Court.
- ‘(3) On an application under subsection (2), the Supreme Court may make any order relating to the disposal of the assets that it considers appropriate.

‘101 Application of Corporations Act to winding up

- ‘(1) This section applies to the winding up of an incorporated limited partnership, other than a voluntary winding up or a winding up required on a certificate of the chief executive published under section 97(2).
- ‘(2) To the extent that the Corporations Act, part 5.7 does not apply, the winding up of the 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 5.7.⁸

⁸ Corporations Act, part 5.7 (Winding up bodies other than companies)

- ‘(3) The Corporations Act, part 5.7 applies as if the incorporated limited partnership were a part 5.7 body within the meaning of that Act, subject to the following modifications—
- (a) as if the words ‘or in the public interest’ were inserted in section 583(c)(ii) after the words ‘just and equitable’;
 - (b) as if section 583(d) were omitted;
 - (c) any other modifications (within the meaning of the *Corporations (Ancillary Provisions) Act 2001*, part 3) that are prescribed under a regulation.

Note—

The *Corporations (Ancillary Provisions) Act 2001*, part 3 provides for the application of provisions of the Corporations Act and the ASIC Act, part 3 as laws of the State in relation to any matter declared by a law of the State (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.

- ‘(4) The Australian Securities and Investments Commission may perform a function conferred on it under a law applied by subsection (3)—
- (a) under an agreement or arrangement of the kind referred to in the ASIC Act, section 11(8) or (9A)(b); and
 - (b) if the Commission is authorised to perform that function under section 11 of that Act.
- ‘(5) Unless a function under a law applied by subsection (3) is conferred on the Australian Securities and Investments Commission as referred to in subsection (4), that law applies as if a reference in it to the Commission were a reference to the chief executive.

‘102 Chief executive to be notified of winding up

- ‘(1) An incorporated limited partnership must give to the chief executive written notice of the commencement of the winding up of the partnership within 7 days after—
- (a) the passing of a special resolution mentioned in section 96(1)(b); or

- (b) if paragraph (a) does not apply—the commencement of the winding up.
- ‘(2) An incorporated limited partnership must give to the chief executive written notice of the completion of the winding up of the partnership within 7 days after that completion, stating the date on which the winding up was completed.
- ‘(3) The chief executive must, as soon as practicable after receiving a notice under subsection (1) or (2), record the receipt of the notice in the register.
- ‘(4) If subsection (1) or (2) is not complied with, each general partner in the incorporated limited partnership commits an offence.

Maximum penalty for subsection (4)—10 penalty units.

‘103 Cancellation of registration

- ‘(1) The chief executive must, by gazette notice, cancel the registration of an incorporated limited partnership as soon as practicable after the partnership is wound up.
- ‘(2) The chief executive must, as soon as practicable after the publication of the gazette notice, record the cancellation of the registration in the register.
- ‘(3) An incorporated limited partnership ceases to exist on the cancellation of its registration under this chapter.

‘Part 7 Miscellaneous provisions

‘104 Execution of documents

- ‘(1) All courts must take judicial notice of the common seal of an incorporated limited partnership affixed to a document and, until the contrary is proved, must presume that it was properly affixed.

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

‘105 Entitlement to make assumptions

- ‘(1) In relation to dealings with an incorporated limited partnership—
- (a) a person is entitled to make the assumptions in section 106; and
 - (b) the incorporated limited partnership is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- ‘(2) In relation to dealings with another person who has, or purports to have, directly or indirectly acquired title to property from an incorporated limited partnership—
- (a) a person is entitled to make the assumptions in section 106; and
 - (b) 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 are incorrect.
- ‘(3) The assumptions 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.
- ‘(4) A person is not entitled to make an assumption in section 106 if at the time of the dealings the person knew or suspected that the assumption was incorrect.

‘106 Assumptions that can be made under s 105

- ‘(1) A person may assume that the partnership agreement of the incorporated limited partnership has been complied with.
- ‘(2) A person may assume that anyone who appears, from information provided by the incorporated limited partnership that is available to the public from the register, to be a general partner in the incorporated limited partnership—
 - (a) is a general partner in the incorporated limited partnership; and
 - (b) has authority to exercise the 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 the incorporated limited partnership to be a general partner in, or an agent of, the incorporated limited partnership—
 - (a) is a general partner in the incorporated limited partnership or has been properly appointed as an agent of the incorporated limited partnership; and
 - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of partner in, or agent of, an incorporated limited partnership.
- ‘(4) A person may assume that the general partners in, and agents of, the incorporated limited partnership properly perform their duties to the incorporated limited partnership.
- ‘(5) A person may assume that a document has been properly executed by the incorporated limited partnership if the document appears to have been signed under section 104(2).
- ‘(6) A person may assume that a document has been properly executed by the incorporated limited partnership if the incorporated limited partnership’s common seal appears to have been affixed to the document.
- ‘(7) A person may assume that a general partner in, or agent of, the incorporated limited partnership who has authority to issue a document or certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.

- ‘(8) Without limiting this section, the assumptions that may be made under this section apply for the purposes of this section.

‘107 Identification of incorporated limited partnerships

- ‘(1) Any document issued for an incorporated limited partnership in connection with the conduct of the partnership’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 partnership.

- ‘(2) A person who—

- (a) issues or authorises the issue of a document in contravention of this section; or
- (b) being a general partner in the incorporated limited partnership concerned—is aware that documents are being issued in contravention of this section;

commits an offence.

Maximum penalty—20 penalty units.

- ‘(3) The certificate of registration of an incorporated limited partnership must be displayed at all times in a conspicuous position at the registered office of the partnership.

- ‘(4) If the certificate of registration is not so displayed, each general partner in the incorporated limited partnership commits an offence.

Maximum penalty for subsection (4)—20 penalty units.

‘108 Registered office

- ‘(1) An incorporated limited partnership must keep in Queensland, at the place shown in the register as the address of the registered office of the partnership, an office to which all communications with the partnership may be addressed.

- ‘(2) A regulation may prescribe the hours during which the registered office is to be open and accessible to the public.

- ‘(3) If subsection (1) is not complied with, each general partner in the incorporated limited partnership commits an offence.

Maximum penalty for subsection (3)—10 penalty units.

‘109 Lodgment of certain documents with the chief executive

- ‘(1) An incorporated limited partnership that was registered under this chapter on the basis of an intention to become a VCLP or an AFOF must, within 1 month after becoming a VCLP or an AFOF, give to the chief executive a copy of a document evidencing its status as a VCLP or an AFOF.
- ‘(2) An incorporated limited partnership that was registered under this chapter 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.
- ‘(3) If—
- (a) the registration of an incorporated limited partnership as a VCLP or an AFOF under the *Venture Capital Act 2002* (Cwlth), part 2 is revoked; or
 - (b) an incorporated limited partnership ceases to be a VCMP;
- the incorporated limited partnership 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, stating the date on which it took effect.
- ‘(4) If an incorporated limited partnership ceases to carry on business, the incorporated limited partnership must, as soon as practicable, give to the chief executive a notice of the cessation, stating the date on which it took effect.
- ‘(5) 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.
- ‘(6) A notice required to be given to the chief executive under this section must—
- (a) be in the approved form; and
 - (b) contain any particulars required under a regulation.

- ‘(7) If subsection (1), (2), (3) or (4) is not complied with, each general partner in the incorporated limited partnership commits an offence.

Maximum penalty for subsection (7)—10 penalty units.

‘110 Duty to give information

- ‘(1) For the purpose of monitoring compliance with this chapter or any regulation made for the purposes of this chapter, the chief executive, may by written notice, require an incorporated limited partnership to give the chief executive, within a period stated in the notice (being at least 28 days) or within the further period the chief executive allows, the information stated in the notice.

- ‘(2) An incorporated limited partnership required under subsection (1) to give information to the chief executive must, within the period stated 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 incorporated limited partnership has a reasonable excuse.

Maximum penalty for subsection (2)—60 penalty units.

‘111 Offences by partnerships and partners

- ‘(1) If this chapter provides that a general partner, being a partnership in an incorporated limited partnership, commits an offence, that reference to the person is to be read as a reference to—

- (a) each general partner in the partnership; or
- (b) 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.

- ‘(2) In any proceeding against a partner for an offence against this chapter brought in reliance on subsection (1), it is a defence to the charge for the partner to prove that the partner took all reasonable precautions and exercised proper diligence to avoid the commission of the offence.’

43 Insertion of new ch 5

After chapter 4—

insert—

‘Chapter 5 General provisions**‘112 Confidentiality**

- ‘(1) A person must not disclose information gained by the person in the administration of this Act, unless the disclosure is permitted under subsection (2).

Maximum penalty—60 penalty units.

- ‘(2) The person may disclose the information to someone else—
- (a) to the extent necessary to perform the person’s functions under this Act; or
 - (b) to a court or tribunal in the course of a legal proceeding; or
 - (c) if the disclosure is authorised under this Act or another Act; or
 - (d) if the disclosure is otherwise required or permitted by law; or
 - (e) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of the Commonwealth; or
 - (f) with the written authority of the person to whom the information relates.
- ‘(3) This section does not limit the *Freedom of Information Act 1992*.

‘113 False or misleading statements

‘A person must not state anything to the chief executive the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

‘114 False or misleading documents

‘(1) A person must not give to the chief executive a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

‘(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the chief executive, to the best of the person’s ability, how it is false or misleading; and
- (b) gives the correct information to the chief executive if the person has, or can reasonably obtain, the correct information.

‘115 Delegations

‘(1) The chief executive may delegate the chief executive’s powers under this Act to an appropriately qualified public service employee.

‘(2) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to the exercise of the power.

Example of standing—

A person’s classification in the public service.

‘116 Offences against the Act are summary

‘(1) An offence against this Act is a summary offence.

‘(2) A proceeding for an offence against this Act must start within the later of the following periods to end—

- (a) 1 year after the commission of the offence;
- (b) 6 months after the offence comes to the complainant’s knowledge, but within 2 years after the commission of the offence.

‘117 Service of limited partnerships and incorporated limited partnerships

- ‘(1) Without limiting any other way of serving a document on 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.
- ‘(2) Without limiting any other way of serving documents on an incorporated limited partnership, a document concerning the business of an incorporated limited partnership may be properly served on the partnership if it is left at, or sent by post addressed to, the registered office of the incorporated limited partnership.

‘118 Entries in registers

- ‘(1) An entry in the register kept for limited partnerships under section 51 of any particular fact concerning a limited partnership, including an entry stating the effect of any notice received by the chief executive—
 - (a) is sufficient notice of the fact or the effect of the notice to all persons who afterwards deal with the firm concerned; and
 - (b) is to have effect, for the purposes of section 39(2),⁹ as if it were an advertisement in the gazette.
- ‘(2) An entry in the register kept for incorporated limited partnerships under section 78 of any particular fact concerning an incorporated limited partnership, 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.

‘119 Approved forms

‘The chief executive may approve forms for use under this Act.

⁹ Section 39 (Rights of persons dealing with firm against apparent members of firm)

‘120 Regulation-making power

- ‘(1) The Governor in Council may make regulations under this Act.
- ‘(2) A regulation may prescribe—
- (a) the particulars to be stated in a statement or notice filed with the chief executive; or
 - (b) matters relating to the keeping of the registered office of a limited partnership or an incorporated limited partnership; or
 - (c) the fees payable under this Act; or
 - (d) offences for contraventions of the regulation, and may fix a penalty of not more than 20 penalty units for a contravention.’.

44 Insertion of new ch 6

After chapter 5—

insert—

‘Chapter 6 Savings and transitional provisions**‘Part 1 Savings provision for Act No 7 of 1891****‘Part 2 Savings provision for Act No 78 of 1988****‘Part 3 Transitional provisions for Act No 94 of 2003**

‘127 Regulations under Partnership (Limited Liability) Act preserved

- ‘(1) 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 be amended or repealed accordingly.
- ‘(2) A regulation mentioned in subsection (1) expires on 31 March 2005.
- ‘(3) Subsection (2) has effect despite the *Statutory Instruments Act 1992*, part 7.

‘128 Prescribed forms under Partnership (Limited Liability) Act

‘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 this section.

‘129 Relation between members of any company registered under State Companies Acts not affected

‘The relation between members of any company mentioned in section 5(2)(a), as in force immediately before the commencement of this section, is not a partnership within the meaning of this Act.

‘130 Liability

‘The liability of a person arising under this Act as in force before the commencement of this section is unaffected by the definition *liability* as inserted by the *Partnership and Other Acts Amendment Act 2004*.

‘131 References to Partnership (Limited Liability) Act 1988

‘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 this Act.’.

45 Insertion of new sch

After section 131, as inserted by this Act—

insert—

‘Schedule Dictionary

section 3’.

46 Amendment of sch

Schedule, as inserted by section 45—

insert—

‘*AFOF*, for chapter 4, see section 70.

approved form means a form approved by the chief executive under section 119.

assets, for chapter 4, part 6, see section 95.

departure, in relation to a partner, for chapter 3, see section 48.

fee, for chapter 4, see section 70.

firm see section 4.

firm-name—

- (a) of a limited partnership, means the firm-name shown in relation to the partnership in the register kept by the chief executive under section 51; or
- (b) of a incorporated limited partnership, means the firm-name of the partnership recorded in the register kept by the chief executive under section 78(1); or

- (c) of a partnership other than a partnership mentioned in paragraph (a) or (b), means the name under which the business of the partnership is carried on.

general partner—

- (a) of a limited partnership, means a partner in the limited partnership who is not a limited partner; or
- (b) of an incorporated limited partnership, means a partner in the incorporated limited partnership who is not a limited partner.

incorporated limited partnership means a partnership formed under chapter 4.

insolvency, for chapter 3, see section 48.

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

limited partner—

- (a) of a limited partnership, means a partner in the limited partnership whose liability to contribute is limited under chapter 3; or
- (b) of an incorporated limited partnership, means a partner in the incorporated limited partnership whose liability to contribute is limited under chapter 4.

limited partnership, without reference to an incorporated limited partnership, means a limited partnership formed under chapter 3.

partnership property see section 23(1).

person, for chapter 4, see section 70.

register—

- (a) for chapter 3, see section 48; or
- (b) for chapter 4, see section 70.

registered office—

- (a) of a limited partnership—means the registered office of the limited partnership recorded in the register; or

- (b) of an incorporated limited partnership—means the registered office of the incorporated limited partnership recorded in the register.

related body corporate, for chapter 4, part 5, see section 85.

security holder, for chapter 4, part 5, see section 85.

special resolution, for chapter 4, see section 70.

VCLP, for chapter 4, see section 70.

VCMP, for chapter 4, see section 70.

venture capital management partnership, for chapter 4, see section 70.’.

Part 3 **Amendment of Partnership (Limited Liability) Act 1988**

47 **Act amended in pt 3 and sch 2**

This part and schedule 2 amend the *Partnership (Limited Liability) Act 1988*.

48 **Amendment of s 4 (Interpretation)**

- (1) Section 4, heading—
omit, insert—
‘Definitions for ch 3’.
- (2) Section 4(1), ‘(1) In this Act—’—
omit, insert—
‘In this chapter—’.
- (3) Section 4(1), definitions *general partner, liability* and *limited partner*—
omit.
- (4) Section 4(1), definition *register*, ‘registrar under section 8.’ and footnote—

omit, insert—

‘chief executive under section 51.¹¹’.

- (5) Section 4(1), definition *registrar*—

omit.

- (6) Section 4(2)—

omit.

- (7) Section 4, as amended—

relocate to the *Partnership Act 1891*, chapter 3, part 1 and *renumber* as section 48.

49 Relocation and renumbering of provisions

- (1) Part 2, as amended—

relocate to the *Partnership Act 1891*, chapter 3 as part 2 and *renumber* sections 6, 7, 8 and 9 as sections 49, 50, 51 and 52.

- (2) Part 3, as amended—

relocate to the *Partnership Act 1891*, chapter 3 as part 3 and *renumber* sections 10, 10A, 11, 12, 13, 14, 15, and 16 as sections 53, 54, 55, 56, 57, 58, 59 and 60.

- (3) Part 4, as amended—

relocate to the *Partnership Act 1891*, chapter 3 as part 4 and *renumber* sections 17, 18, 19 and 20 as sections 61, 62, 63 and 64.

- (4) Part 5, as amended, other than section 27—

relocate to the *Partnership Act 1891*, chapter 3 as part 5 and *renumber* sections 21, 22, 23, 23A and 23B as sections 65, 66, 67, 68 and 69.

- (5) Section 27, as amended—

relocate to the *Partnership Act 1891*, chapter 6, part 2 and *renumber* as section 122.

11 Section 51 (Register—proof of registration)

Part 4 **Minor amendments and repeal**

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

50 **Act amended**

This division amends the *Bills of Sale and Other Instruments Act 1955*.

51 **Amendment of s 6 (Definitions)**

Section 6, definition *official*—
omit, insert—

‘*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 this Act.’.

52 **Amendment of s 13 (Inspecting the register)**

Section 13(1)(a)—
omit, insert—

‘(a) at an office of the department, or an office of another department, prescribed under a regulation when the office is open to the public; or’.

53 **Amendment of s 38 (Delegations)**

Section 38(1), ‘officer or employee of the department’—
omit, insert—
‘public service employee’.

Division 2 Amendment of the Business Names Act 1962

54 Act amended

This division amends the *Business Names Act 1962*.

55 Amendment of s 4C (Delegation by administrator)

(1) Section 4C(1), ‘officer of the department’—

omit, insert—

‘public service employee’.

(2) Section 4C(2), definition *appropriately qualified*, example, ‘the department’—

omit, insert—

‘the public service’.

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

56 Act amended

This division amends the *Electronic Transactions (Queensland) Act 2001*.

57 Amendment of sch 1 (Excluded state laws, requirements and permissions)

Schedule 1, part 1, ‘*Partnership (Limited Liability) Act 1988*’—

omit.

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

58 Act amended

This division amends the *Liens on Crops of Sugar Cane Act 1931*.

59 Amendment of s 2 (Definitions)

Section 2, definition *official*—
omit, insert—

‘*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 this Act.’.

60 Amendment of s 7C (Inspecting the register)

Section 7C(1)(a), after ‘at an office of the department’—
insert—
‘, or an office of another department.’.

61 Amendment of s 23D (Delegations)

Section 23D(1), ‘officer or employee of the department’—
omit, insert—
‘public service employee’.

Division 5 Amendment of the Local Government Act 1993

62 Act amended

This division amends the *Local Government Act 1993*.

63 Amendment of sch (Dictionary)

Schedule, definition *limited partner*, ‘*Partnership (Limited Liability) Act 1988*’—

omit, insert—

‘*Partnership Act 1891*, chapter 3’.

Division 6 Amendment of the Motor Vehicles and Boats Securities Act 1986**64 Act amended**

This division amends the *Motor Vehicles and Boats Securities Act 1986*.

65 Amendment of s 21 (False or misleading information)

Section 21(1), ‘an officer or employee of the department’—

omit, insert—

‘a public service employee’.

66 Amendment of s 21A (False or misleading documents)

(1) Section 21A, ‘an officer or employee of the department’—

omit, insert—

‘a public service employee’.

(2) Section 21A(a) and (b), ‘officer or’—

omit.

67 Amendment of s 23 (Inspecting register)

Section 23(1)(a), after ‘office of the department’—

insert—

‘, or an office of another department, prescribed under a regulation’.

68 Amendment of s 32 (Protection)

- (1) Section 32 (1), ‘An officer or employee of the department,’—
omit, insert—
‘A public service employee’.
- (2) Section 32(2), ‘an officer or employee’—
omit, insert—
‘a public service employee’.

Division 7 Amendment of the Supreme Court of Queensland Act 1991**69 Act amended**

This division amends the *Supreme Court of Queensland Act 1991*.

70 Amendment of s 89 (Enforcement against partnership)

- Section 89(2)—
omit, insert—
- ‘(2) This section has effect subject to the *Partnership Act 1891*, section 65.¹²’.

Division 8 Amendment of the Workers’ Compensation and Rehabilitation Act 2003**71 Act amended**

This division amends the Workers’ Compensation and Rehabilitation Act 2003.

12 Partnership Act 1891, section 65 (Legal proceedings)

72 Amendment of sch 6 (Dictionary)

Schedule 6, definition *single employer*, paragraph (b),
'Partnership (Limited Liability) Act 1988'—

omit, insert—

'Partnership Act 1891'.

Division 9 Repeal of the Partnership (Limited Liability) Act 1988**73 Repeal**

The Partnership (Limited Liability) Act 1988 No. 78 is
repealed.

Schedule 1 Minor and consequential amendments of Partnership Act 1891

section 3

1 Section 3, heading—

omit, insert—

‘3 Definitions’.

2 Section 3(1), definitions—

relocate to schedule.

3 Section 3(1), ‘(1) In this Act—’—

omit, insert—

‘The dictionary in the schedule defines particular words used in this Act.’.

4 Heading before section 5—

omit.

5 Section 5, heading, ‘Definition’—

omit, insert—

‘**Meaning**’.

6 Section 5—

insert—

‘(1A) Partnership includes an incorporated limited partnership.’.

Schedule 1 (continued)

- 7 Section 5(2), ‘But’—**
omit, insert—
‘However,’.
- 8 Section 5(2), ‘which’—**
omit, insert—
‘that’.
- 9 Section 5(2)(a)—**
omit, insert—
‘(a) incorporated under the Corporations Act; or’.
- 10 Section 5(3)—**
omit.
- 11 Section 6, heading, ‘determining’—**
omit, insert—
‘deciding’.
- 12 Section 6, ‘In determining’—**
omit, insert—
‘In deciding’.
- 13 Section 6, ‘regard shall’—**
omit, insert—
‘regard must’.

Schedule 1 (continued)

- 14 Section 6(a), ‘thereof’—**
omit, insert—
‘of anything held or owned jointly or in common’.
- 15 Section 6(c)(iv), ‘shall’—**
omit, insert—
‘is to’.
- 16 Section 6(c)(v)—**
omit.
- 17 Section 6(c)(vi)—**
renumber as section 6(c)(v).
- 18 After section 6(c)—**
insert—
Note—
See section 82 for an additional rule applying to acts preparatory to the registration of incorporated limited partnerships.
‘(2) A contract mentioned in subsection (1)(c)(iv) must be in writing and signed by or on behalf of all the parties to the contract.
(3) This section does not apply in relation to an incorporated limited partnership.’.
- 19 Section 7, ‘shall not be’—**
omit, insert—
‘is not’.

Schedule 1 (continued)

- 20 Section 7, ‘in respect of’—**
omit, insert—
‘in relation to’.
- 21 Section 22, ‘such’—**
omit, insert—
‘that’.
- 22 Section 38(a), (b), (c), (d) and (e), ‘when’—**
omit, insert—
‘if’.
- 23 Section 38(c), ‘such conduct as’—**
omit, insert—
‘conduct that’.
- 24 Section 38(f), ‘whenever’—**
omit, insert—
‘if’.
- 25 Section 39(1), ‘Where’—**
omit, insert—
‘If’.
- 26 Section 39(2), from ‘shall be’ to ‘dealings’—**
omit, insert—
‘is notice to persons who have not had dealings’.

Schedule 1 (continued)

- 27** **Section 42, ‘in respect of’—**
omit, insert—
‘in relation to’.
- 28** **Section 42, ‘such’—**
omit, insert—
‘that’.
- 29** **Section 43, heading, ‘where’**
omit, insert—
‘if’.
- 30** **Section 43, ‘Where one’—**
omit, insert—
‘If one’.
- 31** **Section 43, ‘thereof’—**
omit, insert—
‘of the premium’.
- 32** **Section 44, heading, ‘where’—**
omit, insert—
‘if’.
- 33** **Section 44, ‘Where’—**
omit, insert—
‘If’.

Schedule 1 (continued)

- 34 Section 44, thereto’—**
omit, insert—
‘to the partnership contract’.
- 35 Section 44(a), ‘; and is’—**
omit, insert—
‘; and’.
- 36 Section 44(b), ‘in respect of’—**
omit, insert—
‘in relation to’.
- 37 Section 45(1), ‘Where’—**
omit, insert—
‘If’.
- 38 Section 45(2), ‘where’—**
omit, insert—
‘if’.
- 39 Section 45(2), ‘thereof’—**
omit, insert—
‘of the option’.
- 40 Section 46, ‘in respect of’—**
omit, insert—
‘in relation to’.

Schedule 1 (continued)

- 41 Section 47, ‘shall, subject to any agreement,’—**
omit, insert—
‘are, subject to any agreement, to’.
- 42 Section 47(a), ‘shall’—**
omit, insert—
‘are to’.
- 43 Section 47(b), ‘shall’, first mention—**
omit, insert—
‘are to’.
- 44 Section 47(b)(i), ‘therein’—**
omit, insert—
‘in the firm’.
- 45 Section 47(b)(iii), ‘in respect of’—**
omit, insert—
‘in relation to’.
- 46 Section 47(b)(iv), ‘shall’—**
omit, insert—
‘is to’.

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

section 47

- 1** **Section 6(1), after ‘is a partnership’—**
insert—
‘, other than an incorporated limited partnership’.

- 2** **Section 6(1)(a), ‘shall be’—**
omit, insert—
‘is or are’.

- 3** **Section 6(1)(a), at the end—**
insert—
‘and’.

- 4** **Section 6(1)(b), ‘Act’—**
omit, insert—
‘chapter’.

- 5** **Section 7(1), ‘shall be’—**
omit, insert—
‘is’.

- 6** **Section 7(1), ‘registrar’—**
omit, insert—
‘chief executive’.

Schedule 2 (continued)

- 7 Section 7(1), ‘prescribed form’—**
omit, insert—
‘approved form’.
- 8 Section 7(2), ‘shall’—**
omit, insert—
‘must’.
- 9 Section 7(2)(e), ‘specified’—**
omit, insert—
‘stated’.
- 10 Section 7(2)(f), ‘such other particulars as are’—**
omit, insert—
‘any other particulars’.
- 11 Section 8(1) and (3), ‘registrar’—**
omit, insert—
‘chief executive’.
- 12 Section 8(1) and (3), ‘shall’—**
omit, insert—
‘must’.
- 13 Section 8(2)—**
omit, insert—
‘(2) The register may be kept in any form the chief executive considers appropriate that allows it to be inspected at an office of a department at Brisbane during normal office hours.’.

Schedule 2 (continued)

- 14 Section 8(3), ‘section 7’—**
omit, insert—
‘section 50’.
- 15 Section 8(3), ‘prescribed form’—**
omit, insert—
‘approved form’.
- 16 Section 8(4)(a) and (b), ‘shall be’—**
omit, insert—
‘is’.
- 17 Section 8(4)(b), ‘as such’—**
omit, insert—
‘as general partners or limited partners’.
- 18 Section 9(1), (2), (5), (6) and (7), ‘registrar’—**
omit, insert—
‘chief executive’.
- 19 Section 9(1), (2), (3) and (4), ‘shall’—**
omit, insert—
‘must’.
- 20 Section 9(1), ‘in respect of’—**
omit, insert—
‘for’.

Schedule 2 (continued)

- 21 Section 9(1)(f), ‘section 7(2)(f).’ and footnote—**
omit, insert—
‘section 50(2)(f).¹³’.
- 22 Section 9(2), ‘as defined in section 6’—**
omit.
- 23 Section 9(4), ‘specified’—**
omit, insert—
‘stated’.
- 24 Section 9(5)(a) and (b), ‘shall continue’—**
omit, insert—
‘continues’.
- 25 Section 9(6), ‘shall not’—**
omit, insert—
‘can not’.
- 26 Section 9(7) and (8), ‘shall be’—**
omit, insert—
‘are’.
- 27 Section 10(1), ‘such part of the amount as’**
omit, insert—
‘the part of that amount that’.

13 Section 50 (How formed)

Schedule 2 (continued)

- 28 Section 10A(1), definition *corresponding law*, ‘this Act’—**
omit, insert—
‘this chapter’.
- 29 Section 10A(3)(a) and (b), ‘this Act’—**
omit, insert—
‘this chapter’.
- 30 Section 11(1), (1A) and (2), ‘shall’—**
omit, insert—
‘must’.
- 31 Section 11(1A), ‘such contribution’—**
omit, insert—
‘contribution made by a limited partner in a limited partnership towards the discharge of liabilities of the firm’.
- 32 Section 11(2), ‘Where’—**
omit, insert—
‘If’.
- 33 Section 11(1A), ‘section 10(1).’ and footnote—**
omit, insert—
‘section 53(1).¹⁴’.

14 Section 53 (Liability of limited partner)

Schedule 2 (continued)

- 34 Section 11(2), ‘section 10(1)’—**
omit, insert—
‘section 53(1)’.
- 35 Section 12(1), ‘shall’—**
omit, insert—
‘must’.
- 36 Section 12(1)(a), ‘registrar’—**
omit, insert—
‘chief executive’.
- 37 Section 12(1)(a), ‘section 8;’ and footnote—**
omit, insert—
‘section 51;¹⁵’.
- 38 Section 13, heading, ‘s 12’—**
omit, insert—
‘s 56’.
- 39 Section 13(1), (2) and (3), ‘section 12’—**
omit, insert—
‘section 56’.
- 40 Section 13(1)—**
insert—
‘Maximum penalty—20 penalty units.’

15 Section 51 (Register—proof of registration)

Schedule 2 (continued)

- 41 Section 13(2) and (3), ‘shall’—**
omit, insert—
‘is to’.
- 42 Section 14, heading, ‘s 12’—**
omit, insert—
‘s 56’.
- 43 Section 14, ‘section 12’ and footnote—**
omit, insert—
‘section 56¹⁶’.
- 44 Section 14, ‘section 13(1)’—**
omit, insert—
‘section 57(1)’.
- 45 Section 15(1), ‘shall’—**
omit, insert—
‘must’.
- 46 Section 15(2)—**
insert—
‘Maximum penalty for subsection (2)—20 penalty units.’.
- 47 Section 16(1)(a), ‘shall’—**
omit, insert—
‘must’.

16 Section 56 (Use of descriptive words in name)

Schedule 2 (continued)

- 48 Section 16(2), ‘an agent’—**
omit, insert—
‘an agent,’.
- 49 Section 16(4), ‘shall be’—**
omit, insert—
‘is’.
- 50 Section 16(5)(b), ‘registrar under section 8’ and footnote—**
omit, insert—
‘chief executive under section 51¹⁷’.
- 51 Section 16(5)(b), ‘shall’—**
omit, insert—
‘is to’.
- 52 Section 17(1)(c), ‘shall’—**
omit, insert—
‘does’.
- 53 Section 18, ‘shall’, first mention—**
omit, insert—
‘is to’.

17 Section 51 (Register—proof of registration)

Schedule 2 (continued)

- 54 Section 18, ‘shall’, second mention—**
omit, insert—
‘are to’.
- 55 Section 19(1), ‘this Act’—**
omit, insert—
‘this chapter’.
- 56 Section 19(1)(b), ‘section 18’—**
omit, insert—
‘section 62’.
- 57 Section 19(1) and (2), ‘shall’—**
omit, insert—
‘must’.
- 58 Section 19(1) and (2), ‘registrar’—**
omit, insert—
‘chief executive’.
- 59 Section 19(1) and (2), ‘specified’—**
omit, insert—
‘stated’.
- 60 Section 19(2), ‘such date is so shown’—**
omit, insert—
‘date is shown’

Schedule 2 (continued)

- 61 Section 20, ‘shall’—**
omit, insert—
‘must’.
- 62 Section 21(1)—**
omit.
- 63 Section 21(2), ‘shall’—**
omit, insert—
‘must’.
- 64 Section 22, heading, ‘registrar’—**
omit, insert—
‘chief executive’.
- 65 Section 22(1)(c), ‘section 7(2)(f)’ and footnote—**
omit, insert—
‘section 50(2)(f)¹⁸’.
- 66 Section 22(1)(f), ‘section 18;’ and footnote—**
omit, insert—
‘section 62;¹⁹’.

18 Section 50 (How formed)

19 Section 62 (Cessation of limited partnerships)

Schedule 2 (continued)

- 67 Section 22(1), ‘section 9 or 19’ and footnote—**
omit, insert—
‘section 52 or 63²⁰’.
- 68 Section 22(1) and (2), ‘registrar’—**
omit, insert—
‘chief executive’.
- 69 Section 22(2), ‘shall’—**
omit, insert—
‘is to’.
- 70 Section 22(4) and (5)(a) and (b), ‘in respect of’—**
omit, insert—
‘for’.
- 71 Section 22(5), ‘shall be’—**
omit, insert—
‘is’.
- 72 Section 22(6), ‘shall’—**
omit, insert—
‘is to’.

20 Section 52 (Registration of charges in limited partnership) or 63 (Registration of dissolution or cessation of limited partnerships)

Schedule 2 (continued)

- 73 Section 23, heading, ‘Registrar’—**
omit, insert—
‘Chief executive’.
- 74 Section 23, ‘registrar’—**
omit, insert—
‘chief executive’.
- 75 Section 23, ‘in respect of’—**
omit, insert—
‘in relation to’.
- 76 Section 23, ‘section 9 or 19’ and footnote—**
omit, insert—
‘section 52 or 63²¹’.
- 77 Section 23, ‘shall’—**
omit, insert—
‘must’.
- 78 Section 23A, heading, ‘Registrar’s’—**
omit, insert—
‘Chief executive’s’.

21 Section 52 (Registration of charges in limited partnership) or 63 (Registration of dissolution or cessation of limited partnerships)

Schedule 2 (continued)

- 79 Section 23A, ‘registrar’—**
omit, insert—
‘chief executive’.
- 80 Section 23A(1), ‘registered under this Act’—**
omit.
- 81 Section 23A(4), ‘registrar’s’—**
omit, insert—
‘chief executive’s’.
- 82 Section 23B, heading, ‘Registrar’s’—**
omit, insert—
‘Chief executive’s’.
- 83 Section 23B(1), ‘registrar’—**
omit, insert—
‘chief executive’.
- 84 Section 23B(1), ‘section 23A’—**
omit, insert—
‘section 68’.
- 85 Sections 24 to 26—**
omit.
- 86 Section 27—**
omit, insert—

Schedule 2 (continued)

‘27 Mercantile Act register

- ‘(1) The chief executive must make the record of registrations, previously kept under the *Mercantile Act 1867*, section 57 and the *Partnership (Limited Liability) Act 1988*, section 27 available for inspection by the public during normal business hours.
- ‘(2) This part expires on 1 July 2008.’.

**87 Sections 27A, 28 and 29—
*omit.***