

PARTNERSHIP AMENDMENT BILL 2009

Second Reading

Ms GIDDINGS (Franklin - Minister for Justice - 2R) - Mr Speaker, I move –

That the bill be now read the second time.

Mr Speaker, this bill will amend the Partnership Act 1891 and repeal the Limited Partnerships Act 1908 for the purpose of updating partnerships law in Tasmania, facilitating the incorporation of recent changes to Commonwealth law and creating uniformity with interstate partnerships legislation.

Tasmanian partnership legislation currently covers two types of partnership - standard or 'general' partnerships and 'limited' partnerships. The Partnership Act 1891 provides in effect a scheme for the terms of a partnership (some of which relate to the partners' relationships with each other and some to their relationships with the people with whom they do business). Except to the extent that they might need to register a business name, standard partnerships do not need to be registered with the Office of Consumer Affairs and Fair Trading.

The Limited Partnerships Act 1908 enables the establishment of a firm where one or more of the parties provides the finance but takes no other involvement in, and does not share the risks of, the business except to the extent of his/her financial contribution. This form of partnership is required to be registered with the Office of Consumer Affairs and Fair Trading. If it is not registered it is treated as a general partnership so that the liability of parties is not limited. The 1908 Act is relatively short - it mainly sets out the provisions of the Partnership Act 1891 which do not apply to a limited partner, and sets up a simple registration scheme.

In 2002, the Commonwealth Parliament enacted the Venture Capital Act 2002, which was aimed at attracting venture capital to Australia. The Income Tax Assessment Act 1936 of the Commonwealth was also amended to allow these entities to be taxed as flow-through vehicles (that is, tax exempt) in accordance with internationally recognised best practice for the treatment of venture capital. There are three examples of these vehicles: a venture capital limited partnership (VCLP), an Australian fund of funds (AFOF) and a venture capital management partnership (VCMP). New South Wales, South Australia, Queensland, Victoria, and the Australian Capital Territory have already made the legislative alterations necessary to take advantage of these changes.

The Commonwealth has recently granted tax relief for another form of venture capital fund that invests in small businesses - the early stage venture capital limited partnership (ESVCLP). The creation of bodies such as venture capital limited partnerships is aimed largely to attract overseas investment in Australia. A limited number of such bodies have been approved by the Commonwealth for preferential tax treatment but these bodies cannot be established in individual States or Territories without some changes to limited partnerships law.

The Commonwealth Minister has requested that the States pass the necessary legislation to enable these new investment vehicles to be established and registered. In order to effect these necessary changes, the decision was made to insert a new Part in the Partnership Act 1891 rather than have a separate act. This bill brings together all the provisions that previously made up the Limited Partnerships act 1908, as well as provisions regarding the new incorporated limited partnership, venture capital limited partnership. Most other States only have one act devoted to partnership matters, rather than dividing general and limited partnerships into different acts.

The bill breaks the 1891 act up into a number of parts. Part 1 is about preliminary matters, including definitions. Part 2 relates to partnerships generally: that is, it sets out the basic outline of a partnership, and the rights and duties of a partner. Some of Part 2 relates to all types of partnerships, but most relates to general partnerships only, and excludes limited and incorporated limited partnerships. Parts 1 and 2 are essentially the provisions of the Partnerships Act 1891 in an updated form.

Clause 26 of the amendment bill inserts a new Part 3 into the act. This part sets out most of the provisions that apply to incorporated limited partnerships. The new Part 3 has eight divisions, which I will go through in more detail as they are a combination of new provisions and those brought forward from the Limited Partnerships Act 1908. The first division provides that Parts 1 and 2 of the act (which deal with definitions and general partnerships) apply to this Part unless otherwise stated in the act.

Division 2 sets out matters related to the formation of limited and incorporated limited partnerships, and rules as to their composition and size. It provides that eligible partnerships can be registered by the Director of Consumer Affairs, and that once registered, an incorporated limited partnership will have a legal existence separate from that of its partners; and the legal capacity of an individual, both in and outside Tasmania; and may sue or be sued.

Division 3 is concerned with the registration of limited and incorporated limited partnerships - who may register, how an application is to be made, the procedure on receipt of a duly made application by the Director of Consumer Affairs, the keeping of the Register, and certificates of registration.

Division 4 deals with the powers and liabilities of partners within a limited partnership. These provisions include that limited partnerships will have general partners and limited partners. General partners are responsible for the management of the partnership while limited partners are usually investors.

Division 5 deals with the powers and liabilities of partners within an incorporated limited partnership. Registration as an incorporated limited partnership will protect the limited partners from liability for the debts of the partnership provided that, subject to some allowable activities, they do not engage directly in the day-to-day management of the partnership's business. Allowable activities include the limited partner overseeing their investment, assisting in the growth of the enterprise, and ensuring that the incorporated limited partnership is being managed effectively.

Both divisions 4 and 5 provide that Tasmania-registered limited or incorporated limited partnerships respectively can operate in other jurisdictions while maintaining their

incorporation and limited liability status. The limited liability status is extended to include to limited partnerships incorporated under similar legislation in another jurisdiction. Where a statute in another jurisdiction is not similar to those in this bill, it can, for the avoidance of doubt, be prescribed by regulation (as corresponding law) to ensure recognition of those partnerships in Tasmania.

Division 6 makes a series of modifications to the law set out in what will now be parts 1 and 2 of the act. It provides that a limited partner must not take part in the management of a limited or incorporated limited partnership, and the extent to which their liability will be extended if they do. It also deals with how differences between partners in these sorts of partnerships are to be resolved, and how shares in limited and incorporated limited partnerships are to be assigned or transferred if the membership of the partnership changes.

Division 7 deals with the dissolution and cessation of the operation of limited partnerships and incorporated limited partnerships, and the winding up process for limited partnerships. The winding up provisions for incorporated limited partnerships are included in Schedule 1.

Division 8 deals with various other general matters concerning limited and incorporated limited partnerships such as service of documents, registered offices, what will constitute notice to a partnership, the making of regulations and offences.

After Part 3 there is new schedule 1 to be inserted in the act setting out the process for the winding up incorporated limited partnerships. The amendment bill also repeals the Limited Partnership Act 1908 which as noted above has been subsumed into the 1891 act.

These amendments will bring Tasmanian legislation into line with recent changes in partnerships law interstate and facilitate access to the Commonwealth's preferential tax treatment, which in turn may encourage overseas investment in Tasmania.

I commend this bill to the House.