

South Australia

Partnership (Venture Capital Funds) Amendment Act 2005

An Act to amend the *Partnership Act 1891*; and to make a related amendment to the *Business Names Act 1996*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Partnership (Venture Capital Funds) Amendment Act 2005*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Partnership Act 1891*

4—Amendment of section 1B—Interpretation

- (1) Section 1B—after the definition of *business* insert:

Commission means the Corporate Affairs Commission;

- (2) Section 1B—after the definition of *Court* insert:

external partnership means a partnership (or legal entity however described in the nature of a partnership) formed in accordance with a law of another State, a Territory or another country or jurisdiction, whether or not under that law the liability of any partner for the liabilities of the partnership (or entity) is limited and whether or not under that law the partnership (or entity) is incorporated or is otherwise a separate legal entity;

firm-name of—

- (a) an incorporated limited partnership—means the name of the partnership recorded in the Register; and
- (b) of an external partnership—means the name under which, in accordance with the law of the place in which it is formed, the partnership carries on the business of the partnership;

general partner—

- (a) in a limited partnership—means a partner in the limited partnership who is not a limited partner; and
- (b) in an incorporated limited partnership—means a person or partnership (including an external partnership) admitted as a partner in the incorporated limited partnership in accordance with the partnership agreement and who is not a limited partner;

incorporated limited partnership means an incorporated limited partnership formed in accordance with section 48(2);

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

limited partner—

- (a) in a limited partnership—means a partner in the limited partnership whose liability for the liabilities of the partnership is limited in accordance with Part 3; and

- (b) in an incorporated limited partnership—means a person or partnership (including an external partnership) admitted and designated as a limited partner in the incorporated limited partnership in accordance with the partnership agreement;

limited partnership means a limited partnership formed in accordance with section 48(1);

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

Register means the *Register of Limited Partnerships and Incorporated Limited Partnerships* kept under Part 3;

registered particulars means particulars recorded in the Register.

- (3) Section 1B—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- (2) In this Act, a reference, in relation to an incorporated limited partnership, to the 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.

5—Insertion of section 1C

After section 1B insert:

1C—Application of laws to partnerships and incorporated limited partnerships

- (1) Except so far as they are inconsistent with the express provisions of this Act, the rules of equity and common law relating to partnership will continue in force.
- (2) However, except as provided (whether expressly or by necessary implication) by this Act or any other enactment, the law relating to partnership does not apply to or in respect of an incorporated limited partnership, the partners in an incorporated limited partnership or to the relationship between an incorporated limited partnership and its partners.

6—Amendment of section 1—Definition of partnership

Section 1(1)—after "profit" insert:

and includes an incorporated limited partnership

7—Amendment of section 2—Rules for determining existence of partnership

Section 2—after its present contents (now to be designated as subsection (1)) insert:

- (1) This section does not apply to or in respect of an incorporated limited partnership.

8—Amendment of section 4—Meaning of "firm"

- (1) Section 4—after "partnership" insert:

other than an incorporated limited partnership

- (2) Section 4—after its present contents as amended by this section insert:

Note—

On the meaning of *firm* and *firm-name* in relation to an incorporated limited partnership, see section 1B.

9—Amendment of section 5—Power of partner to bind firm

- (1) Section 5—after "Every partner" insert:

in a partnership other than a firm that is a limited partnership or incorporated limited partnership

- (2) Section 5—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) Every general partner in a limited partnership or incorporated limited partnership is an agent of the firm 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 firm of which the partner is a member, binds the firm and the other general partners, unless—

- (a) the general partner so acting has in fact no authority to act for the firm 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.

10—Amendment of section 6—Partners bound by acts on behalf of firm

- (1) Section 6(1)—delete "the firm" first occurring and substitute:

a firm other than an incorporated limited partnership

- (2) Section 6—after subsection (1) 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 9(3)) binding on the firm and all the general partners.

- (3) Section 6(2)—redesignate current subsection (2) as subsection (3)

11—Amendment of section 7—Partner using credit of firm for private purposes

- (1) Section 7—delete "the firm" first occurring and substitute:

a firm other than a firm that is an incorporated limited partnership

- (2) Section 7—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) Where one 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, but this section does not affect any personal liability incurred by an individual general partner.

12—Amendment of section 8—Effect of notice that firm will not be bound by acts of partner

- (1) Section 8—delete "the firm" first occurring and substitute:

a firm other than a firm that is an incorporated limited partnership

- (2) Section 8—after its present contents as amended by this section (now to be designated as subsection (1)) 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 with respect to persons having notice of the agreement.

13—Amendment of section 9—Liability of partners

- (1) Section 9—after "a firm" insert:

other than an incorporated limited partnership

- (2) Section 9—after "partner; and" insert:

(if the partner is an individual)

- (3) Section 9—after its present contents as amended by this section (now to be designated as subsection (1)) 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 such 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.

14—Amendment of section 10—Liability of firm for wrongs

- (1) Section 10(1)—before "acting in the ordinary course of the business of the firm" insert:

in a firm other than an incorporated limited partnership
- (2) Section 10(2)—after "a partner" insert:

in a firm other than an incorporated limited partnership
- (3) Section 10—after subsection (2) insert:
 - (3) Subject to subsection (4), where 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 in respect of that loss or injury to the same extent as the general partner so acting or omitting to act.
 - (4) For the purposes of subsection (3), a general partner in an incorporated limited partnership who commits a wrongful act or omission as a director of a body corporate, within the meaning of the *Corporations Act 2001* of the Commonwealth, 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 one 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.
- (4) Section 10(3)—redesignate current subsection (3) as subsection (5)

15—Amendment of section 11—Misapplication of money or property received for or in custody of the firm

- (1) Section 11—after "cases" insert:

involving the partners of a firm other than an incorporated limited partnership

- (2) Section 11—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) In the following cases involving general partners in an incorporated limited partnership, namely:
- (a) where one 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; or
 - (b) when 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 one or more of the general partners while it is in the custody of the incorporated limited partnership,

the incorporated limited partnership is liable to make good the loss.

16—Amendment of section 12—Liability for wrongs joint and several

- (1) Section 12—after "Every partner" insert:

in a firm other than an incorporated limited partnership

- (2) Section 12—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) Every general partner in an incorporated limited partnership is liable jointly with the other general partners in the partnership and also severally for everything for which the firm becomes liable under section 10(3) or 11(2) while the general partner is a general partner in the firm.
- (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 that 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.

17—Amendment of section 13—Improper employment of trust property for partnership purposes

- (1) Section 13(1)—after "If a partner" insert:

in a firm other than an incorporated limited partnership

- (2) Section 13(2)—redesignate current subsection (2) as subsection (1a)

- (3) Section 13—after its present contents as amended by this section insert:

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

- (3) Subsection (2)—
 - (a) does not affect any liability incurred by any general partner by reason of the partner's having notice of a breach of trust; and
 - (b) does not prevent trust money from being followed and recovered from the incorporated limited partnership if still in its possession or under its control.

18—Amendment of section 14—Persons liable by "holding out"

- (1) Section 14(1)—after "particular firm" insert:

that is a firm other than a limited partnership or incorporated limited partnership
- (2) Section 14—after subsection (1) insert:
 - (1a) Every one 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 any one who has on the faith of any such 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.

19—Amendment of section 15—Admissions and representations of partners

- (1) Section 15—after "any partner" insert:

in a firm other than a limited partnership or incorporated limited partnership
- (2) Section 15—after its current contents as amended by this section (now to be designated as subsection (1)) 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.

20—Amendment of section 16—Notice to acting partners to be notice to firm

- (1) Section 16—after "any partner" insert:

in a firm other than a limited partnership or incorporated limited partnership
- (2) Section 16—after its current contents as amended by this section (now to be designated as subsection (1)) 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.

21—Substitution of section 17

Section 17—delete the section and substitute:

17—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.

Note—

Liability is defined in section 1B.

- (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.

22—Amendment of section 18—Revocation of continuing guarantee by change in firm

Section 18—after its current contents (now to be designated as subsection (1)) insert:

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

23—Amendment of section 20—Partnership property of firms other than incorporated limited partnerships

Section 20—after subsection (3) insert:

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

24—Insertion of section 20A

After section 20 insert:

20A—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, by virtue only of being a partner in the partnership, has any legal or beneficial interest in its partnership property.

25—Amendment of section 22—Conversion into personal estate of land held as partnership property

Section 22—after its current contents (now to be designated as subsection (1)) insert:

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

26—Amendment of section 23—Procedure against partnership property for a partner's separate judgment debt

Section 23—after subsection (3) insert:

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

27—Amendment of section 24—Rules as to interests and duties of partners other than partners in incorporated limited partnership subject to special agreement

Section 24—after its current contents (now to be designated as subsection (1)) insert:

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

28—Amendment of section 26—Retirement from partnership at will

Section 26—after subsection (2) insert:

- (3) This section does not apply to or in respect of a limited partnership or incorporated limited partnership.

29—Amendment of section 27—Where partnership for term is continued over, continuance on old terms presumed

Section 27—after subsection (2) insert:

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

30—Amendment of section 28—Duties of partners to render accounts etc

- (1) Section 28—after "Partners" insert:

in a firm other than an incorporated limited partnership

- (2) Section 28—after its current contents as amended by this section (now to be designated as subsection (1)) insert:

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

31—Amendment of section 29—Accountability of partners for private profits

Section 29—after subsection (2) insert:

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

32—Amendment of section 30—Duty of partner not to compete with firm

Section 30—after its current contents (now to be designated as subsection (1)) insert:

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

33—Amendment of section 31—Rights of assignee of share in partnership

Section 31—after subsection (2) insert:

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

34—Insertion of section 31A

Before section 32 insert:

31A—Division does not apply to incorporated limited partnerships

This Division does not apply to or in respect of an incorporated limited partnership.

35—Repeal of Part 2 Division 5

Part 2, Division 5—delete Division 5

36—Substitution of heading to Part 3

Part 3—delete the heading to Part 3 and substitute:

Part 3—Limited partnerships and incorporated limited partnerships

37—Substitution of Part 3 Division 1

Part 3, Division 1—delete Division 1 and substitute:

Division 1—Application of Act to limited partnerships and incorporated limited partnerships

47—Application of Act to limited partnerships and incorporated limited partnerships

- (1) Parts 1 and 2 apply to limited partnerships and incorporated limited partnerships, except as provided by those Parts or this Part.
- (2) If a provision made by or under this Part relating to limited partnerships or incorporated limited partnerships is inconsistent with a provision made by or under any other Part that applies to limited partnerships or incorporated limited partnerships, respectively, the provision made by or under this Part prevails and the other provision is (to the extent of the inconsistency) of no force or effect in relation to limited partnerships or incorporated limited partnerships.

38—Substitution of heading to Part 3 Division 2

Part 3, Division 2—delete the heading to Division 2 and substitute:

Division 2—Nature and formation of limited partnerships and incorporated limited partnerships

39—Substitution of section 49

Section 49—delete the section and substitute:

48—Limited partnership or incorporated limited partnership is formed on registration

- (1) A limited partnership is formed by and on registration of the partnership under this Part as a limited partnership.
- (2) An incorporated limited partnership is formed by and on registration of it under this Part as an incorporated limited partnership.

49—Composition of limited partnership or incorporated limited partnership

- (1) A limited partnership or incorporated limited partnership must have—
 - (a) at least one general partner; and
 - (b) at least one limited partner.

- (2) A corporation may be a general partner or a limited partner in a limited partnership or incorporated limited partnership.
- (3) A partnership (including an external partnership) may be a general partner or a limited partner in a limited partnership or incorporated limited partnership.

40—Amendment of section 50—Size of a limited partnership or incorporated limited partnership

- (1) Section 50(1)—after "limited partnership" insert:
or incorporated limited partnership
- (2) Section 50(2)—delete subsection (2) and substitute:
 - (2) An incorporated limited partnership must not have more than 20 general partners.
 - (3) A limited partnership—
 - (a) must not have more than 20 general partners; or
 - (b) if the partnership is of a particular kind in respect of which a higher number applies in accordance with section 115(2) of the *Corporations Act 2001* of the Commonwealth (and the partnership consisted only of those general partners)—must not have more general partners than that higher number.
 - (4) For the purposes of this section—
 - (a) if a general partner is a partnership or external partnership and no partner in that partnership has, under the law of the place where the partnership is formed, limited liability for the liabilities of the partnership, the number of partners in that partnership is to be counted; and
 - (b) if a general partner is a partnership or external partnership and any partner in that partnership has, under the law of the place where the partnership is formed, limited liability for the liabilities of the partnership, the number of partners in that partnership whose liability is not so limited is to be counted but no account is to be taken of the number of partners in that partnership whose liability is so limited.

41—Substitution of section 51

Section 51—delete the section and substitute:

51—Incorporated limited 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) The common seal of an incorporated limited partnership must be kept in such custody as the partnership directs and must not be used except as authorised by it.

51A—Powers of incorporated limited 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 South Australia or outside Australia—
 - (a) to carry on the business of the partnership; or
 - (b) to enter into contracts or otherwise acquire rights or liabilities; or
 - (c) to create, confer, vary or cancel interests in the partnership; or
 - (d) to acquire, hold and dispose of real or personal property or of an interest (whether beneficial or legal) in real or personal property; or
 - (e) to appoint agents and attorneys, and act as agent for other persons; or
 - (f) to form, and participate in the formation of, companies or incorporated limited partnerships; or
 - (g) to participate in partnerships, trusts, joint ventures or other associations and other arrangements for the sharing of profits; or
 - (h) to do such other things as it is authorised to do by or under this Act.
- (2) The powers of an incorporated limited partnership may be limited by the partnership agreement.

51B—Partnership agreement

- (1) There must at all times be a written partnership agreement between the partners in an incorporated limited partnership.
- (2) The interests of the partners in an incorporated limited partnership and their rights and duties in relation to the partnership are, subject to this Act, to be determined in accordance with the agreement.
- (3) A partnership agreement 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.

51C—Relationship of partners in incorporated limited partnership to others and between themselves

- (1) Except as otherwise provided by the partnership agreement or agreed between the partners in an incorporated partnership—
 - (a) a general partner, the partnership or an officer, employee, agent or representative of a general partner or of the partnership is not an agent of a limited partner and the acts of a general partner or of the partnership or of such an officer, employee, agent or representative do not bind a limited partner; and
 - (b) a limited partner is not an agent of, nor fiduciary for, a general partner or another limited partner or the partnership and the acts of a limited partner do not bind a general partner, another limited partner or the partnership itself.
- (2) A reference in subsection (1) to a general partner includes, if the general partner is a partnership or an external partnership, a reference to a partner in that partnership.
- (3) Nothing in subsection (1) prevents the making of, or limits or restricts, an agreement between a partner (the *first person*) and either another partner or the incorporated limited partnership (the *second person*) under which—
 - (a) the first person acts as an agent of the second person and, by so acting, binds the second person; or
 - (b) the second person acts as an agent of the first person and, by so acting, binds the first person.
- (4) Any consent or authority which 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 and without limiting any other way in which it might be given, 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 specified exceptions, or in relation to any specified case or class of case.
- (5) Any consent or authority which 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 in accordance with the partnership agreement.
- (6) 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.

- (7) This section is subject to section 65A (Limited partner not to take part in the management of the incorporated limited partnership).

42—Substitution of heading to Part 3 Division 3

Part 3, Division 3—delete the heading to Division 3 and substitute:

Division 3—Registration of limited partnerships and incorporated limited partnerships

43—Insertion of section 51D

Before section 52 insert:

51D—Who may apply for registration?

- (1) An application for registration as a limited partnership may be made by—
 - (a) a partnership; or
 - (b) any persons or partnerships, or both, proposing to be partners in the limited partnership.
- (2) An application for registration as an incorporated limited partnership may be made, in the circumstances described in subsection (3), by—
 - (a) a partnership (including an external partnership); or
 - (b) any persons or partnerships (including external partnerships), or both, proposing to be partners in the proposed incorporated limited partnership.
- (3) The circumstances are—
 - (a) that the partnership is registered under Part 2 of the *Venture Capital Act 2002* of the Commonwealth, or a general partner in the partnership or a proposed general partner in the proposed incorporated limited partnership intends to apply for registration of the incorporated limited partnership or proposed partnership under that Part, as—
 - (i) a VCLP within the meaning of that Act; or
 - (ii) an AFOF within the meaning of that Act; or
 - (b) that the partnership is a venture capital management partnership within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* of the Commonwealth or the partners in the partnership or the proposed partners in the proposed incorporated limited partnership intend that the partnership or proposed incorporated limited partnership will meet the requirements set out in that section for recognition as a venture capital management partnership; or
 - (c) such other circumstances as are prescribed.

44—Amendment of section 52—Application for registration

- (1) Section 52(1)—after "limited partnership" insert:

or incorporated limited partnership
- (2) Section 52(1)(b)(i) and (ii)—delete subparagraphs (i) and (ii) and substitute:
 - (i) if the application is made by a partnership (including an external partnership)—either by each partner in the partnership or by a person given authority to make such an application on behalf of the partnership and the partners; or
 - (ii) in any other case—by each proposed partner.
- (3) Section 52—after subsection (1) insert:
 - (1a) The application must—
 - (a) contain a statement of whether the partnership is to be registered as a limited partnership or an incorporated limited partnership; and
 - (b) if the application is by a partnership (including an external partnership), contain particulars of—
 - (i) the firm-name of the partnership, and
 - (ii) the full address of the office or principal office in South Australia of the partnership (to be called the *registered office* of the proposed partnership); and
 - (c) if the application is by persons or partnerships (including external partnerships) proposing to be the partners in the proposed partnership, contain particulars of—
 - (i) the proposed firm-name of the proposed partnership; and
 - (ii) the full address of the proposed office or principal office in South Australia of the proposed partnership (to be called the *registered office* of the proposed partnership); and
 - (d) contain particulars of the full name of each partner or proposed partner or, if the partner or proposed partner is a partnership (including an external partnership), the name of that partnership or, if that partnership does not have a name, the full name of each partner in the partnership; and
 - (e) contain particulars of the full address of each partner or proposed partner, being (in the case of an individual) his or her principal place of residence or (in the case of a corporation) its registered office or principal place of business or (in the case of a partnership) its registered office or principal office; and

- (f) contain a statement in relation to each partner or proposed partner that is an individual as to whether that partner or proposed partner is, or is proposed to be, a general partner or a limited partner; and
- (g) contain a statement in relation to each partner or proposed partner that is a corporation or a partnership that is, or is proposed to be, a partner a statement in relation to the corporation or partnership as to whether it is to be a general partner or a limited partner; and
- (h) contain 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; and
- (i) if the application is for a limited partnership—contain a statement in relation to each limited partner to the effect that the partner is a limited partner whose liability to contribute is limited to the extent of the amount specified in the statement (being the amount of any capital, or the value of any property, that the limited partner has agreed to contribute to the partnership or, in the case of a limited partner that is a partnership, the aggregate amounts or values); and
- (j) if the application is by a partnership or persons or partnerships proposing to be partners in a partnership that intends to apply for registration as a VCLP of an AFOF under Part 2 of the *Venture Capital Act 2002* of the Commonwealth, contain a statement that it so intends to apply; and
- (k) if the application is by a partnership that is registered as a VCLP of an AFOF under Part 2 of the *Venture Capital Act 2002* of the Commonwealth, be accompanied by a copy of a document evidencing its status as a VCLP or an AFOF; and
- (l) if the application is by a partnership or proposed persons or partnerships proposing to be a partnership that intends to meet the requirements for recognition as a venture capital management partnership set out in section 94D of the *Income Tax Assessment Act 1936* of the Commonwealth, contain a statement that it so intends to meet those requirements; and
- (m) if the application is by a partnership that is a venture capital management partnership within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* of the Commonwealth, a statement that it is such a partnership; and
- (n) contain such other particulars as are required by the regulations or by the approved form of statement.

45—Substitution of section 53

Section 53—delete the section and substitute:

53—Registration of limited partnership or incorporated limited partnership

- (1) If an application for registration of a limited partnership or incorporated limited partnership has been duly made, the Commission must register the limited partnership or incorporated limited partnership.
- (2) However, the Commission—
 - (a) must not register the limited partnership or incorporated limited partnership if any general partner would, because of a conviction of an offence, be prohibited under Division 7 from carrying on business as a general partner; and
 - (b) may, if the firm-name proposed in an application for registration requires registration as a business name under the *Business Names Act 1996*, postpone registration pending registration of the name as a business name under that Act.
- (3) If the Commission registers a limited partnership or an incorporated limited partnership, the firm-name of the partnership is its name as recorded in the Register.
- (4) On registration of a limited partnership as an incorporated limited partnership, the limited partnership ceases to be a limited partnership and the Commission is to record the cancellation of its registration in the Register; however, in that case, any liability of the firm or a partner in it that arose before its registration as an incorporated limited partnership is to be dealt with as if it were still a limited partnership.
- (5) Registration is effected by recording in the Register the particulars in the statement lodged with the Commission.

53A—Acts preparatory to registration do not constitute partnership

Any act done in connection with the making of an application for registration under this Part by or on behalf of persons or partnerships (including external partnerships) proposing to be the partners in a proposed partnership does not of itself create a partnership between those persons or partnerships.

46—Amendment of section 54—Register of Limited Partnerships and Incorporated Limited Partnerships

Section 54(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) The Commission is required to keep, in such form as it considers appropriate, a register of limited partnerships and incorporated limited partnerships registered under this Part (to be called the *Register of Limited Partnerships and Incorporated Limited Partnerships*).
- (2) There is to be, in the Register, a division of limited partnerships and a division of incorporated limited partnerships.
- (2a) The Commission may 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 Commission decides that the correction is necessary.
- (2b) The Commission must not omit an entry in the Register unless satisfied that the whole of the entry was included in error.

47—Amendment of section 55—Changes in registered particulars

- (1) Section 55(1)—after "limited partnership" insert:

or incorporated limited partnership
- (2) Section 55(3)(c)(i) and (ii)—delete subparagraphs (i) and (ii) and substitute:
 - (i) by all the general partners or by a general partner authorised by all the general partners for the purposes of this section; and
 - (ii) in the case of a limited partnership—if the change relates to the admission of a limited partner, or a change in the liability of a limited partner to contribute—
 - (A) by the limited partner concerned; or
 - (B) if that limited partner is a limited partnership—by all the general partners in that limited partnership or by a general partner in that limited partnership authorised by all the general partners in that limited partnership for the purposes of this section.
- (3) Section 55(4)(a)—delete paragraph (a) and substitute:
 - (a) in the case of a limited partnership—as a result of a change in relation to the registered particulars, the partnership is not eligible to be registered as a limited partnership; or

48—Substitution of section 56

Section 56—delete the section and substitute:

56—Certificates of registration

- (1) The Commission must, at the time of—
 - (a) registering a limited partnership or an incorporated limited partnership; or
 - (b) recording a change in its registered particulars; or
 - (c) correcting an error or omission in the Register in relation to it,issue to the general partners a certificate as to its formation and its registered particulars as at that time.
- (2) The Commission may, on application, issue to the applicant a certificate in relation to a limited partnership or incorporated limited partnership as to its formation and its registered particulars as at the time of the application.
- (3) A certificate under this section is to be in such form as the Commission thinks fit.
- (4) A certificate under this section—
 - (a) as to the formation of a limited partnership or incorporated limited partnership, is conclusive evidence that the partnership was formed on the date of registration referred to in the certificate; and
 - (b) as to the registered particulars as at a specified time of the partnership, is (unless the contrary is established) conclusive evidence that the partnership existed at that time; and
 - (c) as to the general partners and limited partners in a partnership as at a specified time is (unless the contrary is established) conclusive evidence of the general partners and limited partners as at that time; and
 - (d) as to any other particular of a partnership recorded in the Register as at a specified time, is (unless the contrary is established) conclusive evidence of that particular as at that time.

49—Substitution of heading to Part 3 Division 4

Part 3, Division 4—delete the heading to Division 4 and substitute:

Division 4—Limitation of liability of limited partners in limited partnership

50—Amendment of section 58—Liability of limited partner limited to amount shown in Register

- (1) Section 58(1)—delete "debts or obligations" and substitute:
liabilities
- (2) Section 58(2)—delete "debts or obligations" and substitute:
liabilities
- (3) Section 58—after subsection (2) insert:
 - (3) If a partnership (the *investing partnership*) is a limited partner in a limited partnership (the *principal partnership*), a partner in the investing partnership has no separate liability to contribute to the liabilities of the principal partnership, but nothing in this subsection affects any liability of the investing partnership as a limited partner to contribute to those liabilities.

51—Amendment of section 59—Change in liability of limited partner

- (1) Section 59(1)—delete "debt or obligation" and substitute:
liability
- (2) Section 59(2)—delete "debt or obligation" and substitute:
liability

52—Amendment of section 60—Change in status of partners

- (1) Section 60(1)—delete "debt or obligation" and substitute:
liability
- (2) Section 60(2)—delete "debt or obligation" and substitute:
liability

53—Amendment of section 61—Liability for business conducted outside the State

- Section 61—delete "debt or obligation" and substitute:
liability

54—Amendment of section 62—Liability for limited partnerships formed under corresponding laws

- (1) Section 62(1), definition of *corresponding law*—after "country" insert:
or jurisdiction
- (2) Section 62(2)—delete "debt or obligation" and substitute:
liability
- (3) Section 62(4)—after "country" insert:
or jurisdiction

(4) Section 62—after subsection (4) insert:

- (5) This section is additional to, and does not derogate from, any rule of law under which recognition is or may be given to a limitation of liability of a partner in a partnership (including an external partnership).

55—Insertion of section 62A

After section 62 insert:

62A—Effect of sections 61 and 62

No implication is to be taken as arising from section 61 or 62 that a limited partner has any liability (or but for that section would have any liability) in connection with the conduct of a partnership's business outside the State that the limited partner would not have in connection with the conduct of a partnership's business within the State.

56—Amendment of section 63—Contribution towards discharge of liabilities

Section 63(1)—delete "debts or obligations" and substitute:

liabilities

57—Insertion of Division 4A

After section 64 insert:

Division 4A—Limitation of liability of limited partners in incorporated limited partnerships

64A—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 64C or 64D prevents—
- (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 65A (Limited partner not to take part in the management of the incorporated limited partnership).

64B—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 65A(2)) for any liability of the incorporated limited partnership that arose before the partner became a general partner.

Note—

Section 65A(2) imposes liability in certain circumstances on a limited partner who takes part in the management of the business of the incorporated limited partnership.

64C—Liability in respect of conduct or acts or omissions outside the State

The limitation on the liability of a limited partner in an incorporated limited partnership by or under this Act extends to any liability incurred—

- (a) in connection with the conduct of the partnership's business outside the State; or
- (b) as a result of an act or omission outside the State of—
- (i) a general partner or a limited partner in the partnership; or
 - (ii) any officer, employee, agent or representative of a general partner in the partnership; or
 - (iii) the partnership.

64D—Incorporated limited partnerships formed under corresponding laws

- (1) In this section—

corresponding law means—

- (a) a law of another State or of a Territory or of another country or jurisdiction that substantially corresponds to those provisions of this Act that relate to incorporated limited partnerships; or
- (b) a law declared under subsection (3) to be a corresponding law for the purposes of this Part;

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

- (2) 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 or omissions in this State of a partner in the recognised incorporated limited partnership or of the partnership itself or of any officer, employee, agent or representative of such a partner or of the partnership,

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

- (3) Subject to subsections (4) and (5), the Governor may, by notice in the Gazette, declare a law of another State, a Territory or another country or jurisdiction to be a corresponding law for the purposes of this Part.
- (4) The law of another State or a Territory may not be declared to be a corresponding law unless the Minister has certified to the Governor that under that law a limited partner in an incorporated limited partnership formed in accordance with this Part 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 or Territory of the business of the partnership; or
 - (b) the acts or omissions in that State or Territory of a partner in the partnership or of a partnership itself or of any officer, employee, agent or representative of a general partner or of the partnership,

in circumstances where the limited partner would be so liable under this Part if the conduct or acts or omissions occurred within the State.

- (5) The law of another country or jurisdiction (not being another State or Territory) may not be declared to be a corresponding law unless the Minister has certified to the Governor that the law provides for the limitation of liability of certain partners in certain partnerships.
- (6) This section is additional to, and does not derogate from, any rule of law under which recognition is or may be given to a limitation of liability of a partner in a partnership.

64E—Effect of sections 64C and 64D

No implication is to be taken as arising from section 64C or 64D that a limited partner has any liability (or but for that section would have any liability) in connection with the conduct of a partnership's business or acts outside the State that the limited partner would not have in connection with the conduct of a partnership's business or acts or omissions within the State.

58—Amendment of section 65—Limited partner not to take part in management of limited partnership

- (1) Section 65(2)—delete "debts and obligations" and substitute:
liabilities

(2) Section 65—after subsection (5) insert:

- (6) No implication is to be taken as arising from section 65A(3) that a limited partner in a limited partnership is to be regarded as taking part in the management of the business of the partnership merely 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 that subsection.

59—Insertion of sections 65A and 65B

After section 65 insert:

65A—Limited partner not to take part in management of incorporated limited partnership

- (1) A limited partner in an incorporated limited partnership must not take part in the management of the business of the partnership.
- (2) 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 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.
- (3) A limited partner in an incorporated limited partnership is not to be regarded as taking part in the management of the business of the incorporated limited partnership merely because the limited partner or a person acting on behalf of the limited partner—
- (a) is an employee or an independent contractor of the partnership or of a general partner in the partnership or of an associate of the general partner, or is an officer of a general partner that is a body corporate or of an associate of a general partner that is a body corporate; or
- (b) gives advice to, or on behalf of, the partnership or a general partner in the partnership or an associate of the general partner in the proper exercise of functions arising from the engagement of the limited partner, or a person acting on behalf of the limited partner, in a professional capacity or arising from business dealings between the limited partner, or a person acting on behalf of the limited partner, and the partnership or a general partner or an associate of the general partner; or

- (c) gives a guarantee or indemnity in respect of 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 in the partnership, for the purpose of enforcing the rights, or safeguarding the interests, of the limited partner as a limited partner; or
- (e) if permitted by the partnership agreement—
 - (i) calls, requisitions, convenes, chairs, participates in, postpones, adjourns or makes a record of a meeting of the partners or of the limited partners or of any of them; or
 - (ii) requisitions, signs or otherwise passes, approves, disapproves or amends any resolution (whether at a meeting, in writing or otherwise) of the partners or of the limited partners or of any of them, including without limitation by formulating, moving, proposing, supporting, opposing, speaking to or voting on any such resolution; or
- (f) exercises a power conferred on the limited partner by subsection (4) or has, or exercises, any 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 such matters; or
- (g) gives advice to, or consults with, or is or acts as an officer, director, security holder, partner, agent, representative, employee of or independent contractor engaged by, an associate of the partnership; or
- (h) is or acts as a lender to, or fiduciary for, an associate of the partnership; or
- (i) to the extent authorised by the partnership agreement, participates on, or has or exercises any right to appoint one or more persons to, or remove one or more persons from, or to nominate one or more persons for such appointment to or removal from, a committee which considers, approves of, consents to or disapproves of any one 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 such a method);
 - (iii) a proposal for an extension or reduction in the period in which, under the partnership agreement, investments (or certain types of investments) can be made by the partnership, or for any approval or disapproval of investments that the partnership does not otherwise have a right to make;
 - (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 one 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
 - (j) 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 which proposes, considers, approves of, consents to or disapproves of any nomination, selection, appointment, change in control or ownership, suspension, replacement or removal of a general partner or an associate of a general partner; or
 - (k) takes any action, or participates in any action taken by any other limited partner, for the purpose of registering or maintaining the registration of the partnership or a general partner in the partnership under Part 2 of the *Venture Capital Act 2002* of the Commonwealth as a VCLP or AFOF within the meaning of that Act.
- (4) A limited partner in an incorporated partnership or a person authorised by the limited partner may, if and to the extent the partner or person is so authorised by the partnership agreement as in force from time to 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 such matters.
- (5) The provisions of this section (other than subsection (4)) 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.
- (6) No implication is to be taken as arising 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 merely 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 venture capital management partnership (within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* of the Commonwealth) is not to be regarded as taking part in the management of the business of the incorporated limited partnership merely because of any act the limited partner takes in respect of the incorporated limited partnership in the capacity of a partner or associate of a partner in the venture capital management partnership.

65B—Definitions etc applicable to section 65A

- (1) In section 65A—
 - (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 other 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 section 65A and this section, a reference to a *general partner in an incorporated limited partnership* includes, if the general partner is a partnership, a reference to a partner in that partnership.
- (3) In section 65A and this section—

related body corporate has the same meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth;

security holder, in relation to a body (whether corporate or unincorporated) includes a holder of securities (within the meaning given by section 92(3) of the *Corporations Act 2001* of the Commonwealth) in or of the body.

60—Amendment of section 66—Differences between partners

Section 66(1)—after "limited partnership" insert:
or an incorporated limited partnership

61—Amendment of section 67—Change in partners

- (1) Section 67(1)—after "limited partner" first occurring insert:
in a limited partnership
- (2) Section 67—after subsection (1) insert:
 - (1a) A limited partner in an incorporated limited partnership may, with the consent of the general partners and the agreement of the transferee, transfer the whole or a proportion of the limited partner's interest in the limited partnership.
 - (1b) If the whole of the limited partner's interest in the incorporated limited partnership is transferred to the one transferee, the transferee becomes a limited partner in substitution for the transferor with all the rights and obligations of the transferor.
 - (1c) If only a proportion 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 respect of the transferred proportion and with all the rights and obligations of the transferor in respect of it.
- (3) Section 67(2)—after "limited partnership" insert:
or incorporated limited partnership

62—Substitution of heading to Part 3 Division 6

Part 3, Division 6—delete the heading to Division 6 and substitute:

**Division 6—Dissolution and cessation of limited
partnerships and incorporated limited partnerships**

63—Amendment of section 68—Dissolution not available in certain cases

- (1) Section 68(1)(b)—delete "debts or obligations" and substitute:
liabilities
- (2) Section 68—after subsection (1) insert:
Note—
See section 1C
- (3) Section 68(2)—after "limited partnership" insert:
or an incorporated limited partnership

64—Insertion of section 71A

After section 71 insert:

71A—Winding up of incorporated limited partnerships

- (1) The regulations may make provision for the winding up of incorporated limited partnerships, including by applying, with or without modification, specified provisions of the *Corporations Act 2001* of the Commonwealth.
- (2) The limit on the penalties that may be fixed for offences against the regulations under this Act does not apply in relation to any regulation that makes provision for the winding up of incorporated limited partnerships.

65—Insertion of sections 71B to 71E

Before section 72 insert:

71B—Execution of documents

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 in accordance with paragraph (a).

71C—Entitlement to make assumptions

- (1) A person is entitled to make the assumptions in section 71D in relation to dealings with an incorporated limited partnership and the incorporated limited partnership is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (2) A person is entitled to make the assumptions in section 71D 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 and 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 71D if at the time of the dealings the person knew or suspected that the assumption was incorrect.

71D—Assumptions that may be made under section 71C

- (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 duly appointed as an agent of the incorporated limited partnership, as the case requires; and
 - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by 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 duly executed by the incorporated limited partnership if the document appears to have been signed in accordance with section 71B.
- (6) A person may assume that a document has been duly 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 the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

71E—Lodgment of certain documents with Commission

- (1) An incorporated limited partnership that was incorporated on the basis that it intended to be registered as a VCLP or an AFOF under Part 2 of the *Venture Capital Act 2002* of the Commonwealth must, within one month after being so registered, lodge with the Commission a copy of a document evidencing its status as a VCLP or an AFOF.
- (2) An incorporated limited partnership that was incorporated on the basis that it intended to meet the requirements for recognition as a venture capital management partnership within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* of the Commonwealth must, within one month after becoming such a venture capital management partnership, lodge with the Commission a statement that it is such a partnership.
- (3) If—
 - (a) the registration of an incorporated limited partnership as a VCLP or an AFOF under Part 2 of the *Venture Capital Act 2002* of the Commonwealth is revoked; or
 - (b) an incorporated limited partnership ceases to be a venture capital management partnership within the meaning of section 94D(3) of the *Income Tax Assessment Act 1936* of the Commonwealth,the incorporated limited partnership must, within 7 days after the date on which that revocation took effect or it ceased to be such a venture capital limited partnership, lodge with the Commission a notice of that revocation or cessation, specifying 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, lodge with the Commission a notice of the cessation, specifying the date on which it took effect.
- (5) A copy of a document or a notice required to be lodged with the Commission under this section must be accompanied by the prescribed fee or, if no fee is prescribed, a fee of \$70.
- (6) A notice required to be lodged with the Commission under this section must—
 - (a) be in the form approved by the Commission; and
 - (b) contain the particulars required by the regulations or the approved form of notice.
- (7) If subsection (1), (2), (3) or (4) is not complied with, each general partner in the incorporated limited partnership is guilty of an offence.
Maximum penalty: \$1 250

66—Amendment of section 75—Identification of limited partnerships and incorporated limited partnerships

- (1) Section 75(2)—delete subsection (2) and substitute:
 - (2) Any document issued on behalf of a limited partnership in connection with the conduct of the partnership's business must contain in legible letters the words "A Limited Partnership" (or "L.P." or "LP" as an abbreviation) at the end of the firm-name of the partnership.
 - (2a) Any document issued on behalf of 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" as an abbreviation) at the end of the firm-name of the partnership.
- (2) Section 75(3)(b)—after "limited partnership" insert:

or incorporated limited partnership
- (3) Section 75(4)—after "limited partnership" insert:

or incorporated limited partnership

67—Amendment of section 76—Registered office

- (1) Section 76(1)—after "limited partnership" insert:

or incorporated limited partnership
- (2) Section 76(3)—after "limited partnership" insert:

or incorporated limited partnership

68—Substitution of section 77

Section 77—delete the section and substitute:

77—Service

Without affecting any other method of serving documents on the partners in a limited partnership or on an incorporated limited partnership—

- (a) a document concerning the business of a limited partnership may be duly served on partners in the partnership; or
- (b) a document concerning the business of an incorporated limited partnership may be duly served on the partnership,

if it is left at, or sent by post addressed to, the registered office of the firm for the time being shown in the Register.

69—Amendment of section 78—Entry in Register constitutes notice

Section 78—after "limited partnership" insert:

or incorporated limited partnership

70—Insertion of sections 79A to 79C

After section 79 insert:

79A—Offences by partnerships

- (1) If this Act provides that a general partner (being a partnership and including an external partnership) in a limited partnership or incorporated limited partnership is guilty of an offence, the reference to the general partner is to be read as a reference—
 - (a) to each partner in the partnership (or external partnership);
or
 - (b) if the partnership (or external partnership) is one in which any partner has under the law of the place where it is formed limited liability for the liabilities of the partnership, each partner in the partnership whose liability is not so limited.
- (2) In any proceeding against a partner for an offence against this Act brought in reliance on subsection (1), it is a defence for the partner to prove that the partner took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

79B—Duty to furnish information

- (1) For the purpose of monitoring compliance with this Part or the regulations made for the purposes of this Part, the Commission may by notice in writing require an incorporated limited partnership to furnish within a period specified in the notice (being a period of not less than 28 days) or within such further period as the Commission may allow such information as is specified in the notice.
- (2) An incorporated limited partnership required under subsection (1) to furnish information to the Commission must, within the period specified in the notice or within such further period as the Commission has allowed, furnish such information as it is within its power to furnish and must not furnish any information which to its knowledge is false or misleading in a material particular.
- (3) If subsection (2) is not complied with, each general partner in the incorporated limited partnership is guilty of an offence.
Maximum penalty: \$ 5 000.

79C—Confidentiality

- (1) The Commission or a person employed or engaged in the administration of this Act must not, except to the extent necessary to carry out their functions under this Act, give to another person, whether directly or indirectly, any information acquired by the Commission or that person (as the case requires) in carrying out those functions.
Maximum penalty: \$5 000.

- (2) Subsection (1) does not apply to the giving of information—
 - (a) to a court or tribunal in the course of legal proceedings; or
 - (b) pursuant to an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or a Territory or of the Commonwealth; or
 - (d) with the written authority of the person to whom the information relates.

71—Amendment of section 83—Regulations

- (1) Section 83(2)—before paragraph (a) insert:
 - (aa) provide for the keeping of records by a limited partnership or incorporated limited partnership; and
 - (aab) provide for information or copies of records or documents required to be provided to the Commission by a limited partnership or incorporated limited partnership; and
 - (aac) provide for the form in which any record required under this Act to be kept is to be kept; and
- (2) Section 83—after subsection (2) insert:
 - (3) The regulations may exempt, or provide for the exemption of, any person or class of persons or any other matter or thing from any specified provision or provisions of this Act or the regulations, in such circumstances (if any) and subject to such conditions (if any) as may be specified or referred to in the regulations.

72—Insertion of section 84 and Schedule 1

After section 83 insert:

84—Relationship with Corporations legislation

- (1) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to—
 - (a) the whole of the Corporations legislation; or
 - (b) a specified provision of that legislation; or
 - (c) that legislation other than a specified provision; or
 - (d) that legislation otherwise than to a specified extent.

Note—

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) The regulations may declare a matter that is dealt with by this Act or the regulations to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to any of the following (whether with or without modifications):
- (a) the whole of the Corporations legislation;
 - (b) a specified Act, regulations or other instrument forming part of the Corporations legislation;
 - (c) a specified provision or provisions of the Corporations legislation or of an Act, regulations or other instrument forming part of the Corporations legislation.

Note—

Section 14 of the *Corporations (Ancillary Provisions) Act 2001* provides that Part 3 of that Act applies to a provision of a law of the State if the provision declares a matter to be an applied Corporations legislation matter for the purposes of that Part in relation to all or part of the Corporations legislation of the Commonwealth. Such a declaration cannot be made if all or part of the Corporations legislation already applies to the matter as a law of the Commonwealth.

- (3) In this section—

Corporations legislation means the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies.

Schedule 1—Savings, transitional and other provisions

1—Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Partnership (Venture Capital Funds) Amendment Act 2005*.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2—Saving of existing limited partnerships

- (1) The Register of Limited Partnerships kept under Part 3 as in force immediately before the commencement of this clause is taken on that commencement to be the Register of Limited and Incorporated Limited Partnerships required to be kept under Part 3 as amended by the *Partnership (Venture Capital Funds) Amendment Act 2005*.
- (2) Subject to this Act, a partnership registered as a limited partnership before the commencement of this clause is taken on that commencement to be registered as a limited partnership in the division of limited partnerships in the Register.

Schedule 1—Related amendment of *Business Names Act 1996*

1—Amendment of section 28A—Limited liability partnerships and incorporated limited liability partnerships

- (1) Section 28A(1)—after "limited partnership" insert:
or incorporated limited partnership
- (2) Section 28A(2)—after "limited partnership" insert:
or incorporated limited partnership
- (3) Section 28A(3)—before the definition of *limited partner* insert:
incorporated limited partnership means an incorporated limited partnership within the meaning of the *Partnership Act 1891*.