



New South Wales

Partnership Amendment (Venture Capital) Bill 2007

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The *Tax Laws Amendment (2007 Measures No. 2) Act 2007* of the Commonwealth has made amendments to Commonwealth legislation to accommodate early stage venture capital limited partnerships (**ESVCLPs**) in its concessional venture capital tax regime. In particular, amendments were made to the *Venture Capital Act 2002* of the Commonwealth recognising ESVCLPs that are established as limited partnerships under State law. These amendments commenced on 21 June 2007.

In order to obtain concessional tax treatment under Commonwealth legislation, certain venture capital limited partnerships must be registered under the *Venture Capital Act 2002* of the Commonwealth. That Act, as amended, now recognises that the following kinds of limited venture capital partnerships may be registered:

- (a) a venture capital limited partnership (a **VCLP**),
- (b) an Australian venture capital fund of funds (an **AFOF**),
- (c) an ESVCLP.

Part 3 of the *Partnership Act 1892* currently enables an application for registration as an incorporated limited partnership to be made in circumstances where a partnership or proposed partnership is registered, or intends to apply to be registered, as a VCLP

or AFOF under the *Venture Capital Act 2002* of the Commonwealth. However, Part 3 does not currently enable an application to be made for the registration of an ESVCLP or proposed ESVCLP as an incorporated limited partnership.

The objects of this Bill are:

- (a) to amend the *Partnership Act 1892* to enable ESVCLPs and proposed ESVCLPs to be registered as incorporated limited partnerships under that Act, and
- (b) to make consequential amendments to the *Partnership Act 1892* and *Partnership Regulation 2007*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the *Partnership Act 1892* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Partnership Regulation 2007* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after it has commenced. Once the amendments that the proposed Act makes have commenced, the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Partnership Act 1892

Registration of ESVCLPs as incorporated limited partnerships

Schedule 1 [1] amends section 53D of the *Partnership Act 1892* (the *Principal Act*) to enable applications to be made for an ESVCLP or proposed ESVCLP to be registered as an incorporated limited partnership under that Act.

Schedule 1 [2] amends section 54 of the *Principal Act* to require the statement that is required for an application for the registration of an incorporated limited partnership:

- (a) in the case of an application by a partnership or persons or partnerships proposing to be partners in a partnership that intends to apply for registration as an ESVCLP under Part 2 of the *Venture Capital Act 2002* of the Commonwealth—to contain a statement that it so intends to apply, and
- (b) in the case of an application by a partnership that is registered as an ESVCLP under Part 2 of the *Venture Capital Act 2002* of the Commonwealth—to be accompanied with a copy of a document evidencing its status as an ESVCLP.

Schedule 1 [3] amends section 67A of the Principal Act to make it clear that a limited partner in an incorporated limited partnership is not 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 limited partner) 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 an ESVCLP within the meaning of that Act.

Schedule 1 [4] amends section 73E of the Principal Act:

- (a) to require an incorporated limited partnership that was incorporated on the basis that it intended to be registered as an ESVCLP under Part 2 of the *Venture Capital Act 2002* of the Commonwealth to lodge a copy of a document evidencing its status as an ESVCLP within one month after being so registered, and
- (b) to require an incorporated limited partnership whose registration as an ESVCLP under Part 2 of the *Venture Capital Act 2002* of the Commonwealth is revoked to lodge a notice that the partnership's registration under the Commonwealth Act has been revoked within 7 days after the date of revocation.

Schedule 1 [5] amends clause 3 of Schedule 1 to the Principal Act to enable the Registrar (within the meaning of that Act) to require an incorporated limited partnership to be wound up if the Registrar is satisfied that, having been incorporated on the basis that the partnership is or is intended to be registered as an ESVCLP under Part 2 of the *Venture Capital Act 2002* of the Commonwealth:

- (a) the partnership's registration under the Commonwealth Act has been revoked, or
- (b) the partnership has not within the period of 2 years after its incorporation become so registered.

Savings and transitional provisions

Schedule 1 [7] amends clause 1 of Schedule 2 to the Principal Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [9] inserts a new Part in Schedule 2 containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act. In particular, the new Part enables applications for the registration of ESVCLPs or proposed ESVCLPs as incorporated limited partnerships to be made on or after the day the Bill for the proposed Act is first introduced into Parliament. This will enable such applications to be dealt with under the Principal Act once the amendments made by the proposed Act commence. **Schedule 1 [6] and [8]** make amendments to Schedule 2 that are consequential on the insertion of this new Part.

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Explanatory note

Schedule 2 Consequential amendment of Partnership Regulation 2007

Schedule 2 makes consequential amendments to Schedule 2 (Fees) to the *Partnership Regulation 2007*.