

Partnership (Limited Partnerships) Bill

EXPLANATORY MEMORANDUM

General Objects

The object of this Bill is to amend the Partnership Act 1958 to allow the formation of limited partnerships in Victoria.

Notes on Clauses

Clause 1 sets out the purposes of the Act.

Clause 2 provides that the Act commences upon proclamation.

Clause 3 is a formal provision defining the expression "Principal Act" for the purposes of the Bill.

Clause 4 contains amendments to the Partnership Act which are of a drafting nature.

Clause 5 this clause inserts a new Part 3.

PART 3—LIMITED PARTNERSHIPS

Inserts sections 49–80 into the Partnership Act.

Division 1 contains preliminary provisions.

Section 49 contains definitions for the purposes of the new Part, facilitates the performance of functions by the Australian Securities Commission, and provides that the Partnership Act 1958 applies to limited partnerships except as provided by the new Part 3.

Section 50 provides that a limited partnership is a partnership consisting of at least one general partner and at least one limited partner (either may be a body corporate).

Section 51 provides that a limited partnership may consist of any number of limited partners, however the number of general partners is restricted to the maximum number permissible under the Corporations Law.

Section 52 provides that a limited partnership is formed upon registration.

Division 2 provides for a partnership to be designated for the purposes of the new Part 3 by the Minister.

Section 53 contains the requirements for a limited partnership and provides that an application for registration of a limited partnership may not be made unless the Minister is satisfied that the requirements have been met and has made an Order to this effect.

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

Section 54 provides that an application for registration of a limited partnership is made by lodging a statement (signed by each partner) of the particulars of the partnership with the Commissioner, including identifying the general and limited partners and a statement in relation to each limited partner to the effect that the limited partner's 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).

Section 55 provides that the registration of a limited partnership is effected by recording in the Register the statement that is lodged with the Commissioner.

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 Commissioner within 7 days.

Section 57 requires the Commissioner to keep a Register of Limited Partnerships which is to be available for public inspection.

Section 58 requires the Commissioner 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.

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 the firm name is registered under the new Part.

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

Section 60 provides that the liability of a limited partner to contribute to the liabilities 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 limited partner is liable to contribute.

Section 61 provides that if the relevant amount shown in the Register in relation to a limited partner is reduced, liability in respect of existing debts or obligations of the partner is not also reduced.

Section 62 provides for the change of liability of a general partner who becomes a limited partner and of a limited partner who becomes a general partner.

Section 63 provides that the limitation on the liability of a limited partner extends to liabilities incurred in connection with the partnership's business outside Victoria.

Section 64 provides for recognition in Victoria of any limitation on the liability of a limited partner in a limited partnership which was formed under a corresponding law (being a law of another State, a Territory or another country which has been declared by Order-in-Council) and which has been designated by Order by the Minister under section 53.

Section 65 provides that a limited partner is to contribute towards the discharge of liabilities of a limited partnership in the form of money only.

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

Division 5 contains other modifications to the general law of partnerships.

Section 67 provides that (with specified exceptions) a limited partner is not to take part in the management of the business of the limited partnership.

Section 68 provides that differences relating to the business of a limited partnership may be decided by a majority of general partners.

Section 69 provides that a limited partner may (with the consent of the general partners) assign the limited 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.

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.

Section 71 provides for the cessation of a limited partnership and provides for a limited partnership to become an ordinary partnership.

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 Commissioner.

Section 73 provides that if the limited partnership is to be wound-up the winding-up is to be carried out by the general partners unless a court otherwise orders.

Division 7 contains section 74 which provides for regulations to be made in respect of an offer, invitation or issue by a limited partnership of partnership interests.

Division 8 contains miscellaneous provisions relating to limited partnerships.

Section 75 provides that a limited partnership must be identified as a limited partnership in any document that the limited partnership issues.

Section 76 provides that a limited partnership is required to keep a registered office.

Section 77 provides that service of documents, other than documents relating to court proceedings, may be served upon the partnership at its registered office.

Section 78 provides that an entry in the register of a fact concerning a limited partnership is sufficient notice of the fact.

Section 79 prohibits the giving of false or misleading information to the Commissioner.

Section 80 provides for a general regulation making power including regulations for any fees in respect of statements required to be lodged under this Part or for inspection of the Register or for supply of certificates.

