



Speech by

**Hon. Margaret Keech**

**MEMBER FOR ALBERT**

Hansard Tuesday, 17 August 2004

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## **PARTNERSHIP AND OTHER ACTS AMENDMENT BILL**

**Hon. M.M. KEECH** (Kawana—ALP) (Minister for Tourism, Fair Trading and Wine Industry Development) (10.12 p.m.): I move—

That the bill be now read a second time.

The bill introduces an incorporated limited partnership in Queensland. This entity will be a new form of business structure which Australian and international venture capital investors in Queensland can use to access taxation exemptions and flow through taxation treatment for venture capital investment recently provided by the Australian government. The Australian venture capital fund raising industry is relatively small when compared with its United States equivalent. In 2000, Axiss Australia, a division of the Australian government's national inward investment agency, Invest Australia, reported that in 2002 the United States venture capital industry raised 115 more times the amount of capital than that raised in Australia. The venture capital industry in Australia has traditionally been small in comparison but has demonstrated steady growth over the period 1996–2000.

Venture capital is one of the main sources of funding for the biotechnology, information technology and communications sector. It is therefore a very important industry for Queensland. These industries have high research and development activities, and rely heavily on venture capital to fund these activities. The suppliers of such finance are predominantly institutional investors and specialised venture capital investment entities. The introduction of an incorporated limited partnership, together with the Australian government's taxation reform, will create an environment in Queensland that will encourage further international investment in these sectors. It will strengthen Queensland's growing venture capital fund raising and management industries.

Since 1992, the Australian government taxed the income of limited partnerships in the same manner as the income of companies under the corporations legislative framework. However, in late 2002, the Australian government enacted the Venture Capital Act 2002 and the tax Laws Amendment (Venture Capital) Act 2002. These acts set up a new taxation regime for venture capital investment in Australia through the use of limited partnerships. These provide for capital gains exemptions and flow through taxation treatment on the income from venture capital investment earned through a limited partnership. The taxation of such venture capital funding entities is internationally recognised as world's best practice. These Commonwealth acts established a regime with the Australian government Pooled Development Fund Board for the registration of venture capital limited partnerships and Australian venture capital fund of funds. These entities will be incorporated limited partnerships initially formed in Queensland.

A venture capital limited partnership is the investment vehicle used to make direct eligible venture capital investments into Queensland companies under the Commonwealth registration and taxation regimes. An Australian venture capital fund of funds will make investments in a range of venture capital limited partnerships in order to diversify investors' funds. The Commonwealth acts also established a venture capital management partnership within the taxation regime. A venture capital management partnership will be an incorporated limited partnership formed in Queensland and will manage the businesses of venture capital limited partnerships and Australian venture capital fund of funds.

Internationally, limited partnerships are the preferred investment vehicle for venture capital investment. However, these associations have their own separate legal identity that provides full protection from liability for their limited partner investors. Queensland's partnership law does not presently provide for such a business structure. To align Queensland's venture capital investment structures with this international practice, the bill will therefore establish an incorporated limited partnership as a new type of body corporate with a separate legal identity from that of its investor partners. An incorporated limited partnership will consist of at least one general partner and at least one limited partner. The general partner will be responsible for the management of the business of the incorporated limited partnership, while the limited partner will only be obliged to commit an agreed amount of capital or property to the business. As the incorporated limited partnership will be a separate legal entity, it will be responsible for all of its debts and obligations. However, the bill also provides that where an incorporated limited partnership cannot meet those debts or obligations, the general partner must meet that shortfall.

Given the lateness of the hour, I seek leave to have the rest of my speech incorporated in *Hansard*.

Leave granted.

A limited partner will have no liability for the debts or obligations of the business. The 'trade off' for this protection from liability will be that the limited partner will be prohibited from taking part in the management of the business. The Bill does however provide for certain circumstances in which a limited partner can participate in the management of the business. These exceptions will allow a limited partner investor to monitor and oversee the way in which that investor's money is used.

Apart from these situations, if a limited partner does participate in the management of the business of the incorporated limited partnership, the limited partner will be treated the same way as a general partner and must satisfy those debts and obligations that cannot be met by the incorporated limited partnership itself.

The Bill provides for three ways an incorporated limited partnership may be wound up. The body may be wound up voluntarily, through the direction of the chief executive, or if it is unable to pay its debts, it is just and equitable or in the public interest to do so, it may wound up under specific provisions of the Commonwealth Corporations Act 2001.

The Bill will place Queensland in an identical position to New South Wales and Victoria, the only two other jurisdictions that have passed equivalent venture capital investment provisions in their partnership legislation. It will ensure that Queensland can attract further Australian and international investment by providing the legal structure most suitable to access the Australian Government's venture capital investment taxation exemptions and 'flow through' taxation treatment.

#### MINOR TECHNICAL AMENDMENTS TO OTHER ACTS

In addition to the creation of an incorporated limited partnership, the Bill makes some minor and technical amendments to 4 Acts administered by the Office of Fair Trading. Currently, the Service Delivery and Development Division of my department performs the registry functions under the Business Names Act 1962, Bills of Sale and Other Instruments Act 1955, Liens on Crops of Sugar Cane Act 1931 and the Motor Vehicles and Boat Securities Act 1986.

Registry functions include receiving applications for the registration of business names and security interests, seeking further information in relation to these applications and removing particulars from the relevant registers.

It is proposed that a number of departmental officers performing these functions are transferred to the Smart Service Queensland project presently run by the Department of Communities. Smart Service Queensland is the project that aims to provide Queenslanders with a 'front door' to government transactions, information and referrals through the Internet, phone and face-to-face customer service. Essentially, the aim is to provide Queenslanders with one point of contact with all their dealings with government.

In order to ensure that officers transferred out of the department to the SSQ project can continue to perform functions under these Acts, minor and technical amendments are required to the powers of delegation for these functions. The power to delegate functions under these Acts currently refer to 'officers of the department' and 'offices of the department'. This means that the power to delegate is restricted to officers employed by my department and offices in my department.

The Bill will amend these Acts to ensure that the power to delegate registry functions extends to another public service employee and that all other provisions in these Acts referring to officers or employees of my department are consistent with the change in the power to delegate.

I commend the Bill to the House.