



**Small Business
Development Corporation**

Our ref: D14/155

Ms Penny Lipscombe
Director, Legislation and Policy
Discussion Paper – proposed reforms to limited partnership laws
Consumer Protection Division
Department of Commerce
Locked Bag 14
Cloisters Square PO
PERTH WA 6850

Dear Ms Lipscombe

Proposed reforms to limited partnership laws

The Small Business Development Corporation (“SBDC”) welcomes the opportunity to provide this submission to the Department of Commerce’s consultation on the “Proposed Reforms to Limited Partnership Laws”.

The SBDC is an independent statutory authority of the Western Australian (“WA”) Government and was established in 1984 to facilitate the development and growth of small businesses in this State. One of the SBDC’s key strategic objectives is to advocate for a fair, conducive and productive operating environment for small businesses in WA. The SBDC strives to achieve this by taking a leading role in influencing the policy and regulatory environment for small business.

The SBDC provides policy advice regarding small business issues through submissions and consultation with government agencies and regulators. This advice is informed by statistical data gathered internally and from external sources; as well as through direct interaction with WA small business owners over the past 30 years. This information forms the basis of this submission.

In the SBDC’s experience, a limited partnership is currently not a structure favoured for operating a small business in WA. Of the 18,561 enquiries received by the SBDC in the 2012-13¹ financial year, only one related to limited partnerships. To date this financial year, only two enquiries have been received regarding limited partnerships.

¹ Small Business Development Corporation 2013, *Annual Report*. Available from SBDC [16 January 2014].

This data is consistent with the relatively low number of limited partnerships registered in WA, as reported in the Consultation Paper.²

The modernization of the *Limited Partnership Act 1909 (WA)* is supported by the SBDC and it is our belief that the reforms will bring about positive changes in WA by encouraging venture capital investment and reducing red tape. The expected increased investment in WA businesses is likely to facilitate greater innovation, new technologies, export opportunities and enhanced employment outcomes for the sector to the benefit of the State's economy in general.

The SBDC is generally supportive of legislative reform that reduces the regulatory burden on small business, facilitates investment in WA and, where applicable, achieves national consistency. In the SBDC's opinion, the reforms suggested in the Consultation Paper will achieve all of these outcomes.

Reduce the regulatory burden on businesses:

The proposed changes will make it easier for those wishing to set up incorporated limited partnerships in WA. Businesses will consequently be afforded the opportunity to register an incorporated limited partnership in WA without compromising eligibility for Commonwealth Government programs and funding. This would reduce the administrative burden and costs that a business would face trading in WA through a registered office in another jurisdiction.

Facilitates investment in WA:

The uncertainty surrounding the liability of limited partners in WA is a deterrent to venture capitalists wanting to invest in this type of business structure. By recognizing the incorporated limited partnership structure and including a definition of liability in the legislation, the proposed reforms would increase protection for limited partners. As such, the proposal will assist in removing some of the barriers preventing investment in WA by venture capitalists.

Achieves national consistency:

By modernizing the legislation and including mutual recognition provisions for limited liability, the proposed reforms will bring WA in line with the rest of the nation (and internationally) in terms of current investment practices and preferences.

However, the SBDC also supports the inclusion of restrictions on insolvents, persons convicted of offences involving fraud or dishonesty of a kind punishable with imprisonment for three or more months, and persons convicted of an offence and serving a term of imprisonment, from being a general partner or being involved in the promotion or management of a limited partnership.

² Department of Commerce 2013, *Consultation Discussion Paper Proposed Reforms to Limited Partnership Laws*, Government of Western Australia, Available from: , <http://www.commerce.wa.gov.au/consumerprotection/PDF/DiscussionPapers/LtdPartnershipsReviewNov13.pdf> [16 January 2014].

Concerns about the circumvention of restrictions on registering incorporated limited partnerships in WA have also been considered by the SBDC. Whilst the lack of restrictions in other States and Territories may be a loophole in the WA legislation, the SBDC believes that the practical implications of registering a limited partnership in a different jurisdiction and trading in WA will act as enough of a barrier to dissuade people from pursuing this course of action. As mentioned in the Consultation Paper, this would involve additional time, effort and money.

Furthermore, the introduction of such a restriction in the WA legislation may also lead to other Australian jurisdictions following suit in adopting similar provisions in future reviews of their partnership laws.

Should you wish to discuss the SBDC's submission in further detail, please contact Ms Darcy Bosch (Senior Policy and Advocacy Officer) on 6552 3308 or via email at darcy.bosch@smallbusiness.wa.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Eaton', written over a horizontal dashed line.

David Eaton
SMALL BUSINESS COMMISSIONER

3 February 2014