

# Partnership (Limited Partnerships) Bill

No.

## TABLE OF PROVISIONS

### *Clause*

1. Purpose
2. Commencement
3. Principal Act
4. Parts of Principal Act
5. New Part 3 inserted

### **PART 3—LIMITED PARTNERSHIPS**

#### **Division 1—Preliminary**

49. Definitions and application of Parts 1 and 2
50. Composition of limited partnership
51. Size of limited partnership
52. How formed

#### **Division 2—Designated partnerships**

53. Order by Minister

#### **Division 3—Registration of limited partnerships**

54. Application for registration
55. Registration of limited partnership
56. Changes in registered particulars
57. Register of Limited Partnerships
58. Certificates of registration etc.
59. Business Names Act 1962 not to apply

#### **Division 4—Limitation of liability of limited partners**

60. Liability of limited partner limited to amount shown in Register
61. Change in liability of limited partner
62. Change in status of partners
63. Liability for business conducted outside the State
64. Liability for limited partnerships formed under corresponding laws
65. Contribution towards discharge of debts etc.
66. Limitation on liability may not be varied by partnership agreement etc.

#### **Division 5—Other modifications of general law of partnership**

67. Limited partner not to take part in management of partnership
68. Differences between partners
69. Change in partners

#### **Division 6—Dissolution and cessation of limited partnerships**

70. Dissolution not available in certain cases

- 71. Cessation of limited partnerships
- 72. Registration of dissolution of cessation of limited partnership
- 73. Winding up by general partners

**Division 7—Interests in partnerships**

- 74. Regulations relating to interests

**Division 8—Miscellaneous provisions**

- 75. Identification of limited partnerships
- 76. Registered office
- 77. Service
- 78. Entry in Register constitutes notice
- 79. Giving false or misleading information
- 80. Regulations

# LEGISLATIVE ASSEMBLY

---

Read 1° 15 April 1992

*(Brought in by Mr Kennan and Ms Kirner)*

## A BILL

to amend the **Partnership Act 1958** to provide for limited partnerships.

### **Partnership (Limited Partnerships) Act 1992**

The Parliament of Victoria enacts as follows:

1. *Purpose*

The purpose of this Act is to make provision for limited partnerships.

5 2. *Commencement*

This Act comes into operation on a day or days to be proclaimed.

3. *Principal Act*

10

In this Act, the **Partnership Act 1958** is called the **Principal Act**.

---

Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)

N . 6330.  
Reprinted  
N . 7315 and  
subsequently  
am ended by  
Nos 110/1986,  
46/1987,  
55/1987 and  
19/1989.

*Partnership (Limited Partnerships)*

**4. *Parts of Principal Act***

In the Principal Act—

(a) before section 1 insert—

**“PART 1—PRELIMINARY”;**

(b) for the heading before section 5 substitute— 5

**“PART 2—PARTNERSHIPS GENERALLY**

**Division 1—Nature of Partnerships”;**

(c) for the heading before section 9 substitute—

**“Division 2—Relationship of partners to persons  
dealing with them”;** 10

(d) for the heading before section 23 substitute—

**“Division 3—Relationship between partners”;**  
(e) for the heading before section 36 substitute—

**“Division 4—Dissolution of partnership”.**

**5. *New Part 3 inserted*** 15

After section 48 of the Principal Act insert—

**“PART 3—LIMITED PARTNERSHIPS**

**Division 1—Preliminary**

**49. *Definitions and application of Parts 1 and 2***

(1) In this Part— 20

**“Commissioner”**, subject to sub-section (2),  
means the Commissioner for Corporate  
Affairs;

“**general partner**” means a partner in a limited partnership who is not a limited partner;

5 “**limited partner**” means a partner in a limited partnership whose liability to contribute to the debts or obligations of the partnership is limited in accordance with this Part;

“**limited partnership**” means a partnership formed in accordance with this Part;

10 “**Register**” means the Register of Limited Partnerships kept under this Part.

(2) If there is in force an agreement or arrangement made with the Australian Securities Commission under section 11 (8) of the Australian Securities Commission Act 1989 of the Commonwealth, as amended and in force for the time being, for the performance of the functions and exercise of the powers of the Commissioner by the Australian Securities Commission, a reference in this Part to the Commissioner is to be taken to be a reference to that Commission.

(3) Parts 1 and 2 of this Act apply to limited partnerships, except as provided by this Part.

**50. *Composition of limited partnership***

25 (1) A limited partnership is a partnership consisting of—

(a) at least one general partner; and

(b) at least one limited partner.

(2) A body corporate may be a general partner or a limited partner.

30 **51. *Size of limited partnership***

(1) A limited partnership may have any number of limited partners.

(2) The number of general partners must not (if the

*Partnership (Limited Partnerships)*

partnership consisted only of those general partners) result in the partnership being an outside partnership for the purposes of section 112 of the Corporations Law.

**52. How formed** 5

A limited partnership is formed on the registration of the partnership under this Part as a limited partnership.

**Division 2—Designated partnerships**

**53. Order by Minister** 10

(1) An application for the designation of a partnership as a partnership that satisfies the requirements for limited partnerships may be made—

- (a) for the purposes of the registration of the partnership under Division 3; or 15
- (b) in the case of a partnership formed outside the State, for the purposes of recognition under section 64.

(2) The requirements for a limited partnership are as follows: 20

(a) The dominant purpose of the limited partnership must be the acquisition, construction, financing, management or operation of facilities or the provision of services; 25

- (b) The facilities or services must be facilities or services—
    - (i) of a kind likely to benefit the public in Victoria; and
    - (ii) that are for transport by land, air or sea, the supply of water, the provision of sewerage services, the provision of waste management facilities, the generation, distribution, transmission or supply of electricity, gas or other 30
- 35

energy, the provision of public health care, the provision of public education or the provision of public amenities or services for the public; and

5

(iii) the acquisition, construction, financing, management, operation or provision of which is required by, or under, an Act of the State or the Commonwealth, or by or under an agreement entered into or to be entered into by the limited partnership with another person.

10

(3) An application for an order under this section may be made by lodging with the Commissioner a statement signed by each partner, or proposed partner, of the reasons why the partnership satisfies or would satisfy, the requirements for a limited partnership set out in sub-section (2).

15

(4) If the Commissioner is of the opinion that an application under this section should be approved, the Commissioner may make a recommendation to that effect to the Minister.

20

(5) If the Minister is satisfied that the partnership, or proposed partnership, satisfies, or would satisfy, the requirements for limited partnerships set out in sub-section (2), the Minister may, by order published in the Government Gazette, designate the partnership as such a partnership.

25

30

**Division 3—Registration of limited partnerships**

**54. *Application for registration***

(1) An application for the registration as a limited partnership of a partnership that is designated under Division 2 is made by lodging with the Commissioner in accordance with this Part a statement signed by each partner or proposed partner.

35

*Partnership (Limited Partnerships)*

- (2) The statement must be in the form approved by the Commissioner and must contain the following particulars—
- (a) the firm-name;
  - (b) particulars of the order under Division 2 designating the partnership; 5
  - (c) the full address in Victoria of the office or, if there is more than one office, the principal office, of the firm (to be called the “registered office” of the partnership); 10
  - (d) the full name of each partner;
  - (e) the full address of each partner, being (in the case of an individual) his or her principal place of residence or (in the case of a body corporate) its registered office or principal place of business; 15
  - (f) a statement in relation to each partner as to whether that partner is a general partner or a limited partner;
  - (g) a statement in relation to each limited partner to the effect that he or she, or it, is a limited partner whose liability to contribute is limited to the extent of the amount specified in the statement (being the amount of any capital, or the value of any property, that the limited partner has agreed to contribute to the partnership); 25
  - (h) such other particulars as are required by the regulations or by the approved form of statement. 30

**55. Registration of limited partnership**

- (1) If an application for registration of a limited partnership has been made in accordance with section 54, the Commissioner must register the limited partnership. 35
- (2) However, the limited partnership must not be registered if the Commissioner is of the opinion



that the firm-name would not be eligible for registration as a business name under the **Business Names Act 1962**.

- 5 (3) Registration is effected by recording in the Register the particulars in the statement lodged with the Commissioner.

**56. Changes in registered particulars**

- 10 (1) If any change occurs in relation to the registered particulars of a limited partnership, a statement setting out the changed particulars must be lodged with the Commissioner within 7 days after the change occurred.

- (2) The statement must be signed—

15 (a) by all the general partners, or by a general partner authorised by all the general partners for the purposes of this section; and

20 (b) if the change relates to the admission of a limited partner or a change in the liability of a limited partner to contribute, by the limited partner concerned.

- 25 (3) The statement must be in the form approved by the Commissioner and contain the particulars required by the regulations or the approved form of statement.

- 30 (4) If the statement is duly lodged, the Commissioner must record the change in the Register as soon as possible, unless as a result of the change the partnership is not eligible to be registered as a limited partnership.

- (5) If sub-section (1) is not complied with, each general partner of the limited partnership is guilty of an offence.

Penalty: 10 penalty units.

**57. Register of Limited Partnerships**

- (1) The Commissioner must keep a register of limited partnerships registered under this Part (to be called the “Register of Limited Partnerships”).
- (2) The Register may be kept in such form as the Commissioner thinks fit. 5
- (3) The Commissioner must make the information recorded in the Register available for public inspection at the office of the Commissioner during the ordinary business hours of that office. 10

**58. Certificates of registration etc.**

- (1) The Commissioner, at the time of registering a limited partnership or of recording a change in the composition of a limited partnership, must issue to the general partners a certificate as to the formation and composition at that time of the limited partnership. 15
- (2) The Commissioner may, on application, issue to the applicant a certificate as to the formation and composition of a limited partnership or as to any other particulars recorded in the Register. 20
- (3) A certificate under this section is to be in such form as the Commissioner thinks fit.
- (4) A certificate under this section—
  - (a) as to the formation of a limited partnership, is conclusive evidence that the limited partnership was formed on the date of registration referred to in the certificate; and 25
  - (b) as to the composition of a limited partnership, is (unless the contrary is established) conclusive evidence that the partnership consisted at the relevant time of the general partners and limited partners named in the certificate; and 30 35

- (c) as to any other particular of a limited partnership recorded in the Register, is (unless the contrary is established) conclusive evidence of that particular.

5           **59. *Business Names Act 1962 not to apply***

The **Business Names Act 1962** does not apply so as to require the partners in a limited partnership to register a business name if that name is the firm-name registered under this Part.

10           **Division 4—Limitation of liability of limited partners**

**60. *Liability of limited partner limited to amount shown in Register***

- 15           (1) The liability of a limited partner to contribute to the debts or obligations of the limited partnership is (subject to this Part) not to exceed the amount shown in relation to the limited partner in the Register as the extent to which the limited partner is liable to contribute.
- 20           (2) If a limited partner makes a contribution towards the debts or obligations of the limited partnership, the liability of the limited partner is reduced to such part of the amount shown in the Register as remains unpaid.

**61. *Change in liability of limited partner***

- 25           (1) Any reduction in the liability of a limited partner caused by a reduction in the relevant amount shown in the Register in relation to the partner does not extend to any debt or obligation of the limited partnership that arose before the reduction is recorded in the Register.
- 30           (2) Any increase in the liability of a limited partner caused by an increase in the relevant amount shown in the Register in relation to the partner extends to any debt or obligation of the limited

*Partnership (Limited Partnerships)*

partnership that arose before the increase is recorded in the Register.

**62. *Change in status of partners***

- (1) If a general partner becomes a limited partner, the limitation on liability does not extend to any debt or obligation of the limited partnership that arose before the partner became a limited partner. 5
- (2) If a limited partner becomes a general partner, the limitation on liability no longer extends to any debt or obligation of the limited partnership that arose before the partner became a general partner. 10

**63. *Liability for business conducted outside the State***

The limitation on the liability of a limited partner extends to any debt or obligation incurred in connection with the conduct of the partnership's business outside the State. 15

**64. *Liability for limited partnerships formed under corresponding laws***

- (1) In this section— 20

“**corresponding law**” means a law of another State, a Territory or another country that is declared by Order of the Governor in Council published in the Government Gazette to be a corresponding law for the purposes of this Part; 25

“**recognised limited partnership**” means a partnership—

- (a) formed in accordance with a corresponding law; and 30
- (b) designated by order under Division 2.

- (2) Any limitation under a corresponding law on the

liability of a limited partner in a recognised limited partnership extends to any debt or obligation incurred in connection with the conduct of the partnership's business in this State.

5 (3) The law of another State or a Territory may not  
be declared to be a corresponding law unless the  
Minister has certified to the Governor in Council  
that under that law the limitation of liability of  
10 limited partners in a limited partnership formed  
in accordance with this Part and registered or  
otherwise recognised under that law extends to  
any debt or obligation incurred in connection with  
the conduct of the partnership's business in that  
State or Territory.

15 (4) The law of another country may not be declared  
to be a corresponding law unless the Minister has  
certified to the Governor in Council that the law  
provides for the limitation of liability for partners  
in certain partnerships.

20 **65. *Contribution towards discharge of debts etc.***

(1) Any contribution made by a limited partner  
towards the discharge of the debts or obligations  
of a limited partnership must be made in the form  
of money only.

25 (2) If the whole or any part of such a contribution is  
received back by the limited partner, the liability  
of the limited partner is restored accordingly.

**66. *Limitation on liability may not be varied by  
partnership agreement etc.***

30 The provisions of this Part relating to the  
limitation on the liability of a limited partner  
may not be varied by the partnership agreement  
or the consent of the partners.

**Division 5—Other modifications of general law of partnership**

**67. Limited partner not to take part in management of partnership**

- (1) A limited partner must not take part in the management of the business of the limited partnership and does not have power to bind the limited partnership. 5
- (2) If a limited partner takes part in the management of the business of the limited partnership, the limited partner is liable, as if the partner were a general partner, for the debts and obligations of the partnership incurred while the limited partner takes part in the management of that business. 10
- (3) A limited partner is not to be regarded as taking part in the management of the business of the limited partnership merely because the limited partner— 15
  - (a) is an employee or an independent contractor of the partnership or of a general partner, or is an officer of a general partner that is a body corporate; or 20
  - (b) gives advice to, or on behalf of, the limited partnership or a general partner in the proper exercise of functions arising from the engagement of the limited partner in a professional capacity or arising from business dealings between the limited partner and the partnership or a general partner; or 25 30
  - (c) gives a guarantee or indemnity in respect of any debt or obligation of the partnership or of a general partner; or
  - (d) takes any action, or participates in any action by any other limited partner, for the purpose of enforcing rights, or safeguarding interests as a limited partner; or 35

(e) if authorised by the partnership agreement, gives advice or expresses opinions at general meetings of all the partners; or

5 (f) exercises any power conferred on the limited partner by sub-section (4).

(4) A limited partner or a person authorised by the limited partner may at any time—

10 (a) have access to and inspect the books of the partnership and copy any of them; and

(b) examine the state and prospects of the business of the partnership and advise and consult with other partners in relation to such matters.

15 (5) The provisions of this section may not be varied by the partnership agreement or the consent of the partners.

**68. *Differences between partners***

20 (1) A difference arising as to ordinary matters connected with the business of a limited partnership may be decided by a majority of the general partners.

25 (2) The provisions of this section may be varied by the partnership agreement or the consent of the partners.

**69. *Change in partners***

30 (1) A limited partner may, with the consent of the general partners, assign the limited partner's share in the limited partnership. In that case the assignee is taken to be a limited partner in substitution for the assignor with all the rights and obligations of the assignor.

35 (2) A person may be admitted as a partner in a limited partnership without the necessity to obtain the consent of any limited partner.

*Partnership (Limited Partnerships)*

- (3) The provisions of this section may be varied by the partnership agreement or the consent of the partners.

**Division 6—Dissolution and cessation of limited partnerships**

5

**70. *Dissolution not available in certain cases***

- (1) Subject to the terms of any agreement between the partners in a limited partnership—
  - (a) a limited partner is not entitled to dissolve the partnership by notice; and 10
  - (b) the general partners or the other limited partners are not entitled to dissolve the partnership because a limited partner has allowed the limited partner’s share of the partnership property to be charged for the limited partner’s separate debts or obligations; and 15
  - (c) the death, bankruptcy or retirement or, in the case of a body corporate, the dissolution, of a limited partner does not dissolve the partnership. 20
- (2) The fact that a limited partner in a limited partnership is declared to be of unsound mind and incapable of managing his or her affairs is not a ground for dissolution of the partnership by a Court unless the share and interest of the partner in the partnership cannot be otherwise ascertained or realised. 25

**71. *Cessation of limited partnerships***

- (1) A partnership ceases to be a limited partnership if— 30
  - (a) the Minister makes an order under sub-section (3) declaring the partnership not be a designated partnership; or



(b) none of the partners is a limited partner;  
or

(c) the partners agree that they will carry on  
the business of the partnership otherwise  
than as a limited partnership.

(2) If a limited partnership ceases to be a limited  
partnership and the forming members of the  
partnership or some of them continue in  
association or partnership, that association or  
partnership is no longer taken to be formed in  
accordance with this Part.

(3) If the Minister is satisfied that a partnership has  
ceased to be eligible to be designated as a  
partnership satisfying the requirements referred  
to in Division 2, the Minister may by order  
published in the Government Gazette declare the  
partnership not to be a designated partnership.

(4) The Minister must not make an order under  
sub-section (3) unless—

(a) he or she has given the partnership at least  
90 days notice in writing of intention to  
make the order; and

(b) he or she has given the partnership an  
opportunity to be heard.

**72. *Registration of dissolution or cessation of limited  
partnership***

(1) If a limited partnership—

(a) is dissolved; or

(b) ceases to carry on business—

the general partners who were registered  
immediately before the dissolution or cessation  
must, as soon as practicable, lodge with the  
Commissioner a notice of the dissolution or  
cessation, specifying the date on which it took  
effect.

(2) The notice must be in the form approved by the

*Partnership (Limited Partnerships)*

Commissioner and contain the particulars required by the regulations or the approved form of notice.

(3) The Commissioner is required to record in the Register the fact of the dissolution or cessation and the date on which it took effect. 5

(4) If sub-sections (1) and (2) are not complied with, each general partner in the limited partnership concerned is guilty of an offence.

Penalty: 10 penalty units. 10

**73. *Winding up by general partners***

If the affairs of a limited partnership are to be wound up by the partners with a view to its dissolution, the winding up is to be carried out by the general partners unless a Court otherwise orders. 15

**Division 7—Interests in partnerships**

**74. *Regulations relating to interests***

(1) The regulations may make provision for or with respect to— 20

(a) interests in partnerships which are the subject of an offer, invitation or issue by a limited partnership; and

(b) the making of any such offer, invitation or issue. 25

(2) Regulations under sub-section (1) may include regulations based on Parts 7.11 and 7.12 of the Corporations Law of Victoria.

**Division 8—Miscellaneous provisions**

**75. Identification of limited partnerships**

- 5 (1) In this section, “document” includes any letter, notice, publication, written offer, contract, order for goods or services, invoice, bill of exchange, promissory note, cheque, negotiable instrument, endorsement, letter of credit, receipt and statement of account.
- 10 (2) Any document issued on behalf of a limited partnership in connection with the conduct of the partnership’s business must contain in legible letters the words “A Limited Partnership” immediately adjacent to its firm-name.
- 15 (3) A person who—  
(a) issues or authorises the issue of a document in contravention of this section; or  
(b) being a general partner in the limited partnership concerned—is aware that  
20 documents are being issued in contravention of this section—  
is guilty of an offence.  
Penalty: 20 penalty units.
- 25 (4) The certificate of registration of a limited partnership must be displayed at all times in a conspicuous position at the registered office of the partnership.
- 30 (5) If the certificate of registration is not so displayed, each general partner is guilty of an offence.  
Penalty: 20 penalty units.

**76. Registered office**

- (1) A limited partnership must keep in Victoria (at the place shown in the Register as the address of the registered office of the firm) an office to which

*Partnership (Limited Partnerships)*

all communications with the partnership may be addressed.

- (2) The regulations may prescribe the hours during which the registered office is to be open and accessible to the public. 5
- (3) If sub-section (1) is not complied with, each general partner in the limited partnership concerned is guilty of an offence.

Penalty: 10 penalty units.

**77. Service** 10

- (1) Without affecting any other method of serving documents on partners in a partnership, a document concerning the business of a limited partnership may be duly served on the partners if it is left at, or sent by post addressed to, the registered office of the firm for the time being shown in the Register. 15
- (2) This section does not apply to a document relating to proceedings before a court.

**78. Entry in Register constitutes notice** 20

An entry in the Register of any particular fact concerning a limited partnership, including an entry stating the effect of any notice received by the Commissioner—

- (a) is sufficient notice of the fact or of the effect of the notice to all persons who deal with the partnership; and 25
- (b) has effect, for the purposes of section 40 (2), as if it were an advertisement in the Government Gazette. 30

**79. Giving false or misleading information**

A person who, under this Part, provides the Commissioner with a document that the person knows is false or misleading in a material

particular (whether by way of a statement in the document or by an omission from the document) is guilty of an offence.

Penalty: 60 penalty units or imprisonment for 6 months, or both.

5

**80. Regulations**

(1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.

10

(2) In particular, the regulations may make provision for or with respect to the fees required to accompany a statement under this Part or the fees payable for the inspection of the Register or for the supply of certificates of information recorded in the Register.”.

15





