

# Partnerships

The Australasian Lawyers Group Pty Ltd trading as Butlers, Barristers & Solicitors

A partnership is a relationship between persons carrying on a business in common with a view to profit.

Often when individuals join together to form a partnership in a business venture, they begin with natural optimism without considering any problems which may arise between them in the future. A properly drafted Partnership Agreement may prevent misunderstanding and conflict later on. Where a written agreement does not exist, the conduct of and circumstances surrounding the parties will be considered in resolving any issues which may arise between them. Furthermore, in Western Australia, all partnerships are governed by the Partnership Act 1895 (WA) **unless** a written agreement provides otherwise.

Under the Partnership Act a Partnership Agreement is primary evidence that a partnership exists and can even be prepared *after* a partnership has begun conducting business as such. Furthermore, a Partnership Agreement can serve to limit a partner's powers and interests in the partnership, as illustrated in the following table:-

A Partnership Agreement May Provide	Partnership Act
The capacity to contract by one partner is limited	One partner can bind the whole partnership as each partner is jointly and severally liable
The extent to which assets of the partnership are held or applied by a partner	All partnership assets are held and applied exclusively for the purpose of the partnership
The capacity and extent to which a partner engages in a business	Every partner may take part in the management of the partnership business
An entitlement to receive a salary	A partner shall not be entitled to any remuneration other than a share of any profits



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The ability to expel a partner	A partner cannot be expelled by resolution of the other partner
The ability to continue the partnership upon the death of a partner	A partnership is dissolved immediately upon the death of a partner
The ability to retire at any time	Where a partnership is for a fixed term, no partner can retire without the consent of all partners
Partners' entitlements to share the profits of the business in proportion to their contribution to the partnership	All partners are entitled to share equally in the capital and profits of the business and must contribute equally towards the losses sustained by the business

Every Partnership Agreement implies a term of good faith on each partner in all dealings involving the partnership. Therefore, before entering into a Partnership Agreement, we recommend that the intending partners discuss the following issues with their Accountant and Lawyer:

- The respective proportional interests of the partners
- Contribution of capital and or security by the partners
- Authorised drawings and/or expenses and the procedure to authorise drawings and/or expenses
- The partnership's banking arrangements
- The partners' shares of profits and losses
- Remuneration of partners
- Duties and relationship of the partners to each other and the partnership
- Resignation and retirement of a partner
- Sale of a partner's interest in the partnership
- Death and incapacity of a partner

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- Admission of new partners
- Termination or succession of the partnership
- Mechanism for dispute resolution

As at January 2007 we are happy to prepare a Partnership Agreement for a fee of between \$450.00 - \$900.00 plus GST. This does not include the stamp duty payable on the agreement (approximately \$40.00). This also does not include any time spent advising you. We refer you to our Schedule of Charges and our Letter of Engagement for more details.

## Butlers

At Butlers we pride ourselves on being “The Personal Law Firm”. When you visit Butlers you can be assured of our personal attention and care. We aim to reduce your concerns by speaking and writing in plain English, cutting through legal jargon and keeping you informed at all times. Through it all, we work closely with your family’s accountant, bank manager, financial adviser, and other professionals as required. We therefore encourage you to contact us if you have any queries in relation to a Partnership, or the benefits of having a Partnership Agreement prepared.

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