



New South Wales

Partnership Amendment Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Partnership Act 1892* to protect a firm from liability for a partner's wrongful act or omission when the partner is acting as a director of a body corporate (including a company) in certain circumstances.

Section 10 of that Act provides that a firm is liable for a partner's wrongful act or omission when "acting in the ordinary course of the business of the firm, or with the authority of the partner's co-partners".

The Bill provides that for the purposes of that provision a partner who commits a wrongful act or omission as a director of a body corporate is not to be taken to be "acting in the ordinary course of the business of the firm or with the authority of the partner's co-partners" *only* because:

- (a) the partner obtained the agreement of the co-partners, or some of them, to be appointed or to act as a director, or
 - (b) remuneration received as a director forms part of the income of the firm, or
 - (c) any co-partner is also a director of that or any other body corporate.
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Other factors can be taken into consideration, with the result that the firm may be liable under section 10 for the partner's act or omission on additional or other grounds. The amendments do not affect other provisions of the Act imposing liability on partners.

The amendments are similar to amendments made to section 14 of the *Partnership Act 1958* of Victoria.

To deal with the phasing in of the amendments, a new section 82 is proposed to be inserted in the Act. The effect of this section is that, while the proposed amendments can operate by reference to matters arising before the commencement of the proposed Act, they will not apply to wrongful acts and omissions occurring before that commencement.

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.

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

Schedule 1 contains the amendments to the *Partnership Act 1892* referred to in the Overview above.

First print



New South Wales

Partnership Amendment Bill 1998

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Partnership Act 1892 55 Vic No 12	2
 Schedule 1 Amendments	 3



New South Wales

Partnership Amendment Bill 1998

No. , 1998

A Bill for

An Act to amend the *Partnership Act 1892* in relation to the liability of a firm for wrongful acts or omissions of a partner committed as a director of a body corporate.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Partnership Amendment Act 1998*.

2 Commencement

This Act commences on the date of assent.

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3 Amendment of Partnership Act 1892 55 Vic No 12

The *Partnership Act 1892* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 10 Liability of the firm for wrongs

Omit "Where". Insert instead "Subject to subsection (2), where".

[2] Section 10 (2)

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Insert at the end of section 10:

(2) For the purposes of subsection (1), a partner who commits a wrongful act or omission as a director of a body corporate, within the meaning of the *Corporations Law*, is not to be taken to be acting in the ordinary course of the business of the firm or with the authority of the partner's co-partners only because of any one or more of the following:

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(a) the partner obtained the agreement or authority of the partner's co-partners, or some of them, to be appointed or to act as a director of the body corporate,

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(b) remuneration that the partner receives for acting as a director of the body corporate forms part of the income of the firm,

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(c) any co-partner is also a director of that or any other body corporate.

[3] Part 4

Insert after Part 3:

Part 4 Miscellaneous

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82 Application of amendments

(1) This section applies to section 10 as amended by the *Partnership Amendment Act 1998*.

Partnership Amendment Bill 1998

Schedule 1 Amendments

- (2) Section 10 (2) does not apply to wrongful acts or omissions of the kind referred to in that subsection and that occurred before the commencement of that Act.
- (3) Section 10 (2) (a), (b) and (c) extend to acts, matters and things of the kind referred to in those paragraphs and that occurred before the commencement of that Act.

5