

Bankruptcy

No. 122 of 1970

An Act relating to Bankruptcy.

[Assented to 11 November 1970]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Bankruptcy Act* 1970.

Short title
and citation.

(2.) The *Bankruptcy Act* 1966–1969* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Bankruptcy Act* 1966–1970.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Commence-
ment.

3. Section 3 of the Principal Act is amended by inserting after the words—

Parts.

“Part XI.—Administration of Estates of Deceased Persons in Bankruptcy (Sections 244–253).”

the words—

“Part XIA.—Farmers' Debts Assistance (Sections 253A–253F).”.

* Act No. 33, 1966, as amended by No. 121, 1968; and No. 40, 1969.

Interpretation.

4. Section 5 of the Principal Act is amended—

(a) by inserting in sub-section (1.), after the definition of “proceeding”, the following definition:—

“ ‘proclaimed law’ means a law specified for the time being in a Proclamation in force under section 253B of this Act;”;

(b) by inserting in sub-section (1.), after the definition of “State Court”, the following definition:—

“ ‘stay under a proclaimed law’, in relation to a person or the estate of a deceased person, means a stay, by or under a proclaimed law, of proceedings or of execution in relation to all or any of the debts of that person or of that estate, as the case may be;”.

Debtor's
petition.

5. Section 55 of the Principal Act is amended—

(a) by inserting after sub-section (6.) the following sub-section:—

“ (6A.) A debtor in relation to whom a stay under a proclaimed law applies is not, except with the leave of the Court, entitled to present a petition against himself.”; and

(b) by omitting from sub-section (7.) the words “the last preceding sub-section” and inserting in their stead the words “either of the last two preceding sub-sections”.

Debtor's
petition
against
partnership.

6. Section 56 of the Principal Act is amended—

(a) by inserting after sub-section (4.) the following sub-section:—

“ (4A.) The Court shall not make an order under the last preceding sub-section in relation to a petition in relation to which sub-section (1.) of section 253D of this Act applies unless the relevant authority referred to in the last-mentioned sub-section has had an opportunity of being heard.”; and

(b) by inserting after sub-section (5.) the following sub-sections:—

“ (5A.) A member of a partnership who has executed a deed of assignment or a deed of arrangement under Part X. or whose creditors have accepted a composition under that Part is not, except with the leave of the Court, entitled to present a petition against the partnership unless—

(a) the deed of assignment has been declared void or the final dividend has been paid under it;

(b) the deed of arrangement has been declared void or has been terminated; or

(c) the composition has been set aside or terminated or the final payment under it has been made.

“ (5B.) A member of a partnership in relation to whom a stay under a proclaimed law applies is not, except with the leave of the Court, entitled to present a petition against the partnership.

“ (5C.) Where a petition is presented against a partnership in contravention of either of the last two preceding sub-sections, the presentation of the petition does not have any effect.”.

7. Section 75 of the Principal Act is amended by omitting from sub-section (8.) the words “ and sub-sections (1.) and (2.) of section 52 ” and inserting in their stead the words “, sub-sections (1.) and (2.) of section 52 and Part XIA.”.

Effect of composition or scheme of arrangement.

8. Section 109 of the Principal Act is amended by inserting in paragraph (h) of sub-section (1.), after the word “ eighth,”, the words “ in payment of ”.

Priority payments.

9. Section 187 of the Principal Act is amended—

Interpretation.

(a) by inserting in the definition of “ composition ” in sub-section (1.), after the word “ arrangement ”, the words “ (not being an arrangement entered into for the purposes of a proclaimed law) ”; and

(b) by omitting from the definition of “ deed of arrangement ” in sub-section (1.) the words “ or a deed in respect of a composition ” and inserting in their stead the words “, a deed in respect of a composition or a deed executed for the purposes of a proclaimed law ”.

10. Section 221 of the Principal Act is amended by omitting from sub-section (4.) the words “ and sub-sections (1.) and (2.) of section 52 ” and inserting in their stead the words “, sub-sections (1.) and (2.) of section 52 and Part XIA.”.

Power to make sequestration order where debtor fails to attend meeting, execute deed, &c.

11. Section 222 of the Principal Act is amended by omitting from sub-section (9.) the words “ and sub-sections (1.) and (2.) of section 52 ” and inserting in their stead the words “, sub-sections (1.) and (2.) of section 52 and Part XIA.”.

Power of the Court to declare deed or composition void.

12. Section 236 of the Principal Act is amended by omitting from sub-section (5.) the words “ and sub-sections (1.) and (2.) of section 52 ” and inserting in their stead the words “, sub-sections (1.) and (2.) of section 52 and Part XIA.”.

Court may terminate deed.

13. The heading immediately preceding section 238 of the Principal Act is repealed and the following heading inserted in its stead:—

Heading.

“ *Division 6.—Special Provisions applicable to Compositions.*”.

14. Section 239 of the Principal Act is amended by omitting from sub-section (4.) the words “ and sub-sections (1.) and (2.) of section 52 ” and inserting in their stead the words “, sub-sections (1.) and (2.) of section 52 and Part XIA.”.

Court may set aside composition.

15. Section 242 of the Principal Act is amended by omitting from sub-section (5.) the words “ and sub-sections (1.) and (2.) of section 52 ” and inserting in their stead the words “, sub-sections (1.) and (2.) of section 52 and Part XIA.”.

Termination by the Court.

Petition for administration under this Part by person administering estate of deceased person.

16. Section 247 of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words “, and the Court may make, or refuse to make, the order sought as it thinks fit”; and
- (b) by inserting after sub-section (1.) the following sub-section:—
 “(1A.) Upon hearing the petition, the Court may make, or refuse to make, the order sought as it thinks fit.”.

17. After Part XI. of the Principal Act the following Part is inserted:—

“ PART XIA.—FARMERS’ DEBTS ASSISTANCE.

Definition.

“ 253A. In this Part, ‘ the relevant authority ’, in relation to a stay under a proclaimed law in its application in relation to a person or the estate of a deceased person, means the person administering the proclaimed law by or under which the stay was or is in force.

Law of a State or Territory may be proclaimed.

“ 253B. Where a law of a State or Territory, including a law that came into operation before the commencement of this section, provides for the giving of financial assistance for the purpose of discharging all or any of the debts of persons who are farmers within the meaning of the *Loan (Farmers’ Debt Adjustment) Act* 1935–1950, the Governor-General may, by Proclamation, specify that law as being a law in relation to which this Part applies.

Notice to Registrar concerning stay under proclaimed law.

“ 253C.—(1.) If the relevant authority gives to the Registrar for a District notice in writing that a stay under a proclaimed law applies in relation to a person specified in the notice, the Registrar shall forthwith send a copy of the notice to the Registrar of each other District.

“ (2.) If the authority subsequently gives to the Registrar notice in writing that the person is no longer a person in relation to whom a stay under a proclaimed law applies, the Registrar shall forthwith send a copy of the notice to the Registrar of each other District.

“ (3.) The Registrar of each District shall keep a register of notices that are given, or of which copies are sent, to him under this section.

Registrar to notify relevant authority of pending proceedings.

“ 253D.—(1.) If—

- (a) a creditor’s petition is presented against a person (whether alone or jointly with another person) or against a partnership of which a person is a member; or
- (b) a debtor’s petition is presented against a partnership of which a person is a member and that person is not one of the partners presenting the petition,

and it appears to the Registrar, whether from information disclosed by the register kept under the last preceding section or from other information, that a stay under a proclaimed law applies in relation to that person, the Registrar shall forthwith—

- (c) notify the relevant authority of the presentation of the creditor’s petition and of the date fixed for the hearing of the petition; or

(d) fix a date for the consideration by the Court, under sub-section (4.) of section 56 of this Act, of the debtor's petition and notify the relevant authority of the presentation of the petition and of the date so fixed,
as the case may be.

“(2.) If—

- (a) an application is filed for the leave of the Court to be granted under sub-section (6A.) of section 55 of this Act for the presentation of a petition against a debtor in relation to whom a stay under a proclaimed law applies; or
- (b) an application is filed for the leave of the Court to be granted under sub-section (5B.) of section 56 of this Act for the presentation of a petition against a partnership a member of which is a person in relation to whom a stay under a proclaimed law applies,

the Registrar shall forthwith notify the relevant authority of the filing of the application and of the date fixed for the hearing of the application.

“(3.) If a petition is presented under section 244 or section 247 of this Act for an order for the administration of the estate of a deceased person and it appears to the Registrar, whether from information disclosed by the register kept under the last preceding section or from other information, that a stay under a proclaimed law applies in relation to the estate, the Registrar shall forthwith notify the relevant authority of the presentation of the petition and of the date fixed for the hearing of the petition.

“ 253E.—(1.) If—

- (a) a creditor's petition is presented against a person (whether alone or jointly with another person) or against a partnership of which a person is a member; or
- (b) a debtor's petition is presented against a partnership of which a person is a member and that person is not one of the partners presenting the petition,

Relevant authority may apply for stay of proceedings under certain petitions.

and a stay under a proclaimed law applies in relation to that person, the relevant authority may, at any time before a sequestration order is made on the creditor's petition or before the debtor's petition is accepted by the Registrar, as the case may be, apply to the Court for an order staying all or any proceedings under the petition, and the Court may, if it thinks fit, upon such terms and conditions as it thinks proper, stay all or any proceedings under the petition.

“(2.) If a petition is presented under section 244 or section 247 of this Act for an order for the administration of the estate of a deceased person and a stay under a proclaimed law applies in relation to the estate, the relevant authority may, at any time before the order is made, apply to the Court for an order staying all or any proceedings under the petition, and the Court may, if it thinks fit, upon such terms and conditions as it thinks proper, stay all or any proceedings under the petition.

“(3.) An order made under this section may provide that the stay is to be of indefinite duration or for such period as the Court thinks fit.

“253F. If—

Relevant
authority
entitled to be
heard on
application for
leave under
section 55 (6A.)
or 56 (5B.).

(a) an application is made under sub-section (6A.) of section 55 of this Act for leave to present a petition against a debtor in relation to whom a stay under a proclaimed law applies; or

(b) an application is made under sub-section (5B.) of section 56 of this Act for leave to present a petition against a partnership a member of which is a person in relation to whom a stay under a proclaimed law applies,

the relevant authority is entitled to appear and be heard, either personally or by a barrister or solicitor, at the hearing of the application.”.

Swearing of
affidavits.

18. Section 262 of the Principal Act is amended by omitting the words “in a proceeding under” (wherever occurring) and inserting in their stead the words “for the purposes of”.

Concealment,
&c., of
property, &c.

19. Section 263 of the Principal Act is amended—

(a) by adding at the end of the definition of “composition” in sub-section (3.) the words “but does not include a composition entered into for the purposes of a proclaimed law”;

(b) by adding at the end of the definition of “deed of arrangement” in sub-section (3.) the words “but does not include a deed of arrangement executed for the purposes of a proclaimed law”; and

(c) by adding at the end of the definition of “scheme of arrangement” in sub-section (3.) the words “but does not include a scheme of arrangement made or entered into for the purposes of a proclaimed law”.

20. After section 263 of the Principal Act the following section is inserted:—

False
affidavits.

“263A. A person who wilfully makes a false statement in an affidavit to be used for the purposes of this Act is guilty of an offence and is punishable—

(a) upon summary conviction—by a fine not exceeding Two hundred dollars, or imprisonment for a period not exceeding six months, or both; or

(b) upon conviction on indictment—by imprisonment for a period not exceeding four years.”.

Application
of certain
amendments.

21. Sections 253D and 253E of the Principal Act as amended by this Act apply to and in relation to—

(a) a petition presented after the commencement of this Act; and

- (b) a petition presented under Division 2 of Part IV., or under Part XI., of the Principal Act before the commencement of this Act, being a petition on which a sequestration order or an order for the administration of the estate of the deceased person, as the case may be, had not been made before the commencement of this Act.
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