

Western Australia

## **Limited Partnerships Act 1909**

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## Limited Partnerships Act 1909

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### CONTENTS

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1.	Short title	1
2.	Commencement	1
3.	Interpretation	1
4.	Definition and constitution of limited partnership	1
5.	Registration of limited partnership required	2
6.	Modifications of general law in the case of limited partnerships	2
7.	Law as to private partnerships to apply where not excluded by this Act	4
8.	Manner and particulars of registration	4
9.	Registration of changes in partnerships	5
10.	Notice in <i>Gazette</i> of general partner becoming a limited partner and of assignment of share of limited partner	5
11.	<i>Ad valorem</i> stamp duty on contributions by limited partners	6
12.	False statement for registration purposes is a crime	6
13.	Registrar to file statement and issue certificate of registration	6
14.	Register and index to be kept	7
15.	Registrar of limited partnerships	7
16.	Inspection of statements registered	7
17.	Power to make rules	8
	<b>Notes</b>	
	Compilation table	9
	Provisions that have not come into operation	10



## Limited Partnerships Act 1909

### An Act to establish limited partnerships.

**1. Short title**

This Act may be cited as the *Limited Partnerships Act 1909*<sup>1</sup>.

**2. Commencement**

This Act shall come into force on 1 May 1909.

**3. Interpretation**

In the construction of this Act the following words and expressions shall have the meanings respectively assigned to them in this section, unless there is something in the subject or context repugnant to such construction —

“**Firm**”, “**firm name**”, and “**business**” have the same meanings as in *The Partnership Act 1895*.

“**General partner**” shall mean any partner who is not a limited partner as defined by this Act.

**4. Definition and constitution of limited partnership**

- (1) From and after the commencement of this Act, limited partnerships may be formed in the manner and subject to the conditions by this Act provided.
- (2) A limited partnership shall not consist, in the case of a partnership carrying on the business of banking, of more than 10 persons, and, in the case of any other partnership, of more than 20 persons, and, must consist of one or more persons called general partners, who shall be liable for all debts and obligations

**s. 5**

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of the firm and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto, or undertake to contribute thereto, a sum or sums as capital or property valued at a stated amount, which shall be chargeable with and applicable to the payment of the debts and obligations of the firm, and who shall not otherwise be liable for the debts or obligations of the firm.

- (3) A limited partner shall not, during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back.
- (4) A body corporate may be a limited partner.

**5. Registration of limited partnership required**

Every limited partnership must be registered as such in accordance with the provisions of this Act, or in default thereof it shall be deemed to be a general partnership, and every limited partner shall be deemed to be a general partner.

**6. Modifications of general law in the case of limited partnerships**

- (1) A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm:

Provided that the limited partner may, by himself or his agent, at any time inspect the books of the firm and examine into the state and prospects of the partnership business, and may advise with the partners thereon.

If a limited partner takes part in the management of the partnership business, he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner.

- (2) A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the court.
- (3) In the event of the dissolution of a limited partnership its affairs should be wound up by the general partners, unless the court otherwise orders.
- (4) The winding up of a limited partnership is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Parts 5.4, 5.4A, 5.4B, 5.6, 5.7B and 5.8 (winding up) of the *Corporations Act 2001* of the Commonwealth.
- (4a) The following modifications to the text of Parts 5.4, 5.4A, 5.4B, 5.6, 5.7B and 5.8 of the *Corporations Act 2001* of the Commonwealth apply for the purposes of subsection (4) —
  - (a) a reference to a company is to be read as a reference to a limited partnership;
  - (b) a reference to the directors of a company is to be read as a reference to the general partners of a limited partnership;
  - (c) a reference to ASIC is to be read as a reference to the Registrar;
  - (d) a reference to the Court is to be read as a reference to the Supreme Court.
- (5) Subject to any agreement expressed or implied between the partners —
  - (a) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners;
  - (b) a limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor;

**s. 7**

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- (c) the other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;
- (d) a person may be introduced as a partner without the consent of the existing limited partners;
- (e) a limited partner shall not be entitled to dissolve the partnership by notice.

*[Section 6 amended by No. 10 of 1982 s. 28; No. 20 of 2003 s. 33(2).]*

**7. Law as to private partnerships to apply where not excluded by this Act**

Subject to the provisions of this Act, *The Partnership Act 1895*, and the rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last-mentioned Act, shall apply to limited partnerships.

**8. Manner and particulars of registration**

The registration of a limited partnership shall be effected by sending by post or delivering to the Registrar a statement signed by the partners containing the following particulars —

- (a) the firm name;
- (b) the general nature of the business;
- (c) the principal place of business;
- (d) the full name of each of the partners;
- (e) the term, if any, for which the partnership is entered into, and the date of its commencement;
- (f) a statement that the partnership is limited, and the description of every limited partner as such;
- (g) the sum contributed by each limited partner, and whether paid in cash or how otherwise.



**9. Registration of changes in partnerships**

- (1) If, during the continuance of a limited partnership, any change is made or occurs in —
- (a) the firm name;
  - (b) the general nature of the business;
  - (c) the principal place of business;
  - (d) the partners or the name of any partner;
  - (e) the term or character of the partnership;
  - (f) the sum contributed by any limited partner;
  - (g) the liability of any partner by reason of his becoming a limited instead of a general partner or a general instead of a limited partner,

a statement, signed by the firm, specifying the nature of the change shall, within 7 days, be sent by post or delivered to the Registrar.

- (2) If default is made in compliance with the requirements of this section, each of the general partners shall, on summary conviction, be liable to a fine not exceeding \$2 for each day during which the default continues.

*[Section 9 amended by No. 113 of 1965 s. 8.]*

**10. Notice in *Gazette* of general partner becoming a limited partner and of assignment of share of limited partner**

Notice of any arrangement or transaction under which any person will cease to be a general partner in any firm, and will become a limited partner in that firm, or under which the share of a limited partner in a firm will be assigned to any person, shall be forthwith advertised in the *Government Gazette*, and until notice of the arrangement or transaction is so advertised, the arrangement or transaction shall, for the purposes of this Act, be deemed to be of no effect.

**11. *Ad valorem* stamp duty on contributions by limited partners**

The statement of the amount contributed by a limited partner, and a statement of any increase in that amount, sent to the Registrar for registration under this Act, shall be charged with *ad valorem* stamp duty of 50 cents for every \$200, and any fraction of \$200 over any multiple of \$200, of the amount so contributed, or of the increase of that amount, as the case may be; and in default of payment of stamp duty thereon as herein required, the duty, with interest thereon at the rate of 5% per annum from the date of delivery of such statement, shall be a joint and several debt to the Crown, recoverable from the partners, or any of them, in the said statements named, or, in the case of an increase, from all or any of the said partners whose discontinuance in the firm shall not, before the date of delivery of such statement of increase, have been duly notified to the Registrar.

*[Section 11 amended by No. 113 of 1965 s. 8.]*

**12. False statement for registration purposes is a crime**

Every one commits a crime, and shall be liable to imprisonment for a term not exceeding 2 years, who makes, signs, sends, or delivers for the purpose of registration under this Act any false statement known by him to be false.

*[Section 12 amended by No. 51 of 1992 s. 16(1); No. 70 of 2004 s. 82.]*

**13. Registrar to file statement and issue certificate of registration**

On receiving any statement made in pursuance of this Act, the Registrar shall cause the same to be filed, and he shall send by post to the firm from whom such statement shall have been received a certificate of the registration thereof.

**14. Register and index to be kept**

The Registrar shall keep, in proper books to be provided for the purpose, a register and an index of all the limited partnerships registered as aforesaid, and of all the statements registered in relation to such partnerships.

**15. Registrar of limited partnerships**

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the department principally assisting in the administration of this Act as the Registrar for the purposes of this Act.
- (2) The Registrar may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) Sections 19, 20, 21, 22, 23, 23A, 24 and 25 of the *Consumer Affairs Act 1971* apply, with such modifications as are necessary, to and in relation to the functions of the Registrar and persons and matters affected by the exercise of those functions as if the sections were part of this Act.
- (4) In this section —  
“**executive officer**” has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.

*[Section 15 inserted by No. 28 of 2006 s. 105.]*

**16. Inspection of statements registered**

- (1) Any person may inspect the statements filed by the Registrar in the register offices aforesaid, and there shall be paid for such inspection such fees as may be prescribed; and any person may require a certificate of the registration of any limited partnership, or a copy of or extract from any registered statement, to be certified by the Registrar, and there shall be paid for such certificate of registration, certified copy, or extract such fees as may be prescribed.

**s. 17**

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- (2) A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy under the hand of the Registrar (whom it shall not be necessary to prove to be the Registrar) shall, in all legal proceedings, civil or criminal, and in all cases whatsoever be received in evidence.

*[Section 16 amended by No. 113 of 1965 s. 8; No. 50 of 1983 s. 2.]*

**17. Power to make rules**

The Governor may make rules concerning any of the following matters —

- (a) the fees to be paid to the Registrar under this Act;
- (b) the duties or additional duties to be performed by the Registrar for the purposes of this Act;
- (c) the forms to be used for the purposes of this Act;
- (d) generally the conduct and regulation of registration under the Act and any matters incidental thereto.

*[Section 17 amended by No. 113 of 1965 s. 8; No. 50 of 1983 s. 3.]*

**Notes**

<sup>1</sup> This is a compilation of the *Limited Partnerships Act 1909* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Limited Partnerships Act 1909</i>	17 of 1909	6 Feb 1909	1 May 1909 (see s. 2)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<b>Reprint of the <i>Limited Partnerships Act 1909</i> authorised 7 Aug 1975</b> (includes amendments listed above)			
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Limited Partnerships Amendment Act 1983</i>	50 of 1983	5 Dec 1983	5 Dec 1983
<b>Reprint of the <i>Limited Partnerships Act 1909</i> as at 15 Apr 1985</b> (includes amendments listed above)			
<i>Criminal Law Amendment Act (No. 2) 1992</i> s. 16(1)	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 43	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Corporations (Consequential Amendments) Act (No. 2) 2003</i> Pt. 13	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<b>Reprint 3: The <i>Limited Partnerships Act 1909</i> as at 6 Jun 2003</b> (includes amendments listed above)			
<i>Criminal Law Amendment (Simple Offences) Act 2004</i> s. 82	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 4 Div. 14 <sup>2</sup>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Duties Legislation Amendment Act 2008</i> s. 52 <sup>3</sup>	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))

<sup>2</sup> The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 reads as follows:

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#### Division 23 — Transitional provisions

##### 151. Commissioner for Fair Trading

- (1) On commencement, the person holding the office of Commissioner for Fair Trading immediately before commencement is to be taken to have been designated as the Commissioner or Registrar (as the case requires) for the purposes of each of the following enactments —
- (a) the *Associations Incorporation Act 1987*;
  - (b) the *Business Names Act 1962*;
  - (c) the *Chattel Securities Act 1987*;
  - (d) the *Companies (Co-operative) Act 1943*;
  - (e) Part 8 of the *Competition Policy Reform (Western Australia) Act 1996*;
  - (f) the *Consumer Affairs Act 1971*;
  - (g) the *Co-operative and Provident Societies Act 1903*;
  - (h) the *Credit Act 1984*;
  - (i) the *Credit (Administration) Act 1984*;
  - (j) the *Employment Agents Act 1976*;
  - (k) the *Hire-Purchase Act 1959*;
  - (l) the *Limited Partnerships Act 1909*;
  - (m) the *Motor Vehicle Dealers Act 1973*;
  - (n) the *Petroleum Products Pricing Act 1983*;
  - (o) the *Petroleum Retailers Rights and Liabilities Act 1982*;
  - (p) the *Residential Tenancies Act 1987*;
  - (q) the *Retirement Villages Act 1992*;

- (r) the *Travel Agents Act 1985*.
- (2) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under a provision of the *Consumer Affairs Act 1971* for the purposes of another enactment listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted —
- (a) by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that other enactment as in force after commencement; and
  - (b) where relevant, under the corresponding provision of that other enactment as in force after commencement.
- (3) To the extent that a thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under, or for the purposes of, an enactment listed in subsection (1) is not covered by subsection (2), it has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that enactment as in force after commencement.
- (4) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading before commencement under, or for the purposes of, an enactment not listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.
- (5) A reference in an enactment to the Commissioner for Fair Trading is to have effect after commencement as if it had been amended to be a reference to —
- (a) in the case of an enactment listed in subsection (1) or subsidiary legislation made under such an enactment — the Commissioner or Registrar (as the case requires) as defined in the enactment as in force after commencement; or
  - (b) in the case of any other enactment or subsidiary legislation — the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

**152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions**

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.
- (2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

**153. Consumer Affairs Act 1971**

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

**154. Petroleum Products Pricing Act 1983**

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing Act 1983* does not cease merely because that paragraph is deleted by this Act.

**155. Interpretation**

In this Division —

“**commencement**” means the time at which this Division comes into operation;

“**Commissioner for Fair Trading**” means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

“**Prices Commissioner**” means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

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<sup>3</sup> On the date as at which this compilation was prepared, the *Duties Legislation Amendment Act 2008* s. 52, which gives effect to Sch. 1 cl. 20, had not come into operation. It reads as follows:



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**52. Various Acts amended**

Schedule 1 sets out how various Acts listed in that Schedule are to be amended.

”.

Schedule 1 cl. 20 reads as follows:

“

**Schedule 1 — Amendments to various Acts**

[s. 52]

**20. *Limited Partnerships Act 1909***

Section 11 is repealed.

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