

CLAUSE NOTES

PARTNERSHIP AMENDMENT BILL 2009

- Clause 1:** Short Title
- Clause 2:** Commencement.
- Clause 3:** Principal Act
- Clause 4:** Inserts a heading (PART 1 – PRELIMINARY) before section 1 of the Act.
- Clause 5:** Repeals section 4 (Interpretation) of the Principal Act and replaces it with updated Limited Partnerships Act 1908, and definitions relating to limited and incorporated limited partnerships.
- Clause 6:** Inserts a heading ('PART 2 - PARTNERSHIPS GENERALLY) after section 5 of the Act
- Clause 7:** Inserts a Division heading into the new Part 2 (Division 1 – Nature of Partnership).
- Clause 8:** Inserts a new subsection in section 6 to include an 'incorporated limited partnership' in the definition of 'partnership'.
- Clause 9:** Inserts a new subsection in section 7 excluding incorporated limited partnerships from the section containing rules determining the existence of a partnership.
- Clause 10:** Inserts a Division heading into the new Part 2 (Division 2 – relationships of partners to persons dealing with them).
- Clause 11:** Repeals sections 10 to 23 of the Principal Act and replaces them with new sections covering similar issues but setting out provisions which in most cases have application to general, limited and incorporated limited partnerships. The new sections continue unchanged the current provisions of the repealed sections of the same number but incorporate appropriate related sections from the Limited Partnerships Act and insert new provisions relating to incorporated limited partnerships:
- New section 10 provides that every partner in a general partnership, and every general partner in a limited partnership or incorporated limited partnership, has the power to bind the partnership, except in certain circumstances.

- New section 11 provides that an act or instrument relating to a partnership done or executed in the name of the partnership or in any other manner showing an intention to bind the partnership is binding on the partnership and all the general partners.
- New section 12 provides that partnerships are not bound by a partner using the credit of the partnership for a purpose not connected with the business of the partnership, unless specially authorised by the partnership.
- New section 13 provides that where partners have agreed that a partnership is not to be bound by the acts of a particular partner or partners, the firm will not be bound by any agreement with persons having notice of that agreement.
- New section 14 provides that general partners making up a general partnership or who are part of an incorporated limited partnership will be jointly liable for debts and obligations of the partnership whilst they are a partner and after their death their estate will be severally liable for such debts and obligations subject to prior payment of any separate debts.
- New section 15 provides that the partnership firm is liable for the wrongs of general partners where the wrongs were caused in the ordinary course of business or with the authority of the co-partners, except in certain circumstances where the general partners is acting as a director of a body corporate under the Corporations Act 2001 of the Commonwealth. It also applies a similar approach to incorporated limited partnerships (ss 3 & 40
- New section 16 provides that where a general partner or a general or incorporated limited partnership misapplies money or property received for the partnership, the partnership is to make good the loss.
- New section 17 provides that every general partner is jointly and severally liable with every other general partner for everything for which the partnership becomes liable under sections 15 and 16.
- New section 18 provides that where there is improper use of trust property for partnership purposes by a general partner who is a trustee, neither the partnership nor any other partner is liable for the trust property to persons beneficially interested in that property. This does not include liability incurred by a general partner by reason of them having notice of a breach or trust, and also does not prevent recovery of trust money held by the partnership.
- New section 19 provides that of persons who represent or allow themselves to be represented as a partner in a partnership will be liable as a partner in the case of a general partnership, and as a general partner in the case of a limited or incorporated

limited partnership where a person reliant on that representation gives credit to the partnership. This applies whether the representation has been made to the person giving credit by or with the knowledge of the person represented as a partner. The exception is where a partner has died and the partnership continues to use the same name or the deceased partner's name; in those cases the estate will not be liable for partnership debts contracted after the death.

- New section 20 provides that admissions or representations of partners (other than limited partners) concerning the partnership's affairs and in the ordinary course of its business will be evidence against a partnership.
- New section 21 provides that notice to a partner (other than a limited partner) is to be considered notice to the partnership, except where there is a fraud on the partnership committed by or with the consent of the partner.
- New section 22 provides that a person admitted as partner or general partner into an existing partnership does not become liable for anything done before the person becomes a partner, and a partner retiring from a partnership does not cease to be liable for the liabilities incurred before the retirement. A retiring partner may be discharged from liabilities by an agreement between the retiring partner, the new partnership and the creditors.
- New section 23 provides that a continuing guarantee given to a third person or firm by a partnership (other than an incorporated limited partnership) is automatically revoked (unless there is an agreement to the contrary) by any change to the constitution of the partnership.

Clause 12: Inserts a new Division heading into the new Part 2 (Division 3 – Relationship between Partners). While amending a number of sections of the existing Act most changes in the new Division 3 are to dis-apply the current provisions to incorporated limited partnerships.

Clause 13: Inserts a new subsection (4) in section 25 to the effect that the section (containing the rules about partnership property) does not apply to incorporated limited partnerships (covered by new s 25A).

Clause 14: Inserts new section 25A, dealing with partnership property of incorporated limited partnerships.

Clause 15: Repeals section 27, and substitutes a new section (subsection 1 is the same as the existing section) adding a new subsection which excludes its application to incorporated limited partnerships.

- Clause 16:** Inserts a new subsection (4) in section 28 (which deals with, proceedings against partnership property for a partner's separate judgement debt) to exclude the section from applying to incorporated limited partnerships.
- Clause 17:** Amends section 29 (which deals with rules as to interests and duties of partners subject to special agreements), and adds a new subsection which excludes its application to incorporated limited partnerships.
- Clause 18:** Inserts a subsection in section 31 (which deals with the rules about retiring from a partnership at will) to exclude its application to incorporated limited partnerships.
- Clause 19:** Inserts a new subsection (3) in section 32 (which deals with a partnership made for a term which is continued past the date) to exclude its application to incorporated limited partnerships.
- Clause 20:** Repeals section 33 (regarding the duty of partners in all sorts of partnerships to render accounts), and substitutes a new section to include a provision to cover incorporated limited partnerships.
- Clause 21:** Inserts a new subsection in section 34 (regarding the accountability of partners for private profits) to exclude the application of the section to incorporated limited partnerships.
- Clause 22:** Repeals section 35 (regarding the duty of a partner not to compete with the partnership), and substitutes a new section which includes a provision to exclude the application of the section to incorporated limited partnerships.
- Clause 23:** Inserts a subsection in section 36 (regarding the rights of the assignee of a share in a partnership) to exclude the application of the section to incorporated limited partnerships.
- Clause 24:** Inserts a Division heading into the new Part 2 (Division 4 – Dissolution of Partnership).
- Clause 25:** Inserts a new section 36A that provides that Division 4 does not apply to incorporated limited partnerships.
- Clause 26:** Amends section 41(2) of the Act to correct an error affecting the meaning of the section.

Clause 27: Inserts a new Part 3 and Schedule 1 covering limited partnerships and incorporated limited partnerships, including the following matters:

- New section 50 provides that Parts 1 and 2 of the Act apply to this Part unless otherwise stated in the Act.
- New section 51 provides that limited partnerships and incorporated limited partnerships are formed on registration (includes the provisions previously found in section 5 of the Limited Partnerships Act 1908).
- New section 52 provides the minimum requirements for the composition of a limited partnership or incorporated limited partnership and allows partnerships and corporations to be partners.
- New section 53 provides the limits on the number of members of a limited partnership or incorporated limited partnership.
- New section 54 provides that an incorporated limited partnership is considered a body corporate and a separate legal entity from the partners that make it up.
- New section 55 provides for the powers able to be exercised by an incorporated limited partnership.
- New section 56 provides that there must always be a written partnership agreement between the partners in an incorporated limited partnership, and what binding effect this agreement has on the parties.
- New section 57 provides for the relationship of partners in incorporated limited partnerships to others and between themselves.
- New section 58 prescribes who may apply for registration as a limited partnership or an incorporated limited partnership and brings in the requirements in relation to Venture Capital Limited Partnerships etc.
- New section 59 provides the form and other requirements for an application for registration (includes the provisions previously found in section 8 of the Limited Partnerships Act 1908).
- New section 60 describes the responsibility of the Director of Consumer Affairs and Fair Trading (the Director) to register limited partnerships and incorporated limited partnerships.
- New section 61 provides that acts done in preparation for registration do not of themselves constitute a partnership.
- New section 62 provides the procedure to be followed where there has been a change in the registered particulars of a partnership (includes the provisions previously found in section 9 of the Limited Partnerships Act 1908).
- New section 63 provides for the keeping of a Register of Limited Partnership and Incorporated Limited Partnerships by the Director and making it publicly available (includes the provisions previously found in section 14 of the Limited Partnerships Act 1908).
- New section 64 provides for the certificate of registration to be issued by the Director where a limited or incorporated limited partnership is registered, changed or corrected, and the evidentiary weight of such a

certificate (includes the provisions previously found in section 13 of the Limited Partnerships Act 1908).

- New section 65 provides that a limited or incorporated limited partnership is not required to register a business name under the Business Names Act 1962 if their registered name is to be the firm name (includes the provisions previously found in section 10 of the Limited Partnerships Act 1908)..
- New section 66 provides that the liability of a limited partner is limited to the amount shown in the Register.
- New section 67 provides for the effect of a change of liability being recorded in the Register – a reduction in the nominated liability does not affect existing liabilities of the partner.
- New section 68 provides for the effect of a change in the status of partners – becoming a limited partner does not affect pre-existing obligations.
- New section 69 provides that limitations liability also apply in respect of business conducted by a Tasmanian registered partnership outside the State (includes the provisions previously found in section 12 of the Limited Partnerships Act 1908).
- New section 70 provides for recognition of limitations on the liability of members of limited partnerships formed under corresponding laws (includes the provisions previously found in section 12A of the Limited Partnerships Act 1908).
- New section 71 provides that the previous provisions in relation to business conducted outside the State do not extend the liability of a limited partner further than it would be extended if the same business was conducted within the State.
- New section 72 provides that contributions towards the discharge of debts or obligations of a limited partnership must be in money only, and if all or any part of that contribution is given back to the limited partner liability is restored accordingly.
- New section 73 provides that statutory provisions relating to limitation of liability of a limited partner cannot be varied by a partnership agreement.
- New section 74 provides that a limited partner has no liability for the liabilities to either an incorporated limited partnership or a general partner other than to the extent of the nominated contribution in the agreement.
- New section 75 provides for the effect of a change in the status of partners from general partner to limited partner and vice versa - becoming a limited partner does not affect preexisting obligations.
- New section 76 deals with the liability of a limited partner in an incorporated limited partnership in respect of conduct, acts or omissions outside the State.
- New section 77 provides for recognition of limitations of liability for incorporated limited partnerships formed under corresponding laws in other jurisdictions.

- New section 78 provides that the previous provisions in relation to business conducted outside the State by a limited partner do not extend liability further than it would be extended if the same business was conducted within the State.
- New section 79 provides that a limited partner is not to take part in the management of a limited partnership – taking part removes the limits on liability and the person is treated as a general partner (includes some of the provisions previously found in section 6 of the Limited Partnerships Act 1908).
- New section 80 similarly provides that a limited partner is not to take part in the management of an incorporated limited partnership but because of the different structures the limited partner has some different rights than a limited partner in an ordinary limited partnership.
- New section 81 provides that a difference arising as to ordinary matters in a limited partnership may be decided by a majority of the general partners and extends the provisions to incorporated limited partnership (includes some of the provisions previously found in section 6 of the Limited Partnerships Act 1908).
- New section 82 provides rules relating to transfers and assignments of partner's interests in limited and incorporated limited partnerships.
- New section 83 provides that dissolution of the partnership is not available in certain cases.
- New section 84 provides for the cessation of limited partnerships where there is no longer a limited partner.
- New section 85 provides for the registration of dissolution or cessation of limited partnerships.
- New section 86 provides that the winding up of a limited partnership is to be carried out by the general partners of the partnership unless a Court orders otherwise.
- New section 87 provides that the winding up of an incorporated limited partnership is to be carried out in accordance with Schedule 1 (below).
- New section 88 describes ways for an incorporated limited partnership to execute a document, including a deed.
- New section 89 provides that a person is entitled to make assumptions about matters under section 90 – (eg, assumptions about compliance with the partnership agreement, about the authority of general partners).
- New section 90 provides that a person may make assumptions about an incorporated limited partnership - that a partnership agreement has been complied with, and a series of assumptions about persons who appear to be, or are held out to be, general partners of the partnership, and relating to the due execution of documents.
- New section 91 provides that certain documents relating to the status of an incorporated limited partnership as a Venture Capital Limited Partnership etc must be lodged with the Director within one month of registration, and makes failure to lodge documents an offence.

- New section 92 provides that the regulations may prescribe a model limited partnership agreement which can be adopted by reference by a partnership.
- New section 93 provides that on documents issued by a partnership the initials 'L.P.' must be used to designate a limited partnership, and 'I.L.P' to designate an incorporated limited partnership.
- New section 94 provides that limited partnerships and incorporated limited partnerships must keep a registered office in Tasmania.
- New section 95 provides that service of documents can be achieved by leaving a document at or sending a document to the registered office of the partnership.
- New section 96 provides that an entry in the Register of a fact concerning the partnership will constitute notice to anyone dealing with the partnership, and also has effect for the purposes of section 41.
- New section 97 makes providing false or misleading document to the Director an offence.
- New section 98 provides that where the Act provides that a general partner in a limited partnership or an incorporated limited partnership is guilty of an offence, general partner is to be taken to mean each partner in the partnership, unless the partner has limited liability. This section also applies to partnerships which are partners in another partnership and includes a defence of reasonable precautions and due diligence for proceeding brought under this section.
- New section 99 allows the Director to require information from an incorporated limited partnership. The incorporated limited partnership must furnish the information in the period allowed, and to furnish information that is false or misleading is an offence.
- New section 100 contains the regulation making power and provides a list of matters about which regulations may be made (includes the provisions previously found in section 16 of the Limited Partnerships Act 1908).
- New section 101 provides that a matter dealt with under the Act may be wholly or partially excluded from coverage by the Corporations Act 2001 of the Commonwealth by regulations made under this Act.
- New Schedule 1 holds the procedure for winding up incorporated limited partnerships. It includes 9 clauses:
 - Clause 1 provides definitions for 'assets' of an incorporated limited partnership and the meaning of 'special resolution' for the purposes of the Schedule.
 - Clause 2 sets out the process for voluntarily winding up an incorporated limited partnership, if the partnership agreement sets out terms to do so, or by a special resolution of the partners. Persons aggrieved by the operation of the section have recourse to the Supreme Court.
 - Clause 3 provides that the Director may require an incorporated limited partnership to show good cause why it

should not be wound up. If the partnership is unable to satisfy the Director, the Director may publish a notice in the Gazette requiring that the incorporated limited partnership be wound up. A partnership may also be wound up where it has failed to meet the requirements of a Venture Capital Limited Partnership, Australian Venture Capital Fund of Funds, Early Stage Venture Capital Limited Partnership or Venture Capital Management Partnership.

- Clause 4 provides that a person whom is affected by the decision to publish a notice under clause 3 may apply to the Supreme Court for a review of the decision. It also provides the time in which this application is to be made, and the options open to the Court upon review.
- Clause 5 provides the time in which the winding up must commence after the gazettal of the notice or unsuccessful review of the decision to gazette the notice. It also provides that the Director may appoint a liquidator, who need not be a registered liquidator under the Corporations Act 2001 of the Commonwealth, and the duties and powers of the liquidator. The costs of winding up are payable out of the property of the incorporated limited partnership.
- Clause 6 provides that where a partnership agreement sets out how assets are to be dealt with upon winding up, the assets are to be dealt with in that manner. In any other case the assets are to be distributed among the partners in shares proportionate to their respective contributions of capital or property to the partnership.
- Clause 7 provides that the winding up of an incorporated limited partnership, other than a voluntary winding up or a winding up required on a certificate of the Director under clause 3, is declared to be an 'applied Corporations legislation matter' for the purposes of Part 3 of the Corporations (Ancillary Provisions) Act 2001 in relation to the provisions of Part 5.7 (Winding up bodies other than companies) of the Corporations Act 2001 of the Commonwealth and that Part applies as if the incorporated limited partnership were a Part 5.7 body within the meaning of that Act, subject to some textual modifications. Accordingly, the Australian Securities and Investment Commission (ASIC) may perform a function under this Commonwealth legislation, pursuant to an arrangement of the kind referred to in section 11 (8) or (9A) (b) of the Australian Securities and Investments Commission Act 2001 of the Commonwealth and the Commission is authorised to perform that function under section 11 of that Act. Any functions under the Commonwealth legislation that refer to

ASIC, unless specifically mentioned above, are to be read as referring to the Director under this Act.

- Clause 8 provides that an incorporated limited partnership is to notify the Director of the commencement (or special resolution) and completion of winding up, and the Director must record the receipt of these notices on the Register. Clause 8 also makes a failure to notify the Director in this way an offence on the part of each general partner of the incorporated limited partnership.
- Clause 9 provides that the Director must cancel the incorporation of the partnership by notice in the Gazette after winding up, and record the cancellation of the incorporation in the Register. Clause 9 confirms that the incorporated limited partnership ceases to exist on the cancellation of incorporation.

Clause 28: Provides that the Limited Partnerships Act 1908 (in Schedule 1), is repealed.