

1976

COMMONWEALTH OF AUSTRALIA

THE SENATE

BANKRUPTCY AMENDMENT BILL 1976

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
representing the Attorney-General,
Senator the Honourable P.D. Durack)

Bankruptcy Amendment Bill 1976

Introductory Note

The purpose of this Bill is to transfer the original bankruptcy jurisdiction of the Federal Court of Bankruptcy to the newly created Federal Court of Australia. The original bankruptcy jurisdiction of State courts and the Supreme Court of the Northern Territory will not be altered.

2. Appeal in all bankruptcy matters will now lie as of right to the Full Court of the Federal Court of Australia. No appeal will lie direct to the High Court from a State court. An appeal will lie to the High Court from the Full Court of the Federal Court of Australia as of right in cases where an amount of \$20,000 or more is in issue and otherwise only with leave of the High Court.

3. Pending its abolition, the Federal Court of Bankruptcy continues to have jurisdiction in proceedings commenced and part-heard before the change in jurisdiction takes effect. Provision is made for the transfer of business of the Federal Court of Bankruptcy, other than part-heard cases, to the Federal Court of Australia.

Clause 1

4. This clause provides for the short title of this Act.

Clause 2

5. The Act is to come into force on a date fixed by Proclamation, not being earlier than the date on which the Federal Court of Australia commences to exercise jurisdiction.

6. As original jurisdiction in bankruptcy under the Bankruptcy Act 1966 is to be conferred on the Federal Court of Australia, it is a prerequisite to the present amendments taking effect that the Federal Court of Australia should then be in existence.

Clause 3

7. The Federal Court of Australia is to be given the bankruptcy jurisdiction previously vested in the Federal Court of Bankruptcy. State Courts and the Northern Territory Supreme Court are empowered by section 27 of the Bankruptcy Act to exercise concurrent bankruptcy jurisdiction. In practice, the Federal Court of Bankruptcy has sat regularly only in New South Wales and Victoria. It is to be expected, therefore, that the Federal Court of Australia will ordinarily exercise its original bankruptcy jurisdiction in New South Wales, Victoria and the Australian Capital Territory. The original bankruptcy jurisdiction of State Courts and the Supreme Court of the Northern Territory will remain unchanged.

8. The original bankruptcy jurisdiction of the Federal Court of Australia will be exercised by a single Judge of that Court (clauses 19 and 20 of the Federal Court of Australia Bill 1976).

9. The Federal Court of Bankruptcy is not to be abolished until no person holds office as a Judge of that Court as set out in clause 8 of this Bill. The Court will then be abolished on a date to be fixed by Proclamation. In the meantime its jurisdiction in bankruptcy proceedings instituted before the transfer of jurisdiction to the Federal Court of Australia and which are part heard at that date is specifically retained in the Federal Court of Bankruptcy under this clause. This jurisdiction would also exist if the hearing had been completed but judgment had yet to be delivered.

Clause 4

10. This clause remakes existing sub-section 28(1) of the Bankruptcy Act, which provides that courts having jurisdiction in bankruptcy, other than the Northern Territory Supreme Court, have that jurisdiction throughout Australia.

Clause 5

11. This clause provides for the removal to the Federal Court of Australia of the existing business of the Federal Court of Bankruptcy, other than part heard proceedings jurisdiction in respect of which is retained in the Federal Court of Bankruptcy under clause 4 above.

12. Sub-clauses (b), (c) and (d) of clause 5 provide for the machinery to give effect to this transition.

13. The Federal Court of Australia is to be empowered to hear and determine the transferred proceedings. All documents filed or lodged, or moneys lodged, with a Registrar in Bankruptcy in relation to such proceedings are to be deemed to have been filed or lodged in the Federal Court of Australia. All things done in relation to the proceedings in the Federal Court of Bankruptcy are to be deemed to have been done in the Federal Court of Australia.

Clause 6

14. Section 38 of the Principal Act which provides that a court exercising jurisdiction in bankruptcy matters can state a case on a question of law to the Full Court of the High Court of Australia, is to be repealed.

15. Sub-clause 25(6), and clause 26 of the Federal Court of Australia Bill include provision for a case to be stated to the Full Court of the Federal Court of Australia from a court exercising original jurisdiction in bankruptcy.

16. Section 39 of the Principal Act which provides for an appeal to the High Court, by leave of the court exercising bankruptcy jurisdiction or the High Court, is also to be repealed.

17. Under the new provision a bankruptcy appeal from a decision of a State Court or the Federal Court of Bankruptcy, given or pronounced after the commencement of this Act, lies to the Federal Court of Australia alone.

18. By virtue of clause 24 of the Federal Court of Australia Bill 1976 the appellate jurisdiction of that Court will be exercised by a Full Court.

19. Where a person has any other right of appeal, or to seek leave to appeal, to the High Court otherwise than under sub-clause 6(2), from a judgment of a State Court exercising bankruptcy jurisdiction or the Federal Court of Bankruptcy given before the commencement date of the Act, that right is to be converted into a right to appeal or to seek leave to appeal to the Federal Court of Australia.

20. As regard appeals from the Supreme Court of the Northern Territory of Australia exercising bankruptcy jurisdiction, this is dealt with in the Federal Court of Australia Bill 1976.

Clause 7

21. No proceedings, other than proceedings incidental to proceedings already commenced in the Federal Court of Bankruptcy, may be begun in that Court after the commencement of this Act.

Clause 8

22. This clause provides that the Federal Court of Bankruptcy is to be abolished on a date to be fixed by Proclamation, being a date on which no Judge holds office as a Judge of that Court.

Clause 9

23. This clause provides that any proceedings uncompleted in the Federal Court of Bankruptcy on the day that Court is abolished are transferred to the Federal Court of Australia as from that date.

24. Machinery provisions are included to accomplish this. In particular, any moneys or documents lodged with the Registrar in Bankruptcy in relation to transferred proceedings are to be transferred to the Federal Court of Australia.

25. The Federal Court of Australia is empowered to hear and determine transferred proceedings. That Court may have regard to any evidence or argument given in the proceedings as proceedings in the former court. Any things done in relation to the proceedings as proceedings in the former court are deemed to have been done as proceedings in the Federal Court of Australia.

26. Sub-clause (3) continues the operation of orders, directions or warrants of the former Federal Court of Bankruptcy in force when that Court is abolished and gives power to enforce, vary or rescind them, or entertain contempt proceedings in respect of them in the Federal Court of Australia.

27. Any outstanding bankruptcy notice which was issued before the transfer of jurisdiction to the new Court and which refers to the Federal Court of Bankruptcy is to be treated as if referring to the Federal Court of Australia.

28. Any order or document previously made or issued by the Federal Court of Bankruptcy is to be treated as having been made or issued by the Federal Court of Australia.