

FIRST PRINT

**PARTNERSHIP (LIMITED PARTNERSHIP) AMENDMENT  
BILL 1991**

NEW SOUTH WALES



**EXPLANATORY NOTE**

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Partnership Act 1892 to allow the formation of limited partnerships. A limited partnership is a partnership consisting of at least one limited partner (being a partner whose liability to contribute to the debts or obligations of the partnership is limited generally to the amount of capital contributed by the limited partner to the partnership) and at least one general partner (being a partner whose liability is not so limited).

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation.

Clause 3 gives effect to the Schedules of amendments.

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**SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP**

Schedule 1 inserts at the end of the Partnership Act 1892 a new Part dealing with limited partnerships. The new Part is divided as follows:

Division 1 (proposed sections 49 and 50) contains definitions for the purposes of the new Part and provides that the other Parts of the Partnership Act 1892 apply to limited partnerships except as provided by the new Part.

Division 2 contains provisions relating to the nature and formation of limited partnerships. In particular:

- proposed section 51 provides that a limited partnership is a partnership consisting of at least one general partner and at least one limited partner (either of which may be a corporation);
- proposed section 52 provides that a limited partnership may consist of any number of limited partners (the number of general partners is restricted to the maximum number permissible under the Corporations Law);

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- proposed section 53 provides that a limited partnership is formed on the registration of the partnership.

Division 3 contains provisions relating to the registration of limited partnerships. In particular:

- proposed section 54 provides that application for registration of a limited partnership is made by lodging a statement (signed by each proposed partner) of the particulars of the partnership, including a statement in relation to each limited partner that he or she is a 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);
- proposed section 55 provides that the registration of a limited partnership is effected by recording, in the Register of Limited Partnerships, the statement that is lodged with the Registrar (being the person who keeps the Register of Business Names);
- proposed section 56 provides that, if any change occurs in relation to the registered particulars of a limited partnership, a statement setting out the changes must be lodged with the Registrar;
- proposed section 57 requires the Registrar to keep a Register of Limited Partnerships which is to be available for public inspection;
- proposed section 58 requires the Registrar to issue a certificate as to the formation and composition of a limited partnership at the time of registration or when a change is recorded;
- proposed section 59 provides that the partners of a limited partnership are not required to register a business name under the Business Names Act 1962 if that name is the firm-name registered under the new Part.

Division 4 contains provisions relating to the limitation of liability of limited partners. In particular:

- proposed section 60 provides that the liability of a limited partner to contribute to the debts or obligations of the limited partnership is not to exceed the amount shown in relation to the limited partner in the Register as the extent to which the partner is liable to contribute;
- proposed section 61 provides that if the relevant amount shown in the Register in relation to a limited partner is reduced, any previous liability of the partner is not also reduced;
- proposed section 62 provides for the change of liability of a general partner who becomes a limited partner or of a limited partner who becomes a general partner;
- proposed section 63 provides that the limitation on the liability of a limited partner extends to debts or obligations incurred in connection with the conduct of the partnership's business outside New South Wales;
- proposed section 64 provides for the recognition in New South Wales of any limitation on the liability of a limited partner in a limited partnership formed under a corresponding law (being a law of another State, a Territory or another country declared by the regulations);
- proposed section 65 provides that a limited partner is to contribute towards the discharge of debts or obligations of a limited partnership in the form of money only;

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- proposed section 66 prevents the provisions relating to the limitation on the liability of a limited partner from being varied by the partnership agreement or by the consent of the partners.

Division 5 contains other modifications of the general law of partnership. In particular:

- proposed section 67 provides that (with certain exceptions) a limited partner is not to take part in the management of the partnership;
- proposed section 68 provides that differences relating to the business of a limited partnership may be decided by a majority of the general partners;
- proposed section 69 provides that a limited partner may (with the consent of the general partners) assign the partner's share in the partnership to another person and provides that the consent of the limited partners is not required for the admission of a new partner.

Division 6 contains provisions dealing with the dissolution and cessation of limited partnerships. In particular:

- proposed section 70 provides that a limited partnership is not dissolved by the death or bankruptcy etc. of a limited partner or because a limited partner wishes to dissolve the partnership;
- proposed section 71 enables a limited partnership to become an ordinary partnership;
- proposed section 72 provides that if a limited partnership is dissolved or ceases to carry on business, the general partners must lodge a notice of the dissolution or cessation with the Registrar.

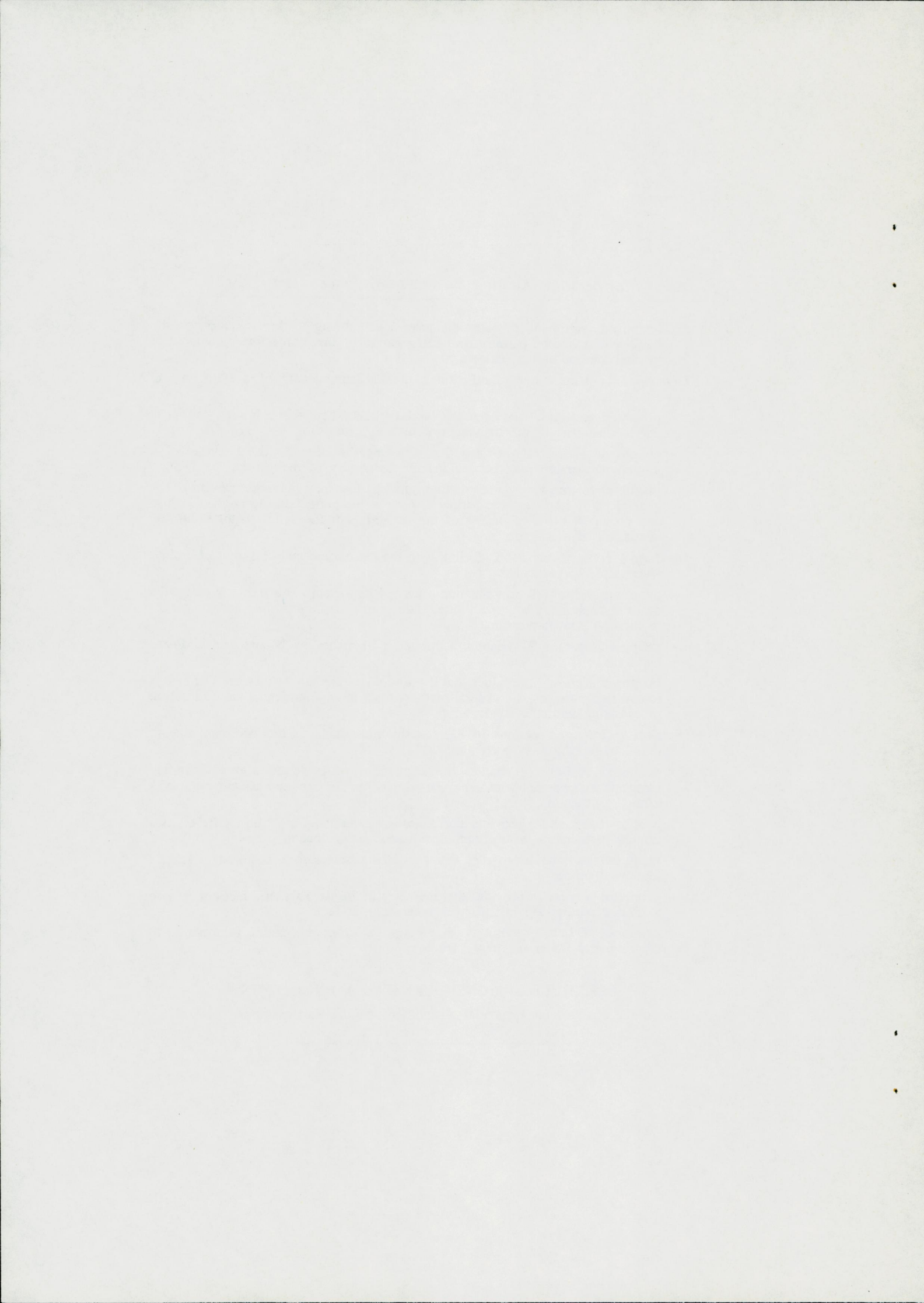
Division 7 (proposed sections 74–81) contains miscellaneous provisions relating to limited partnerships. In particular:

- proposed section 74 enables the regulations to prescribe a model limited partnership agreement which may be adopted as the partnership agreement of a limited partnership;
- proposed section 75 provides that a limited partnership must be identified as a limited partnership in any document issued on its behalf;
- proposed section 76 provides that a limited partnership is required to keep a registered office;
- proposed section 78 provides that the entry in the Register of a fact concerning a limited partnership is sufficient notice of the fact;
- proposed section 79 prohibits the giving of false or misleading information to the Registrar under the new Part.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENTS**

Schedule 2 contains consequential amendments to the Partnership Act 1892.

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FIRST PRINT

**PARTNERSHIP (LIMITED PARTNERSHIP) AMENDMENT  
BILL 1991**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Partnership Act 1892, 55 Vic. No. 12

**SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP**

**SCHEDULE 2—CONSEQUENTIAL AMENDMENTS**

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**PARTNERSHIP (LIMITED PARTNERSHIP) AMENDMENT  
BILL 1991**

NEW SOUTH WALES



No. , 1991

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**A BILL FOR**

An Act to amend the Partnership Act 1892 to provide for limited partnerships.

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The Legislature of New South Wales enacts:

**Short title**

1. This Act may be cited as the Partnership (Limited Partnership) Amendment Act 1991.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Partnership Act 1892, 55 Vic. No. 12**

3. The Partnership Act 1892 is amended as set out in Schedules 1 and 2.

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**SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP**

(Sec. 3)

At the end of the Act, insert:

**PART 3—LIMITED PARTNERSHIPS**

**Division 1—Preliminary**

**Definitions**

49. In this Part:

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

“**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;

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

“**Registrar**” means the person who keeps the Register of Business Names under the Business Names Act 1962.



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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

**Application to limited partnerships of general law  
relating to partnership**

50. The other Parts of this Act apply to limited partnerships, except as provided by this Part.

**Division 2—Nature and formation of  
limited partnership**

**Composition of limited partnership**

51. (1) A limited partnership is a partnership consisting of:

- (a) at least one general partner; and
- (b) at least one limited partner.

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

**Size of limited partnership**

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

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

**How formed**

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

**Division 3—Registration of limited partnerships**

**Application for registration**

54. (1) An application for the registration of a limited partnership is made by lodging with the Registrar in accordance with this Part a statement signed by each proposed partner.

(2) The statement must be in the form approved by the Registrar and must contain the following particulars:

- (a) the firm-name;
- (b) the full address in New South Wales of the office or, if there is more than one office, the principal office of the

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

- firm (to be called the “registered office” of the partnership);
- (c) a statement that the partnership is to be a limited partnership;
  - (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 corporation) its registered office or principal place of business;
  - (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 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);
  - (h) such other particulars as are required by the regulations or by the approved form of statement.

**Registration of limited partnership**

55. (1) If an application for registration of a limited partnership has been duly made, the Registrar is to register the limited partnership.

(2) However, the limited partnership is not to be registered if the Registrar is of the opinion that the firm-name would not be eligible for registration as a business name under the Business Names Act 1962.

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

**Changes in registered particulars**

56. (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 Registrar within 7 days after the change occurred.

(2) The statement must be signed:

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

- (a) by all the general partners or by a general partner authorised by all the general partners for the purposes of this section; and
  - (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.
- (3) The statement must be in the form approved by the Registrar and contain the particulars required by the regulations or the approved form of statement.
- (4) If the statement is duly lodged, the Registrar is to record the change in the Register, unless as a result of the change the partnership is not eligible to be registered as a limited partnership.
- (5) If subsection (1) is not complied with, each general partner of the limited partnership is guilty of an offence.

Maximum penalty: 10 penalty units.

**Register of Limited Partnerships**

57. (1) The Registrar is required to 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 Registrar thinks fit.

(3) The Registrar must make the information recorded in the Register available for public inspection at the office of the Registrar during the ordinary business hours of that office.

**Certificates of registration etc.**

58. (1) The Registrar must, at the time of registering a limited partnership or of recording a change in the composition of a limited partnership, issue to the general partners a certificate as to the formation and composition at that time of the limited partnership.

(2) The Registrar 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.

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

(3) A certificate under this section is to be in such form as the Registrar 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
- (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
- (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.

**Business Names Act 1962 not to apply**

59. 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.

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

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

60. (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.

(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.

**Change in liability of limited partner**

61. (1) Any reduction in the liability of a limited partner caused by a reduction in the relevant amount shown in the

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

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.

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

**Change in status of partners**

62. (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.

(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.

**Liability for business conducted outside the State**

63. 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.

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

64. (1) In this section:

“**corresponding law**” means a law of another State, a Territory or another country that is declared by the regulations to be a corresponding law for the purposes of this Part;

“**recognised limited partnership**” means a partnership formed in accordance with a corresponding law.

(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.

(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:

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

- (a) that the provisions of the law are similar to the provisions of this Part; and
- (b) that under that law the limitation of liability of limited partners in a limited partnership formed in accordance with this Part extends to any debt or obligation incurred in connection with the conduct of the partnership's business in that State or Territory.

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

**Contribution towards discharge of debts etc.**

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

(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.

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

66. 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**

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

67. (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.

(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.

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

(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:

- (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 corporation; or
- (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
- (c) gives a guarantee or indemnity in respect of any debt or obligation of the partnership or of a general partner; or
- (d) participates in any action by other limited partners for the purpose of enforcing their rights or safeguarding their interests as limited partners; or
- (e) if authorised by the partnership agreement, participates in general meetings of all the partners; or
- (f) exercises any power conferred on the limited partner by subsection (4).

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

- (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.

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

**Differences between partners**

68. (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.

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

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

**Change in partners**

69. (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.

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

(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**

**Dissolution not available in certain cases**

70. (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
- (b) the general partners or the other limited partners are not entitled to dissolve the partnership because a limited partner has allowed his or her share of the partnership property to be charged for his or her separate debts or obligations; and
- (c) the death, bankruptcy or retirement or, in the case of a corporation, the dissolution of a limited partner does not dissolve the partnership.

(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.



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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

**Cessation of limited partnerships**

71. (1) A partnership ceases to be a limited partnership if none of the partners is a limited partner or 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.

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

72. (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 Registrar a notice of the dissolution or cessation, specifying the date on which it took effect.

Maximum penalty: 10 penalty units.

(2) The notice must be in the form approved by the Registrar and contain the particulars required by the regulations or the approved form of notice.

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

**Winding up by general partners**

73. 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.

**Division 7—Miscellaneous provisions**

**Model limited partnership agreement**

74. (1) The regulations may prescribe a model limited partnership agreement or model limited partnership agreements.

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

(2) The partnership agreement of a limited partnership may adopt any such model agreement (or any part of it) whether as in force at a particular time or as in force from time to time.

**Identification of limited partnerships**

75. (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.

(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.

(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 documents are being issued in contravention of this section,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(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.

(5) If the certificate of registration is not so displayed, each general partner is guilty of an offence.

Maximum penalty: 20 penalty units.

**Registered office**

76. (1) A limited partnership must keep in New South Wales (at the place shown in the Register as the address of the registered office of the firm) an office to which 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.

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

(3) If subsection (1) is not complied with, each general partner in the limited partnership concerned is guilty of an offence.

Maximum penalty: 10 penalty units.

**Service**

77. (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.

(2) This section does not apply to a document relating to proceedings before a Court.

**Entry in Register constitutes notice**

78. 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 Registrar:

- (a) is sufficient notice of the fact or of the effect of the notice to all persons who deal with the partnership; and
- (b) has effect, for the purposes of section 36 (2), as if it were an advertisement in the Gazette.

**Giving false or misleading information**

79. A person who, under this Part, provides the Registrar 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.

Maximum penalty: 50 penalty units.

**Criminal proceedings**

80. Proceedings for an offence against this Part are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

81. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(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.

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS

(Sec. 3)

- (1) The whole Act (**Italicised headings to sections**):  
Omit the italicised headings before sections 1, 5, 19, 32 and 45.
- (2) Part 1 and Part 2, heading:  
Before section 1, insert:

**PART 1—PRELIMINARY**

**Short title**

1A. This Act may be cited as the Partnership Act 1892.

**Definitions**

1B. In this Act:

“**business**” includes trade, occupation and profession;

“**Court**” means the court having jurisdiction in the case concerned.

**PART 2—PARTNERSHIPS GENERALLY**

**Division 1—Nature of partnership**

- (3) Section 1 (**Definition of partnership**):  
Omit section 1 (2) (a), insert instead:  
(a) incorporated under the Corporations Law; or
- (4) Part 2, Division 2, heading:  
Before section 5, insert:

**Division 2—Relationship of partners to persons dealing with them**

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SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

- (5) Part 2, Division 3, heading:  
Before section 19, insert:  
**Division 3—Relationship between partners**
- (6) Part 2, Division 4, heading:  
Before section 32, insert:  
**Division 4—Dissolution of partnership**
- (7) Section 45 (**Definitions of “Court” and “business”**):  
Omit the section.
- (8) Part 2, Division 5, heading:  
Before section 46, insert:  
**Division 5—Miscellaneous provisions**
- (9) Section 48 (**Short title**):  
Omit the section.
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FIRST PRINT

**PARTNERSHIP (LIMITED PARTNERSHIP) AMENDMENT  
BILL 1991 (No. 2)**

NEW SOUTH WALES



**EXPLANATORY NOTE**

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Partnership Act 1892 to allow the formation of limited partnerships. A limited partnership is a partnership consisting of at least one limited partner (being a partner whose liability to contribute to the debts or obligations of the partnership is limited generally to the amount of capital contributed by the limited partner to the partnership) and at least one general partner (being a partner whose liability is not so limited).

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation.

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- proposed section 51 provides that a limited partnership is a partnership consisting of at least one general partner and at least one limited partner (either of which may be a corporation);
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- proposed section 59 provides that the partners of a limited partnership are not required to register a business name under the Business Names Act 1962 if that name is the firm-name registered under the new Part.

Division 4 contains provisions relating to the limitation of liability of limited partners. In particular:

- proposed section 60 provides that the liability of a limited partner to contribute to the debts or obligations of the limited partnership is not to exceed the amount shown in relation to the limited partner in the Register as the extent to which the partner is liable to contribute;
- proposed section 61 provides that if the relevant amount shown in the Register in relation to a limited partner is reduced, any previous liability of the partner is not also reduced;
- proposed section 62 provides for the change of liability of a general partner who becomes a limited partner or of a limited partner who becomes a general partner;
- proposed section 63 provides that the limitation on the liability of a limited partner extends to debts or obligations incurred in connection with the conduct of the partnership's business outside New South Wales;
- proposed section 64 provides for the recognition in New South Wales of any limitation on the liability of a limited partner in a limited partnership formed under a corresponding law (being a law of another State, a Territory or another country declared by the regulations);
- proposed section 65 provides that a limited partner is to contribute towards the discharge of debts or obligations of a limited partnership in the form of money only;



*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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- proposed section 66 prevents the provisions relating to the limitation on the liability of a limited partner from being varied by the partnership agreement or by the consent of the partners.

Division 5 contains other modifications of the general law of partnership. In particular:

- proposed section 67 provides that (with certain exceptions) a limited partner is not to take part in the management of the partnership;
- proposed section 68 provides that differences relating to the business of a limited partnership may be decided by a majority of the general partners;
- proposed section 69 provides that a limited partner may (with the consent of the general partners) assign the partner's share in the partnership to another person and provides that the consent of the limited partners is not required for the admission of a new partner.

Division 6 contains provisions dealing with the dissolution and cessation of limited partnerships. In particular:

- proposed section 70 provides that a limited partnership is not dissolved by the death or bankruptcy etc. of a limited partner or because a limited partner wishes to dissolve the partnership;
- proposed section 71 enables a limited partnership to become an ordinary partnership;
- proposed section 72 provides that if a limited partnership is dissolved or ceases to carry on business, the general partners must lodge a notice of the dissolution or cessation with the Registrar.

Division 7 (proposed sections 74–81) contains miscellaneous provisions relating to limited partnerships. In particular:

- proposed section 74 enables the regulations to prescribe a model limited partnership agreement which may be adopted as the partnership agreement of a limited partnership;
- proposed section 75 provides that a limited partnership must be identified as a limited partnership in any document issued on its behalf;
- proposed section 76 provides that a limited partnership is required to keep a registered office;
- proposed section 78 provides that the entry in the Register of a fact concerning a limited partnership is sufficient notice of the fact;
- proposed section 79 prohibits the giving of false or misleading information to the Registrar under the new Part.

#### SCHEDULE 2—CONSEQUENTIAL AMENDMENTS

Schedule 2 contains consequential amendments to the Partnership Act 1892.

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FIRST PRINT

**PARTNERSHIP (LIMITED PARTNERSHIP) AMENDMENT  
BILL 1991 (No. 2)**

NEW SOUTH WALES

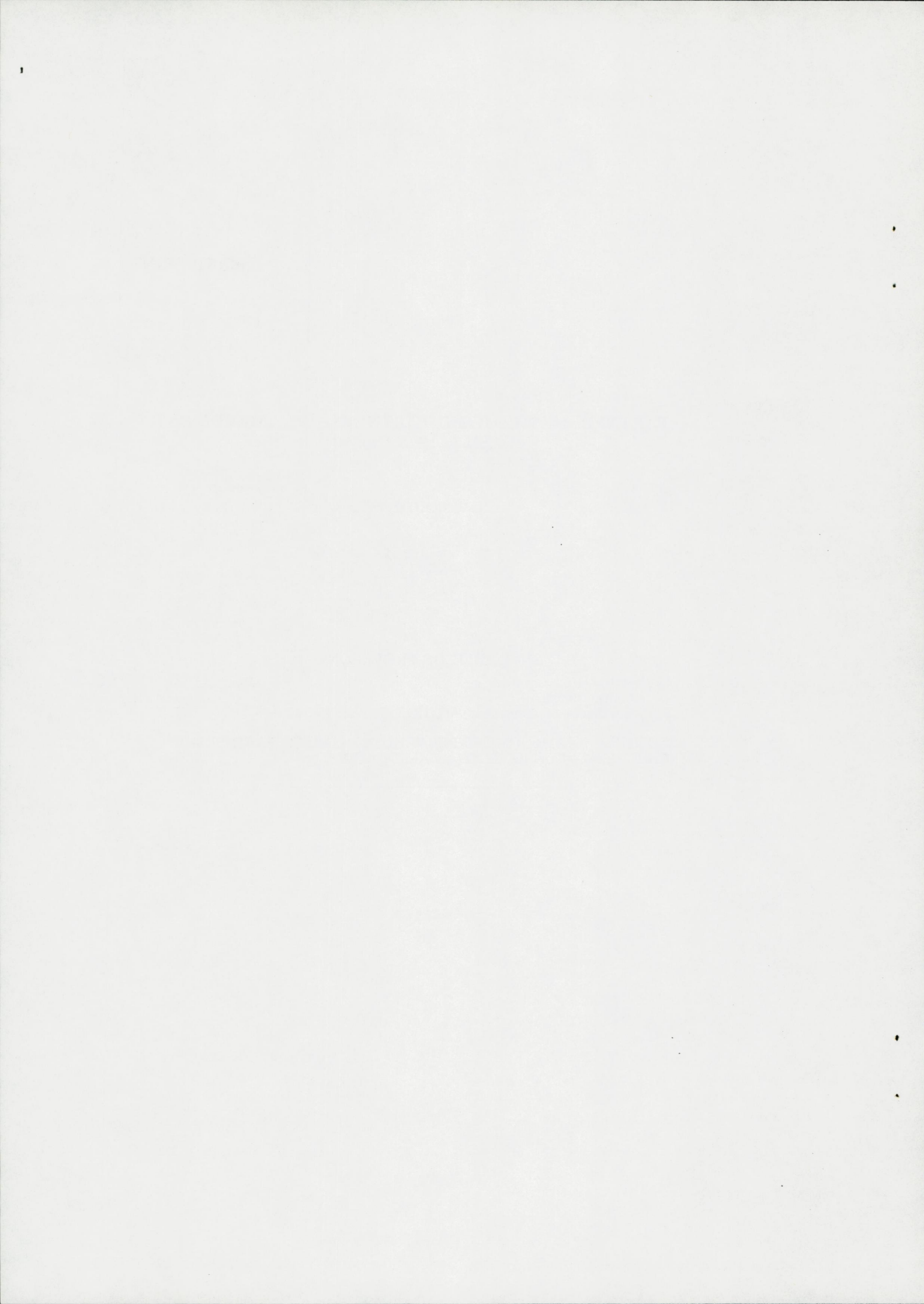


**TABLE OF PROVISIONS**

1. Short title
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**SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP**  
**SCHEDULE 2—CONSEQUENTIAL AMENDMENTS**

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**PARTNERSHIP (LIMITED PARTNERSHIP) AMENDMENT  
BILL 1991 (No. 2)**

NEW SOUTH WALES



No. , 1991

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**A BILL FOR**

An Act to amend the Partnership Act 1892 to provide for limited partnerships.

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*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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The Legislature of New South Wales enacts:

**Short title**

1. This Act may be cited as the Partnership (Limited Partnership) Amendment Act 1991.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Partnership Act 1892, 55 Vic. No. 12**

3. The Partnership Act 1892 is amended as set out in Schedules 1 and 2.

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**SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP**

(Sec. 3)

At the end of the Act, insert:

**PART 3—LIMITED PARTNERSHIPS**

**Division 1—Preliminary**

**Definitions**

49. In this Part:

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

“**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;

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

“**Registrar**” means the person who keeps the Register of Business Names under the Business Names Act 1962.

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

**Application to limited partnerships of general law  
relating to partnership**

50. The other Parts of this Act apply to limited partnerships, except as provided by this Part.

**Division 2—Nature and formation of  
limited partnership**

**Composition of limited partnership**

51. (1) A limited partnership is a partnership consisting of:

- (a) at least one general partner; and
- (b) at least one limited partner.

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

**Size of limited partnership**

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

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

**How formed**

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

**Division 3—Registration of limited partnerships**

**Application for registration**

54. (1) An application for the registration of a limited partnership is made by lodging with the Registrar in accordance with this Part a statement signed by each proposed partner.

(2) The statement must be in the form approved by the Registrar and must contain the following particulars:

- (a) the firm-name;
- (b) the full address in New South Wales of the office or, if there is more than one office, the principal office of the

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

firm (to be called the “registered office” of the partnership);

- (c) a statement that the partnership is to be a limited partnership;
- (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 corporation) its registered office or principal place of business;
- (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 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);
- (h) such other particulars as are required by the regulations or by the approved form of statement.

**Registration of limited partnership**

55. (1) If an application for registration of a limited partnership has been duly made, the Registrar is to register the limited partnership.

(2) However, the limited partnership is not to be registered if the Registrar is of the opinion that the firm-name would not be eligible for registration as a business name under the Business Names Act 1962.

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

**Changes in registered particulars**

56. (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 Registrar within 7 days after the change occurred.

(2) The statement must be signed:



*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

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

(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.

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

(4) If the statement is duly lodged, the Registrar is to record the change in the Register, unless as a result of the change the partnership is not eligible to be registered as a limited partnership.

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

Maximum penalty: 10 penalty units.

**Register of Limited Partnerships**

57. (1) The Registrar is required to 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 Registrar thinks fit.

(3) The Registrar must make the information recorded in the Register available for public inspection at the office of the Registrar during the ordinary business hours of that office.

**Certificates of registration etc.**

58. (1) The Registrar must, at the time of registering a limited partnership or of recording a change in the composition of a limited partnership, issue to the general partners a certificate as to the formation and composition at that time of the limited partnership.

(2) The Registrar 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.

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

(3) A certificate under this section is to be in such form as the Registrar 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
- (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
- (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.

**Business Names Act 1962 not to apply**

59. 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.

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

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

60. (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.

(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.

**Change in liability of limited partner**

61. (1) Any reduction in the liability of a limited partner caused by a reduction in the relevant amount shown in the

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

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.

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

**Change in status of partners**

62. (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.

(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.

**Liability for business conducted outside the State**

63. 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.

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

64. (1) In this section:

“**corresponding law**” means a law of another State, a Territory or another country that is declared by the regulations to be a corresponding law for the purposes of this Part;

“**recognised limited partnership**” means a partnership formed in accordance with a corresponding law.

(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.

(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:

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

- (a) that the provisions of the law are similar to the provisions of this Part; and
- (b) that under that law the limitation of liability of limited partners in a limited partnership formed in accordance with this Part extends to any debt or obligation incurred in connection with the conduct of the partnership's business in that State or Territory.

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

**Contribution towards discharge of debts etc.**

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

(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.

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

66. 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**

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

67. (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.

(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.

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

(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:

- (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 corporation; or
- (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
- (c) gives a guarantee or indemnity in respect of any debt or obligation of the partnership or of a general partner; or
- (d) participates in any action by other limited partners for the purpose of enforcing their rights or safeguarding their interests as limited partners; or
- (e) if authorised by the partnership agreement, participates in general meetings of all the partners; or
- (f) exercises any power conferred on the limited partner by subsection (4).

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

- (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.

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

**Differences between partners**

68. (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.

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

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

**Change in partners**

69. (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.

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

(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**

**Dissolution not available in certain cases**

70. (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
- (b) the general partners or the other limited partners are not entitled to dissolve the partnership because a limited partner has allowed his or her share of the partnership property to be charged for his or her separate debts or obligations; and
- (c) the death, bankruptcy or retirement or, in the case of a corporation, the dissolution of a limited partner does not dissolve the partnership.

(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.

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

**Cessation of limited partnerships**

71. (1) A partnership ceases to be a limited partnership if none of the partners is a limited partner or 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.

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

72. (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 Registrar a notice of the dissolution or cessation, specifying the date on which it took effect.

Maximum penalty: 10 penalty units.

(2) The notice must be in the form approved by the Registrar and contain the particulars required by the regulations or the approved form of notice.

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

**Winding up by general partners**

73. 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.

**Division 7—Miscellaneous provisions**

**Model limited partnership agreement**

74. (1) The regulations may prescribe a model limited partnership agreement or model limited partnership agreements.

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

(2) The partnership agreement of a limited partnership may adopt any such model agreement (or any part of it) whether as in force at a particular time or as in force from time to time.

**Identification of limited partnerships**

75. (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.

(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.

(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 documents are being issued in contravention of this section,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(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.

(5) If the certificate of registration is not so displayed, each general partner is guilty of an offence.

Maximum penalty: 20 penalty units.

**Registered office**

76. (1) A limited partnership must keep in New South Wales (at the place shown in the Register as the address of the registered office of the firm) an office to which 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.



*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

(3) If subsection (1) is not complied with, each general partner in the limited partnership concerned is guilty of an offence.

Maximum penalty: 10 penalty units.

**Service**

77. (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.

(2) This section does not apply to a document relating to proceedings before a Court.

**Entry in Register constitutes notice**

78. 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 Registrar:

- (a) is sufficient notice of the fact or of the effect of the notice to all persons who deal with the partnership; and
- (b) has effect, for the purposes of section 36 (2), as if it were an advertisement in the Gazette.

**Giving false or misleading information**

79. A person who, under this Part, provides the Registrar 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.

Maximum penalty: 50 penalty units.

**Criminal proceedings**

80. Proceedings for an offence against this Part are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

81. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(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.

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS

(Sec. 3)

- (1) The whole Act (**Italicised headings to sections**):  
Omit the italicised headings before sections 1, 5, 19, 32 and 45.
- (2) Part 1 and Part 2, heading:  
Before section 1, insert:

**PART 1—PRELIMINARY**

**Short title**

1A. This Act may be cited as the Partnership Act 1892.

**Definitions**

1B. In this Act:

“**business**” includes trade, occupation and profession;

“**Court**” means the court having jurisdiction in the case concerned.

**PART 2—PARTNERSHIPS GENERALLY**

**Division 1—Nature of partnership**

- (3) Section 1 (**Definition of partnership**):  
Omit section 1 (2) (a), insert instead:  
(a) incorporated under the Corporations Law; or

*Partnership (Limited Partnership) Amendment 1991 (No. 2)*

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SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

- (4) Part 2, Division 2, heading:  
Before section 5, insert:  
**Division 2—Relationship of partners to persons  
dealing with them**
- (5) Part 2, Division 3, heading:  
Before section 19, insert:  
**Division 3—Relationship between partners**
- (6) Part 2, Division 4, heading:  
Before section 32, insert:  
**Division 4—Dissolution of partnership**
- (7) Section 45 (**Definitions of “Court” and “business”**):  
Omit the section.
- (8) Part 2, Division 5, heading:  
Before section 46, insert:  
**Division 5—Miscellaneous provisions**
- (9) Section 48 (**Short title**):  
Omit the section.
-

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11

PARTNERSHIP (LIMITED PARTNERSHIP) AMENDMENT BILL

1991

SECOND READING

LEGISLATIVE COUNCIL

MR PICKERING TO SAY:

Mr President,

I move that this Bill be read a second time.

The purpose of this Bill is to introduce limited partnerships in New South Wales. Limited partnerships will offer an alternative mechanism to assist the raising of venture capital for private investors as well as providing a relatively simple and inexpensive commercial vehicle for small business. This will assist business developments and attract investments to this State.

A limited partnership offers the advantage of limited liability for investors without the imposition of company tax. Such a



structure is viewed as a modified partnership and is governed by State partnership legislation and the common law.

The Government, when it was in Opposition, gave a commitment to introduce legislation to permit the registration of limited liability partnerships. This was expressed in its Small Business Policy Statement issued in July 1987.

The Bill before Parliament is designed to further advance the Government's policy of promoting economic growth and business development in this State.

At present, three States have limited partnership legislation. The Tasmanian Act was enacted in 1908 and the Western Australian Act was enacted in 1909. The Western Australian Act is currently being reviewed and will soon be updated. Both pieces of legislation follow closely the English Limited Partnership Act 1908.

In Queensland, until recently certain provisions of the Mercantile Act governed the formation and operation of limited partnerships. A separate Limited Partnership Act was introduced in that State in May last year following an inquiry by the Queensland Law Reform Commission. The legislation in the three jurisdictions is not uniform although there are many common elements.

The limited partnership structure is common in many major overseas countries including the United States, the United Kingdom, Canada, New Zealand and South Africa.





Limited partnerships provide a relatively simple and inexpensive commercial vehicle without many of the formalities and complexities applicable to companies incorporated under the Companies Code. They offer an ideal mechanism for attracting risk or venture capital from private investors who are prepared to contribute capital, in return for a share of the profits, so long as their liability is limited to the amount of their contribution.

One of the main attractions to investors of the limited partnership structure, as compared with the corporate structure, is the availability of significant tax advantages. As the formation of a limited partnership does not involve the creation of a separate legal entity, limited partners are able to claim as deductions all of the expenses of the partnership in the year in which they are incurred. With long term projects, it is not uncommon for them to incur substantial operating losses during the early stages. Unlike a company, these tax losses are immediately available to the limited partners to be claimed as deductions against their assessable income.

The Income Tax Assessment Act provides special concessions (usually in the form of generous up-front deductions) to a number of high risk investments which are considered by the Government to be of benefit to the economy. In the case of limited partnerships, these additional tax benefits are available to the limited partners directly in the year in which the investments are made. The benefit of indexation of assets for capital gains tax purposes is also



retained.

All of the taxation advantages outlined above are important to investors in venture capital type operations as they balance, in part, the risks involved.

Savings in legal and accounting costs are also realised by not having to comply with such Companies Code requirements as the filing of annual returns.

In Australia, limited partnerships have been increasingly used in the last ten years as vehicles for ventures requiring risk capital and entrepreneurial initiative. They have been used in industrial and real estate development, mining projects, arts, theatrical and film undertakings, agricultural schemes, and more recently, in management buyouts. In many cases New South Wales investors have been involved and, if this State had limited partnership legislation, they would, in many cases, have been formed and administered here. In the absence of such legislation, they have gone to other States or New Zealand.

~~My colleague, the Minister for Business and Consumer Affairs, who has collaborated in developing this legislation will, in debate, outline the considerable commercial benefits for this State from limited partnerships.~~

The proposed legislation is designed to allow for the formation of limited partnerships in New South Wales provided they



are registered with the Registrar of Business Names. The legislation will not change the present statutory and common law governing partnerships and it is intended that the Partnership Act 1892 will continue to apply so long as it is not inconsistent with the legislation. The proposed statutory provisions will focus primarily on the procedures for securing the limitation of the liability for those who wish to form a limited partnership, and the requirements for maintaining that limitation.

Limited partnerships consist of one or more general partners, who manage the business and have unlimited liability, and one or more limited partners. Limited partners invest in the partnership, but may not participate in its management. Their liability is limited to the extent of their contribution, unless they become involved in the management of the partnership whereupon they lose their limited liability. The terms of the relationship between the general partners and the limited partners are normally set out in a partnership agreement. The contribution of a limited partner may be made in the form of cash or property. All management decisions are the sole responsibility of the general partner(s).

Subject to the provisions of the partnership deed, a difference arising in connection with the partnership business, including the admission of further general partners to the partnership, is to be decided by a majority of the general partners.

Subject to the provisions of the partnership deed, a limited partner may, with the consent of the general partners, assign his or



her interest in the partnership to another person who, on assignment and registration, is entitled to the rights and subject to the liabilities accorded to the limited partner.

Any limited partner who takes part in the management of the business loses the benefit of the statutory limitation on liability. It is proposed to provide that a limited partner is not to be regarded as taking part in the management of the business (so as to incur unlimited liability) merely because the limited partner acts in a number of other roles such as the giving of professional advice to the partnership, providing a guarantee or indemnity, or being an employee, agent or independent contractor of the business.

The limited partnership will come into existence upon the registration of a statement containing particulars of the partnership and following the issue of a certificate by the Registrar. Registration is intended to give notice to creditors of the details of the partners, particularly those who will be liable if the partnership fails. The Register of Limited Partnerships will be open for public inspection.

Any change to the registered particulars must be notified to the Registrar for amendment to the Register, including the dissolution of the partnership or the cessation of business.

Changes involving, for example, the admission or withdrawal of a limited partner, or an alteration to the extent of a limited partner's liability, will not take effect until the prescribed notice





containing particulars of the change has been lodged.

Duplicate registration under the Business Names Act 1962 will not be required where the business is carried on under the name of the partnership.

In order to put persons dealing with the limited partnership on notice as to the limitation of liability, it is proposed that every business document issued on behalf of the partnership bear the firm name and the words "a limited partnership" so as to signify to the public the fact of limited liability. Additionally, a copy of the certificate of registration is to be on public display in every place of business of the limited partnership.

It is proposed that there be no limitation on the number of general and limited partners. There is a limitation of 20 on the total number of partners in the Tasmanian and Western Australian Acts. No limit has been set in the new Queensland Act, on the recommendation of the Queensland Law Reform Commission. It is understood that both Tasmania and Western Australia may look at raising or even removing the limitation in future amendments. Queensland has advised that the absence of a size limit has been well received by the local business community. In Western Australia, there have been many instances where "batches" of partnerships were registered to circumvent the statutory limitation on the total number of partners.

One feature of this proposal which is significantly different to



the limited partnership legislation of other States, is the inclusion of a model partnership deed. The deed may, but need not be adopted by a partnership. It will provide an option for those partnerships which do not wish to draft their own agreement. A model deed will be of considerable benefit to small business by making the use of limited partnerships much more accessible.

One of the deficiencies of limited partnerships is the uncertainty, both legal and commercial, about the effect of the limitation on liability provided by one jurisdiction for transactions entered into or acts done in other jurisdictions.

The liability of the partners will usually be determined according to the law of the relevant jurisdiction. Thus, for example, a tort committed in Victoria by a limited partnership would be determined according to Victorian law which does not recognise limited partnerships.

This uncertainty has made it difficult for limited partnerships to attract investment for interstate activities and to attract interstate investment. Indeed, this uncertainty is often referred to in prospectuses issued for limited partnerships. The answer is for each Australian jurisdiction to put in place reciprocal recognition provisions. It is proposed, therefore, to give support to the moves to establish reciprocal recognition in the various Australian jurisdictions, by providing that a limitation on liability is only available to limited partnerships registered in New South Wales or registered under the law of another jurisdiction which substantially



conforms with New South Wales requirements. Provision is also made to recognise limited partnerships formed in other countries.

I commend the Bill to the House.



**PARTNERSHIP (LIMITED PARTNERSHIP) AMENDMENT  
ACT 1991 No. 48**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Partnership Act 1892, 55 Vic. No. 12

SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP  
SCHEDULE 2—CONSEQUENTIAL AMENDMENTS

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**PARTNERSHIP (LIMITED PARTNERSHIP) AMENDMENT  
ACT 1991 No. 48**

NEW SOUTH WALES



**Act No. 48, 1991**

An Act to amend the Partnership Act 1892 to provide for limited partnerships. [Assented to 11 December 1991]

*Partnership (Limited Partnership) Amendment 1991*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Partnership (Limited Partnership) Amendment Act 1991.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Partnership Act 1892, 55 Vic. No. 12**

3. The Partnership Act 1892 is amended as set out in Schedules 1 and 2.

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**SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP**

(Sec. 3)

At the end of the Act, insert:

**PART 3—LIMITED PARTNERSHIPS**

**Division 1—Preliminary**

**Definitions**

49. In this Part:

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

“**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;

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

“**Registrar**” means the person who keeps the Register of Business Names under the Business Names Act 1962.

*Partnership (Limited Partnership) Amendment 1991*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

**Application to limited partnerships of general law relating to partnership**

50. The other Parts of this Act apply to limited partnerships, except as provided by this Part.

**Division 2—Nature and formation of limited partnership**

**Composition of limited partnership**

51. (1) A limited partnership is a partnership consisting of:

- (a) at least one general partner; and
- (b) at least one limited partner.

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

**Size of limited partnership**

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

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

**How formed**

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

**Division 3—Registration of limited partnerships**

**Application for registration**

54. (1) An application for the registration of a limited partnership is made by lodging with the Registrar in accordance with this Part a statement signed by each proposed partner.

(2) The statement must be in the form approved by the Registrar and must contain the following particulars:

- (a) the firm-name;
- (b) the full address in New South Wales of the office or, if there is more than one office, the principal office of the

*Partnership (Limited Partnership) Amendment 1991*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

firm (to be called the “registered office” of the partnership);

- (c) a statement that the partnership is to be a limited partnership;
- (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 corporation) its registered office or principal place of business;
- (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 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);
- (h) such other particulars as are required by the regulations or by the approved form of statement.

**Registration of limited partnership**

55. (1) If an application for registration of a limited partnership has been duly made, the Registrar is to register the limited partnership.

(2) However, the limited partnership is not to be registered if the Registrar is of the opinion that the firm-name would not be eligible for registration as a business name under the Business Names Act 1962.

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

**Changes in registered particulars**

56. (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 Registrar within 7 days after the change occurred.

(2) The statement must be signed:

*Partnership (Limited Partnership) Amendment 1991*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

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

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

(4) If the statement is duly lodged, the Registrar is to record the change in the Register, unless as a result of the change the partnership is not eligible to be registered as a limited partnership.

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

Maximum penalty: 10 penalty units.

**Register of Limited Partnerships**

57. (1) The Registrar is required to 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 Registrar thinks fit.

(3) The Registrar must make the information recorded in the Register available for public inspection at the office of the Registrar during the ordinary business hours of that office.

**Certificates of registration etc.**

58. (1) The Registrar must, at the time of registering a limited partnership or of recording a change in the composition of a limited partnership, issue to the general partners a certificate as to the formation and composition at that time of the limited partnership.

(2) The Registrar 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.

*Partnership (Limited Partnership) Amendment 1991*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

(3) A certificate under this section is to be in such form as the Registrar 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
- (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
- (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.

**Business Names Act 1962 not to apply**

59. 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.

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

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

60. (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.

(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.

**Change in liability of limited partner**

61. (1) Any reduction in the liability of a limited partner caused by a reduction in the relevant amount shown in the

*Partnership (Limited Partnership) Amendment 1991*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

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.

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

**Change in status of partners**

62. (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.

(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.

**Liability for business conducted outside the State**

63. 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.

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

64. (1) In this section:

“**corresponding law**” means a law of another State, a Territory or another country that is declared by the regulations to be a corresponding law for the purposes of this Part;

“**recognised limited partnership**” means a partnership formed in accordance with a corresponding law.

(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.

(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:

*Partnership (Limited Partnership) Amendment 1991*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

- (a) that the provisions of the law are similar to the provisions of this Part; and
- (b) that under that law the limitation of liability of limited partners in a limited partnership formed in accordance with this Part extends to any debt or obligation incurred in connection with the conduct of the partnership's business in that State or Territory.

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

**Contribution towards discharge of debts etc.**

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

(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.

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

66. 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**

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

67. (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.

(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.



*Partnership (Limited Partnership) Amendment 1991*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

(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:

- (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 corporation; or
- (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
- (c) gives a guarantee or indemnity in respect of any debt or obligation of the partnership or of a general partner; or
- (d) participates in any action by other limited partners for the purpose of enforcing their rights or safeguarding their interests as limited partners; or
- (e) if authorised by the partnership agreement, participates in general meetings of all the partners; or
- (f) exercises any power conferred on the limited partner by subsection (4).

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

- (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.

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

**Differences between partners**

68. (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.

*Partnership (Limited Partnership) Amendment 1991*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

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

**Change in partners**

69. (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.

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

(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**

**Dissolution not available in certain cases**

70. (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
- (b) the general partners or the other limited partners are not entitled to dissolve the partnership because a limited partner has allowed his or her share of the partnership property to be charged for his or her separate debts or obligations; and
- (c) the death, bankruptcy or retirement or, in the case of a corporation, the dissolution of a limited partner does not dissolve the partnership.

(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.

*Partnership (Limited Partnership) Amendment 1991*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED  
PARTNERSHIP—*continued*

**Cessation of limited partnerships**

71. (1) A partnership ceases to be a limited partnership if none of the partners is a limited partner or 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.

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

72. (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 Registrar a notice of the dissolution or cessation, specifying the date on which it took effect.

Maximum penalty: 10 penalty units.

(2) The notice must be in the form approved by the Registrar and contain the particulars required by the regulations or the approved form of notice.

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

**Winding up by general partners**

73. 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.

**Division 7—Miscellaneous provisions**

**Model limited partnership agreement**

74. (1) The regulations may prescribe a model limited partnership agreement or model limited partnership agreements.

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

(2) The partnership agreement of a limited partnership may adopt any such model agreement (or any part of it) whether as in force at a particular time or as in force from time to time.

**Identification of limited partnerships**

75. (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.

(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.

(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 documents are being issued in contravention of this section,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(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.

(5) If the certificate of registration is not so displayed, each general partner is guilty of an offence.

Maximum penalty: 20 penalty units.

**Registered office**

76. (1) A limited partnership must keep in New South Wales (at the place shown in the Register as the address of the registered office of the firm) an office to which 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.

*Partnership (Limited Partnership) Amendment 1991*

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SCHEDULE 1—AMENDMENT RELATING TO LIMITED PARTNERSHIP—*continued*

(3) If subsection (1) is not complied with, each general partner in the limited partnership concerned is guilty of an offence.

Maximum penalty: 10 penalty units.

**Service**

77. (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.

(2) This section does not apply to a document relating to proceedings before a Court.

**Entry in Register constitutes notice**

78. 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 Registrar:

- (a) is sufficient notice of the fact or of the effect of the notice to all persons who deal with the partnership; and
- (b) has effect, for the purposes of section 36 (2), as if it were an advertisement in the Gazette.

**Giving false or misleading information**

79. A person who, under this Part, provides the Registrar 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.

Maximum penalty: 50 penalty units.

**Criminal proceedings**

80. Proceedings for an offence against this Part are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

81. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter

*Partnership (Limited Partnership) Amendment 1991*SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

that is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(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.

## SCHEDULE 2—CONSEQUENTIAL AMENDMENTS

(Sec. 3)

(1) The whole Act (**Italicised headings to sections**):

Omit the italicised headings before sections 1, 5, 19, 32 and 45.

(2) Part 1 and Part 2, heading:

Before section 1, insert:

**PART 1—PRELIMINARY****Short title**

1A. This Act may be cited as the Partnership Act 1892.

**Definitions**

1B. In this Act:

“**business**” includes trade, occupation and profession;

“**Court**” means the court having jurisdiction in the case concerned.

**PART 2—PARTNERSHIPS GENERALLY****Division 1—Nature of partnership**

(3) Section 1 (**Definition of partnership**):

Omit section 1 (2) (a), insert instead:

(a) incorporated under the Corporations Law; or

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SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

- (4) Part 2, Division 2, heading:  
 Before section 5, insert:  
     **Division 2—Relationship of partners to persons  
     dealing with them**
- (5) Part 2, Division 3, heading:  
 Before section 19, insert:  
     **Division 3—Relationship between partners**
- (6) Part 2, Division 4, heading:  
 Before section 32, insert:  
     **Division 4—Dissolution of partnership**
- (7) Section 45 (**Definitions of “Court” and “business”**):  
 Omit the section.
- (8) Part 2, Division 5, heading:  
 Before section 46, insert:  
     **Division 5—Miscellaneous provisions**
- (9) Section 48 (**Short title**):  
 Omit the section.

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[*Minister's second reading speech made in—  
 Legislative Assembly on 2 July 1991  
 Legislative Council on 3 December 1991*]

