Date Introduced: 20 March 1985
House: Senate
Presented by: Senator the Hon. Gareth Evans, Q.C.,
Minister for Resources and Energy,
Minister Representing the Attorney-General

Short Digest of Bill

Purpose

To improve the efficiency of the Bankruptcy Act 1966, its relationship with other areas of the law and to strengthen the position of maintenance creditors. It will also implement the Government's decision to modify the effect of the Commonwealth Functions (Statutes Review) Act 1981.

Background

The Bill was introduced in the Senate on 30 May 1984, but lapsed following the dissolution of Parliament in October 1984.

The Bankruptcy Act 1966 (The Principal Act) was passed following the recommendations of the Committee chaired by the late Sir Thomas Clyne.[1] The Principal Act has since been amended on a number of occasions in order to improve its efficiency and to incorporate developments in Government policy and other areas of the law.[2]

This Bill is the result of a review of the Principal Act commenced by the then Department of Business and Consumer Affairs in July 1981 and continued by the present Government.

A more extensive review of bankruptcy and insolvency law was commenced by the Law Reform Commission in 1983, but it is expected to be some time before new legislation can be implemented.

Main Provisions

Clause 3 amends the definition section (s.5) of the Principal Act to extend the meaning of 'maintenance order'
to include an order in respect the payment of maintenance arrears.

Clause 4 amends section 12 of the Principal Act to extend the powers of the Inspector-General of Bankruptcy to examine the actions of trustees and to investigate the conduct, trade dealings, property and affairs of a bankrupt or debtor. It also requires trustees to provide a report when requested by the Inspector-General. Currently Registrars, Receivers and other officers must provide such reports. It further inserts a new section 12(1B) in the Principal Act to allow the Inspector-General to file a report on investigations with the Registrar in Bankruptcy.

Clause 5 amends section 14 of the Principal Act to allow the Minister to determine the number of Deputy Registrars by notice published in the Gazette. Such determinations are presently made by Proclamation of the Governor-General.

Clause 6 amends section 16 of the Principal Act which concerns the appointment of the Inspector-General, Registrars, Deputy Registrars and Receivers to allow such appointments to be made by the Secretary of the Attorney-General's Department rather than by the Governor-General.

Under Clause 7 which amends section 17 of the Principal Act, an Acting Inspector-General or Acting Official Receiver may also be appointed by the Secretary.

Clause 8 amends section 17A of the Principal Act to effect the same change as clause 7 regarding the appointment of Acting Registrars and Deputy Registrars.

Clause 9 amends section 18 of the Principal Act to make it clear that Official Receivers may exercise the power of the Official Trustee in Bankruptcy.

Clause 10 amends section 19 of the Principal Act by inserting new sub-sections (1A), (1B) and (1C) which allow Official Receivers to take part in the investigation of bankrupts or to instigate such investigations where the registered trustee does not intend to do so and the Official Receiver thinks it fit to investigate.

Clause 13 amends section 40 of the Principal Act to strengthen the position of maintenance creditors by making it clear that a maintenance creditor may issue a bankruptcy notice based on an order enforcing arrears of maintenance.
Clause 14 amends section 44 of the Principal Act to increase the debt for which a creditor may petition for bankruptcy from $1,000 to $1,500.

Clause 15 amends section 52 of the Principal Act to return the section to its form prior to the passage of the Commonwealth Functions (Statutes Review) Act 1981. It will no longer be mandatory for a petitioning creditor to gain the consent of a registered trustee or to prove the debtor's value.

Clauses 17, 18 and 19 amend the sections concerned with debtor's petitions (sections 55, 56 and 57 respectively) to remove the effect of the Commonwealth Functions (Statutes Review) Act 1981. It will no longer be necessary for a petitioning debtor to file a trustee's consent with the debtor's petition.

Clause 21 amends section 69 of the Principal Act to allow the Official Receiver to apply for the public examination of a bankrupt (also see clause 10). It also allows a bankrupt to use the transcripts of an investigation. At present, they can only be used against the bankrupt.

Clause 23 amends section 109 of the Principal Act to achieve greater uniformity with the Companies Act 1981. The amendments are concerned with priority payments from the bankrupt's property, but do not substantially effect the present order of priorities.

Clause 24 inserts a new section 109A in the Principal Act to make it clear that only long service leave accrued after bankruptcy is a cost of the administration of the bankruptcy, whereas long service leave accrued before bankruptcy will be treated under section 109(1)(g) and receive a lower priority.

Clause 29 amends section 155 of the Principal Act to detail the qualifications necessary for registration as a trustee. The requirements are the same as those for a liquidator under the Companies Act. It also clarifies the current power to suspend or cancel registration and adds a new ground, namely, failure to comply with section 161A (see clause 31).

Clause 31 inserts a new section 161A in the Principal Act which requires registered trustees to lodge a statement every 3 years. It is proposed that trustees will be required to provide the same information as liquidators and auditors currently supply under the Companies Act.
Clause 32 will amend section 179 of the Principal Act to allow the Inspector-General in Bankruptcy to apply for an order under section 179 to remove the trustee from office. This will complement the Inspector-General's power to investigate, in that it will grant power to take action.

For further information, if required, contact:

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Law & Government Group
LEGISLATIVE RESEARCH SERVICE

References

2. For a list of amending Acts see the Explanatory Memorandum to the Bill, p.5.