

## Bankruptcy Act 2006

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 the *Enactments Reprinting Act 1980*]

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# Bankruptcy Act 2006

An Act to provide for the distribution of the estates of bankrupt debtors amongst their creditors and for the release of bankrupt debtors from their debts, and for related purposes.

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**BE IT ENACTED** by the Legislative Assembly of Norfolk Island as follows —

## PART 1 — PRELIMINARY

### 1. Short title

This Act is the *Bankruptcy Act 2006*.

### 2. Commencement

This Act shall come into operation on the day on which notification of its assent is published in the Gazette.

### 3. Interpretation

In this Act, unless the contrary intention appears—

- “act of bankruptcy” means an act of bankruptcy within the meaning of section 23(1);
- “bankruptcy notice” means a bankruptcy notice granted under subdivision 3.2.2;
- “Court” means the Supreme Court;
- “creditors present”, in relation to a meeting, includes creditors who are represented at the meeting by a person duly authorised in writing by them;
- “debt provable in bankruptcy” includes a debt or liability made provable in bankruptcy under Section 112;
- “dividend” includes a final dividend referred to in section 129;
- “elected trustee” means a trustee appointed under section 56;
- “examining magistrate” means a magistrate before whom a person is ordered to attend for examination under this Act;
- “extraordinary resolution”, in relation to a resolution of creditors, means resolution that has been —
  - (a) passed by a majority in number and 75% in value of the creditors of the debtor present at a general meeting held in the prescribed manner, of which meeting notice has been given in the prescribed manner; and



- (b) confirmed by a majority in number and value of the creditors present at a subsequent general meeting—
    - (i) of which notice has been given in the prescribed manner; and
    - (ii) that is held not less than seven days nor more than 14 days after the date of the meeting referred to in paragraph (a);
- “liability” includes —
- (a) compensation for work or labour done; and
  - (b) an obligation, or the possibility of an obligation, to pay money or money’s worth on the breach of an express or implied covenant, contract, agreement or undertaking, whether the breach —
    - (i) does or does not occur; or
    - (ii) is or is not likely to occur or capable of occurring, and
  - (c) an express or implied engagement, agreement or undertaking to pay, or that is capable of resulting in the payment of, money or money’s worth, whether the payment to be made be —
    - (i) a fixed or unliquidated amount; or
    - (ii) payable as at a present or future time; or
    - (iii) certain or dependent on a contingency; or
    - (iv) capable, in respect of value of being ascertained by fixed rules or assessable only by the Court or as a matter of opinion;
- “the first meeting of creditors”, in relation to a bankrupt, means the general meeting of the creditors referred to in section 51(a);
- “the official trustee” means the official trustee appointed under section 7;
- “prescribed” means prescribed by this Act or the Rules of the Supreme Court applicable to bankruptcy;
- “property” means —
- (a) money, goods, things in action or land, or any other kind of property; and
  - (b) obligations or easements, or any other kind of estate, interest or profit, present or future, vested or contingent, arising out of or incident to property referred to in paragraph (a);
- “the property of the bankrupt” means the property of the bankrupt that is divisible among his or her creditors by virtue of section 4;
- “the registrar” means the registrar of the Court;
- “the registry” means the office of the registry;
- “secured creditor” means a creditor holding a mortgage, charge or lien on the bankrupt’s estate or part of his or her estate as security for a debt due to the creditor;
- “special resolution”, in relation to a resolution of creditors, means a resolution decided by a majority in number and 75% in value of the creditors present at the meeting and voting on the resolution;

“trustee” —

- (a) includes the person for the time being filling the office of trustee, whether or not he or she is the official trustee; and
- (b) in relation to a bankrupt or a bankrupt estate, means the official trustee or an elected trustee acting in respect of the estate.

#### **4. Application**

(1) Except as otherwise provided in this Act, the provisions of this Act relating to the determination of bankruptcy apply to all debtors who are resident in, or have property in, Norfolk Island.

(2) A company incorporated or registered under the *Companies Act 1985* shall not be determined bankrupt under this Act.

#### **5. Calculation of a majority of creditors**

Where under this Act (otherwise than for the purposes of Division 14.2) it is necessary to calculate a majority of creditors—

- (a) a creditor whose debt does not exceed \$1000.00 shall not be counted in reckoning a majority in number; and
- (b) the debt due to such a creditor shall be taken into account in reckoning a majority in value.

#### **6. Property of bankrupt that is divisible among his or her creditors**

(1) For the purposes of this Act, the property of the bankrupt that is divisible among his or her creditors is—

- (a) all the property—
  - (i) belonging to or vested in the bankrupt at the commencement of the bankruptcy; or
  - (ii) that is acquired by him or her, or devolves on him or her, during the bankruptcy; and
- (b) subject to Part 11, the capacity to exercise, and to take proceedings for exercising, all the powers in or over or in respect of property that might have been exercised by him or her for his or her own benefit at the commencement of or during the bankruptcy; and
- (c) subject to subsection (2), all goods and chattels that are in the possession, order or disposition of the bankrupt at the commencement of the bankruptcy by the consent and permission of the true owner—
  - (i) of which the bankrupt is the reputed owner; or
  - (ii) of which he or she has taken on himself or herself the sale or disposition as owner.

(2) Subsection (1)(c) does not apply to things in action other than debts due to the bankrupt in the course of his or her trade or business.

(3) The following property of the bankrupt is not divisible among his or her creditors:—

- (a) property held by the bankrupt on trust for any other person being property that was not beneficially owned by the bankrupt at any time during the preceding 3 years;
- (b) the tools (if any) of his or her trade and the necessary wearing apparel and bedding of himself or herself and his or her spouse and children to a value (inclusive of tools, apparel and bedding) not exceeding \$10,000;
- (c) policies of life assurance or endowment, except to the extent of a charge on the policies in respect of the amount of the premiums paid on the policies during the three years immediately preceding the date of the determination of bankruptcy.

## PART 2 — OFFICIAL TRUSTEE IN BANKRUPTCY

### 7. Appointment of official trustee

(1) The Minister may appoint a person to be the official trustee.

(2) At the expiration of the official trustee's term of appointment or if the official trustee—

- (a) dies; or
- (b) leaves Norfolk Island; or
- (c) is removed from office,

the Minister may appoint another person to be official trustee in his or her place.

(3) Where a person is appointed under subsection (2)—

- (a) he or she has all the rights, powers, duties and liabilities of his or her predecessor as official trustee; and
- (b) all of the property that was vested in his or her predecessor as official trustee vests in him or her by virtue of the appointment.

### 8 Security by official trustee

Where required by the Minister, the official trustee shall, before entering on his or her duties, give such security by bond for the due performance of his or her duties as the Court directs.

### 9. Payments by official trustee to Public Account

(1) Subject to subsection (2), the official trustee shall pay into the Public Account 5% of any sums that come to his or her hands as trustee as the proceeds of property realised or debts collected by him or her while he or she is acting as trustee.

(2) The percentage referred to in subsection (1) is not chargeable on any moneys that come to the official trustee by devolution from an elected trustee who preceded him or her in his or her office.

**10. Immediate functions of official trustee in relation to bankruptcy on debtor's petition**

Immediately on the presentation of a petition for determination under Division 3.2, the official trustee shall —

- (a) take possession, or cause possession to be taken, of all the property of the petitioner; and
- (b) retain the property in his or her possession and custody until—
  - (i) an determination of bankruptcy has been made; or
  - (ii) the petition has been dismissed.

**11. Immediate functions of official trustee in relation to bankruptcy on creditor's petition**

(1) In the case of a creditor's petition—

- (a) until a trustee is elected under section 56 by the creditors, the official trustee is the trustee for the purposes of this Act; and
- (b) immediately on the order of determination being made the property of the bankrupt passes to and vests in the official trustee and continues to be vested in him or her until a trustee is so elected by the creditors.

(2) On his or her appointment by virtue of subsection (1)(a), the official trustee shall—

- (a) take possession, or cause possession to be taken, of the property of the bankrupt; and
- (b) cause any property of a perishable nature to be sold; and
- (c) preserve the residue until—
  - (i) the election of a trustee; or
  - (ii) the time for the election of a trustee has elapsed,

whichever first occurs.

**12. Functions of official trustee in relation to trustees' accounts**

(1) An elected trustee of a bankrupt shall, as prescribed and not less frequently than once in every six months during the bankruptcy, transmit to the official trustee a statement in the prescribed form and containing the prescribed particulars showing the proceedings in the bankruptcy.

(2) An elected trustee who fails to transmit accounts in accordance with subsection (1) is guilty of a contempt of court.

(3) The official trustee—

- (a) shall examine the statements transmitted to him or her under subsection (1); and
- (b) shall call the elected trustee to account for any misfeasance, neglect or omission that appears on the statements; and
- (c) may require the elected trustee to make good any loss that the estate of the bankrupt has sustained by any such misfeasance, neglect or omission.

- (4) If an elected trustee fails to comply with a requirement of the official trustee under subsection (1) —
- (a) the official trustee may report the failure to the Court; and
  - (b) the Court, after hearing the explanation (if any) of the elected trustee, shall make such order as it thinks just.

**13. Oversight of elected trustees**

The official trustee may —

- (a) require an elected trustee to answer any inquiry made by him or her in relation to any bankruptcy in which the elected trustee is engaged; and
- (b) if he or she thinks fit, apply to the Court to examine the elected trustee or any other person, on oath, concerning the bankruptcy; and
- (c) direct a local investigation to be made of the books and vouchers of the elected trustee.

**14. Functions of official trustee in relation to liquidations under Division 14.1**

Sections 12 and 13 apply to every trustee appointed under Division 14.1 as well as to elected trustees.

**15. Oversight of bankruptcy officers, etc**

The officers of the Court acting in bankruptcy shall make such returns of the business of the Court and of their offices, at such times and in such manner and form as is prescribed by the Rules of Court of the Supreme Court.

**16. Official trustee's records**

The official trustee shall keep, in the manner prescribed by the Rules of Court of the Supreme Court, books that, under the Rules of Court, shall be open for public information and searches.

**PART 3.—DETERMINATION OF BANKRUPTCY**

*Division 3.1 — Preliminary*

**17. Determination by the Court**

A determination of bankruptcy shall be made only by the Court except in the circumstances provided in section 34.

**18. Institution of proceedings**

Proceedings for determination of bankruptcy shall be by petition presented at, and filed in, the registry.

**19. Annulment of determination on application by person prejudicially affected**

(1) A person prejudicially affected by a determination of bankruptcy may, within the prescribed time and on the prescribed notice to all parties, apply to the Court to annul the determination, and if sufficient cause is shown the Court shall annul the determination.

(2) If an application under subsection (1) is made by a debtor against whom a determination has been made under section 34, the Court may set aside the determination and set the petition for hearing by the Court.

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*Division 3.2 — Debtors' Petitions***20. Debtors' petitions generally**

(1) A debtor may petition for a determination of bankruptcy against himself or herself.

(2) A debtor's petition may be in Form 1, and shall be signed by the petitioner and attested by the registrar or any person authorised to take statutory declarations in the place where the petition is signed.

**21. Debtors' petitions by partnerships**

A petition for bankruptcy against a partnership may be presented by the majority of the members of the partnership who at the time of presenting the petition are usually resident in Norfolk Island.

**22. Determinations**

Where a debtor's petition has been presented, the Court shall—

- (a) proceed to determine the petition without delay; and
- (b) on due proof, make a determination of bankruptcy against the petitioner.

*Division 3.3—Creditors' Petitions**Subdivision 3.3.1 — Acts of bankruptcy***23. Definition of acts of bankruptcy**

- (1) The following acts on the part of a debtor are acts of bankruptcy —
- (a) if the debtor, in Norfolk Island or elsewhere —
    - (i) has transferred his or her property to a trustee for the benefit of his or her creditors generally; or
    - (ii) has made a fraudulent conveyance, gift, delivery or transfer of his or her property, or any part of his or her property;
  - (b) if, with intent to defeat or delay his or her creditors, the debtor—
    - (i) has departed Norfolk Island; or
    - (ii) being out of Norfolk Island has remained out of it; or
    - (iii) has departed from his or her dwelling-house or otherwise absented himself or herself;
  - (c) if the debtor has filed in the prescribed manner a declaration admitting his or her inability to pay his or her debts;
  - (d) if the debtor has presented a petition for determination of bankruptcy against himself or herself under Division 3.2;

- 
- (e) if —
- (i) an execution issued against the debtor on any legal process for payment of not less than \$2000.00 has been levied by seizure; and
  - (ii) the debtor has not *bona fide* satisfied the process, by payment or otherwise, within four days after the seizure;
- (f) if, after the presentation of a petition for determination of bankruptcy against the debtor, he or she has paid, given or delivered, to the creditor who presented the petition, money or any satisfaction as security for the debt or any part of it, so that the petitioning creditor may receive a greater percentage than other creditors;
- (g) if —
- (i) the creditor presenting the petition has served on the debtor, in the prescribed manner, a bankruptcy notice requiring him or her to pay a sum due, not less than \$2000.00; and
  - (ii) he debtor has for such time after the service of the notice as is specified in the notice neglected to pay the sum or to secure it or compound for it to the satisfaction of the creditor;
- (h) if the debtor —
- (i) having against him or her the sentence, judgment or decree of any court; and
  - (ii) being required to do so by the sentence, judgment or decree, has failed—
  - (iii) to satisfy it; or
  - (iv) to point out to the officer charged with its execution sufficient disposable property to satisfy it;
- (i) if the debtor—
- (i) has consented at a meeting of his or her creditors to present a petition under Division 3.2; and
  - (ii) within 48 hours from the time of consenting (or any further time made necessary by illness, distance or other sufficient cause), has not presented the petition;
- (j) if the debtor—
- (i) admits at a meeting of his or her creditors that he or she is unable to meet his or her engagements; or
  - (ii) offers at such a meeting a composition of less than 100% in cash, and he or she—
  - (iii) has been requested by a majority of the creditors present at the meeting to present a petition under Division 3.2; and
  - (iv) within 48 hours after the request (or any further time made necessary by illness, distance or other sufficient cause), has not presented the petition;
- (k) if the debtor has given or made any preference to or in favour of a creditor that, if the debtor were determined bankrupt under this Act, would be a fraudulent preference of the creditor;

- (1) if a debtor has —
  - (i) been determined or declared bankrupt or insolvent in any court outside Norfolk Island having jurisdiction in bankruptcy or insolvency or for the relief of bankrupt debtors; or
  - (ii) presented a petition to any such court praying determination of bankruptcy or insolvency against himself or herself.

(2) A debtor who has committed an act of bankruptcy is liable to be determined bankrupt on the petition of any creditor who is competent to present the petition.

#### **24. Available acts of bankruptcy**

A person shall not be determined bankrupt on an act of bankruptcy that occurred more than 12 months before the presentation of the petition.

##### *Subdivision 3.3.2 — Bankruptcy notices*

#### **25. Proceedings for bankruptcy notice**

(1) A bankruptcy notice may be granted by the registrar on a creditor establishing to his or her satisfaction that —

- (a) a debt sufficient to support a petition in bankruptcy is due to the creditor from the person against whom the notice is sought; and
- (b) the creditor has failed to obtain payment of his or her debt after using reasonable efforts to do so.

(2) A notice under subsection (1) —

- (a) shall be in Form 2; and
- (b) shall state that if the debtor fails —
  - (i) to pay the sum specified in the notice; or
  - (ii) to compound for that sum to the satisfaction of the creditor,

a petition may be presented against him or her that he or she be determined a bankrupt; and

- (c) shall have an endorsement to indicate to the debtor —
  - (i) the nature of the document served on him or her; and
  - (ii) the consequences of inattention to the requisitions made in the notice.

#### **26. Application to dismiss notice**

(1) A debtor served with a bankruptcy notice may apply to a magistrate within 21 days of service of the notice upon him or her to dismiss the notice on the ground that—

- (a) he or she is not indebted to the creditor serving the notice; or
- (b) he or she is not indebted in an amount that justifies the creditor in presenting a bankruptcy petition against him or her.

(2) On an application under subsection (1), the magistrate may —

- (a) dismiss the notice, with or without costs, if he or she is satisfied with the allegations made by the debtor; or
- (b) on the giving of such security (if any) as seems just for payment to the creditor of the debt, alleged by him or her to be due, and the costs of



establishing the debt — stay all proceedings on the notice for such time as is required for the trial of the question relating to the debt.

- (3) The trial referred to in subsection (2)(b) shall be before—
- (a) the Court; or
  - (b) if it has jurisdiction to determine questions relating to debts of the same amount, the Court of Petty Sessions.

*Subdivision 3.3.3 — Creditors' Petitions Generally*

**27. Right to present creditors' petitions**

(1) For the purposes of this section, any number of creditors in partnership shall be deemed to be a single creditor.

(2) Subject to subsection (3), where a debt or the total of debts due by a debtor—

- (a) to a single creditor amounts to \$2000.00 or more; or
- (b) to two creditors amounts to \$3000.00 or more; or
- (c) to three or more creditors amounts to \$4000.00 or more,

the creditor or creditors may present a petition to the Court—

- (d) that the debtor be determined a bankrupt; and
- (e) alleging as the ground for determination any act or acts of bankruptcy.

(3) Subject to subsections (4) and (5) the debt of the petitioning creditor—

(a) must be a liquidated sum due and subsisting at the times—

- (i) when the act of bankruptcy was committed; and
- (ii) when the petition was presented; and

(b) must not be a secured debt, unless the petitioner —

- (i) states in his or her petition that he or she is ready to give up the security for the benefit of the creditors in the event of the debtor being determined a bankrupt; or
- (ii) gives an estimate of the value of his or her security.

(4) In a case to which subsection (3)(b)(ii) applies, the creditor—

- (a) may be admitted as a petitioning creditor to the extent of the balance of the debt due to him or her after deducting the value so estimated; and
- (b) if he or she is admitted as a petitioning creditor shall, on application being made by the trustee within the prescribed time after the date of determination, give up his or her security to the trustee for the benefit of the creditors on payment of the estimated value.

(5) A person who has given credit to a debtor for valuable consideration for a sum payable at a certain time that had not elapsed when the act of bankruptcy was committed may petition or join in petitioning, whether or not the time for payment has arrived at the date of presenting the petition.

## 28. Form of petition

- (1) A creditor's petition for a determination of bankruptcy may be in Form 3.
- (2) In the petition, the following short statements of acts of bankruptcy may be used —
  - (a) “made a transfer of his or her property for his or her creditors”;
  - (b) “made a fraudulent conveyance (*or* gift *or* delivery *or* transfer) of his or her property (*or* part of his or her property) to E.F.”;
  - (c) “with intent to defeat (*or* delay) his or her creditors departed out of Norfolk Island (*or* remained out of Norfolk Island *or as the case may be*)”;
  - (d) “filed a declaration of bankruptcy”;
  - (e) “filed a bankruptcy petition”;
  - (f) “suffered his or her property to be seized and detained for four days in execution for \$2000.00 (*or more*)”;
  - (g) “fraudulently preferred E.F., a petitioning creditor”;
  - (h) “failed for . . . days to pay, secure or compound a debt of \$ . . . that he or she was required to pay by a bankruptcy notice”;
  - (i) “failed to satisfy, or point out property to satisfy, an execution”;
  - (j) “at a creditors' meeting, consented to present a bankruptcy petition and failed to do so for 48 hours without excuse”;
  - (k) “at a creditors’ meeting admitted his or her bankruptcy (*or* offered a composition) and being requested by a majority of creditors to present a bankruptcy petition failed to do so for 48 hours without excuse”;
  - (l) “made a fraudulent preference of E.F., a creditor”;
  - (m) “was determined bankrupt (*or* bankrupt) in . . . (*or* presented a petition in . . . for a determination of bankruptcy (*or* bankruptcy) against himself or herself”).

## 29. Signature of petition

A creditor's petition shall be signed by the petitioner or a person authorised by section 28 to verify the petition.

## 30. Verification of petition

- (1) Subject to this Act, a creditor's petition shall be verified by the oath of the petitioner.
- (2) Where the petitioning creditor is a corporation, joint-stock company or company authorised to sue in the name of a public officer, the petition may be verified by the manager, secretary or other authorised officer of the corporation or company.
- (3) Where the petitioning creditors are two or more persons in partnership, the petition may be verified by one only of the partners.
- (4) Where the petitioning creditor is out of Norfolk Island, the petition may be verified by his or her duly authorised attorney or agent in Norfolk Island.
- (5) The verification shall be —
  - (a) by affidavit in Form 4; and
  - (b) annexed or subscribed to the petition.

(6) Where a petition is verified by a person other than a petitioner, he or she shall also show in the affidavit verifying the petition that he or she is authorised under this Act to verify the petition.

### **31. Evidentiary effect of verifying affidavit**

An affidavit verifying the petition is sufficient *prima facie* evidence to support the petition.

### **32. Service of petition**

(1) A creditor's petition shall be served on the debtor.

(2) The copy of the petition served on the debtor shall have endorsed on it a summons in Form 5, signed by the registrar and sealed with his or her official seal.

(3) Service of a creditor's petition may be effected —

(a) personally; or

(b) in any other prescribed manner; or

(c) in such manner as the Court, on application by the petitioner, directs.

### **33. Fee for entry of appearance**

No fee is payable by a debtor for entering an appearance to a petition.

### **34. Proceedings on failure to appear**

If at the expiration of —

(a) four days after service; or

(b) such further time —

(i) as is prescribed; or

(ii) as the Court thinks necessary to enable the debtor to appear,

the debtor has not entered an appearance to the petition at the place appointed by the summons, the registrar may, on proof of service, proceed to determine the debtor bankrupt.

### **35. Proceedings on appearance**

If the debtor appears, the registrar shall set the petition down for hearing in Chambers before a Judge.

### **36. Affidavit by debtor showing cause against petition**

A debtor intending to show cause against a petition may file in the registry any affidavit intended to be used by him or her for that purpose.

### **37. Proceedings on hearing generally**

(1) Where the debtor appears at the hearing of the petition, the Court shall require proof of —

(a) the debt of the petitioning creditor; and

(b) an act of bankruptcy alleged in the petition,

and if satisfied with the proof shall adjudge the debtor to be bankrupt.

- (2) The Court may —
  - (a) adjourn the petition, conditionally or unconditionally —
    - (i) for the procurement of further evidence; or
    - (ii) for any other just cause; or
  - (b) dismiss the petition, with or without costs as the Court thinks just.

### **38. Proceedings where debt contested**

- (1) Where the debtor appears on the petition and denies —
  - (a) that he or she is indebted to the petitioner; or
  - (b) that he or she is indebted in an amount that would justify the petitioner in presenting a petition against him or her,the Court may, on such security (if any) being given as it requires for payment to the petitioner of —
  - (c) any debt that may be established against him or her in due course of law; and
  - (d) the costs of establishing the debt,stay all proceedings on the petition for such time as is required for the trial of the question relating to the debt.

- (2) The trial referred to in subsection (1) shall be before—
  - (a) the Court; or
  - (b) the Court of Petty Sessions if it has jurisdiction to determine questions relating to debts of the same amount.

- (3) Where —
  - (a) proceedings are stayed under subsection (1); and
  - (b) the Court thinks it just to do so —
    - (i) by reason of the delay caused by the stay of proceedings; or
    - (ii) for any other cause,the Court —
  - (c) may adjudge the debtor to be a bankrupt on the petition of some other creditor; and
  - (d) in that case shall dismiss, on such terms as it thinks just, the proceedings that have been so stayed.

### **39. Costs.**

- (1) The petitioning creditor shall defray the costs and expenses of all proceedings in the bankruptcy until, and inclusive of, the order of determination.
- (2) When costs and expenses have been taxed, they shall be repaid to the petitioning creditor out of the first moneys received from the estate of the bankrupt.

### **40. Effect of payment to petitioning creditor**

- Where, after the presentation of a petition for determination of bankruptcy against him or her, a debtor —
- (a) pays money to the petitioning creditor; or
  - (b) gives or delivers, or procures to be given or delivered, to the petitioning creditor any satisfaction or security for his or her debt,
- so that the petitioning creditor receives a greater percentage of his or her debt than the other creditors, the petitioning creditor —

- (c) forfeits his or her whole debt; and
- (d) shall repay or deliver up the money, satisfaction or security, or the full value of it, to the trustee.

*Subdivision 3.3.4 — Petitions against Partnerships*

**41. Creditors' petitions against partnerships**

(1) A creditor of a partnership may present, in the same manner as is prescribed for a creditor's petition, a petition for determination of bankruptcy against all, or any one or more, of the members of the partnership if any of the partners has committed an act of bankruptcy in respect of the estate of the partnership.

(2) An order made under subsection (1) is valid even if it does not include all the partners.

(3) After an order made under subsection (1), the same proceedings may be taken concerning the estate of the partnership and the partner or partners as are prescribed by this Act for other estates and persons.

(4) This section does not prevent a creditor of a partnership from proceeding against —

- (a) a partner; or
- (b) the separate estate of a partner,

in respect of debts due by the partnership in the same way as he or she might proceed against him or her in respect of debts due by the partner in his or her individual capacity.

*Division 3.4.—Summoning of Witnesses, etc, prior to Determination*

**42. Summoning of witnesses, etc**

Before determination the Court may —

- (a) summon the debtor or any person whom it thinks capable of giving information concerning an act of bankruptcy committed by the debtor to attend before it, or before a magistrate; and
- (b) require him or her to produce books or documents in his or her possession or control.

**43. Examination of witnesses**

The examining magistrate may —

- (a) examine a person summoned under section 42; and
- (b) if the person fails, without reasonable excuse, to attend the examination—
  - (i) order by warrant that he or she be arrested and brought before him or her for examination; or
  - (ii) order the seizure of all or any of the books or documents that the person has been ordered to produce,

or both.

**44. Failure to appear for examination**

A person summoned under section 42 who fails, without reasonable excuse, to attend an examination by an examining magistrate is guilty of an offence.

Penalty: 10 penalty units or 6 months imprisonment, or both.

*Division 3.5 — Orders of Determination of bankruptcy*

**45. Publication of order of determination**

(1) A copy of an order of determination shall be —

(a) published in the Gazette; and

(b) advertised elsewhere or in such manner (if any) as is prescribed.

(2) The production of a copy of the Gazette containing an order published under subsection (1) is conclusive evidence in all legal proceedings —

(a) that the debtor has been duly determined a bankrupt; and

(b) of the date of the determination,

and it is not necessary in any such proceedings to prove any petitioning creditor's debt or any act of bankruptcy in order to support the determination.

**46. Date of determination**

A determination of bankruptcy takes effect on the date of the order of determination.

**47. Commencement of bankruptcy**

(1) Subject to subsection (3), the bankruptcy of a debtor shall be deemed to have relation back to and to commence at the time of —

(a) the completion of the act of bankruptcy on which the order is made adjudging him or her to be bankrupt; or

(b) if the bankrupt is proved to have committed more acts of bankruptcy than one, the first of the acts of bankruptcy that is proved to have been committed by him or her within 12 months preceding the presentation of the petition on which the determination is founded.

(2) Subsection (1) applies whether the determination is made on the petition of the debtor or of a creditor.

(3) A bankruptcy does not relate to a prior act of bankruptcy unless it is proved that —

(a) at the time of committing the act the bankrupt was indebted to a creditor or creditors in a sum or sums sufficient to support a petition in bankruptcy; and

(b) the debt or debts remain due at the time of the determination.

**48. Effects of determination as to property distributable among creditors**

Where an order has been made adjudging a debtor bankrupt the property of the bankrupt is divisible among his or her creditors in proportion to the debts proved by them in the bankruptcy.

**49. Effect of determination as to debts provable in the bankruptcy**

(1) Subject to subsection (2), where a debtor is determined a bankrupt, a creditor to whom the bankrupt is indebted in respect of a debt provable in the bankruptcy does not have any remedy against the property or person of the bankrupt in respect of the debt other than a remedy prescribed by this Act.

(2) Subsection (1) does not affect the power of a creditor holding a security over the property of the bankrupt to realise or otherwise deal with the security as he or she would have been entitled to realise or deal with it if this section had not been passed.

**50. Discharge of bankrupt in custody**

On determination of bankruptcy being made against him or her, a person in custody of the Sheriff or of a gaoler or officer —

- (a) under *mesne* process; or
- (b) in execution of a judgment, decree or order for a debt or demand provable in bankruptcy,

is, on application to the Court, entitled to an order discharging him or her out of custody in respect of the process or execution, absolutely or on such terms as the Court thinks proper.

**51. Contents of order**

In addition to any other things that under this Act it should or may include, an order of determination of bankruptcy shall —

- (a) fix a date, not being earlier than six days or later than 30 days after the date of the order, for the holding of a general meeting of the creditors of the debtor, for the purpose of the election of a trustee; and
- (b) shall specify a time and place at which the debtor shall come in and deliver to the trustee a full and accurate statement, verified on oath, of —
  - (i) his or her debts and other liabilities; and
  - (ii) the names and residences (so far as they are known to him or her) of his or her creditors, and
  - (iii) the causes of his or her inability to meet his or her engagements.

**PART 4 —ELECTION, ETC, OF TRUSTEES AND COMMITTEES OF INSPECTION***Division 4.1 — Meetings of Creditors for Purpose of Elections***52. Calling of meetings**

Notice of the first meeting of creditors shall be given in the prescribed form —

- (a) in the Gazette; and
- (b) in such other place or manner (if any) as the Court directs in any case; and
- (c) by affixing a copy of the notice in some conspicuous place in the registry and the court house.

**53. Holding of meetings**

The first meeting of creditors —

- (a) shall be held at the registry or some convenient place on Norfolk Island; and
- (b) shall be held in the prescribed manner; and
- (c) shall be presided over by the registrar or, if the registrar is unable to attend through illness or any unavoidable cause, by such chairman as the meeting elects; and
- (d) is subject to the prescribed provisions as to quorum, adjournment and all other matters relating to the conduct of the meeting or the proceedings at the meeting.

**54. Adjournment of meeting**

Subject to the directions of the Court, the registrar or other chairman may adjourn the first meeting of creditors from time to time and from place to place.

**55. Voting at meetings**

(1) At the first meeting of creditors—

- (a) a person is not entitled to vote as a creditor unless at or before the meeting he or she has proved a debt due to him or her under the bankruptcy in accordance with this section; and
- (b) a creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained; and
- (c) for the purpose of voting, a secured creditor shall be deemed to be a creditor only in respect of the balance (if any) due to him or her after deducting the value of his or her security, unless at or before the meeting of creditors he or she gives up the security to the trustee in which case he or she ranks as a creditor in respect of the whole sum due to him or her; and
- (d) votes may be given personally or by proxy; and
- (e) a resolution other than a special resolution or an extraordinary resolution shall be decided by a majority in value of the creditors present personally or by proxy at the meeting and voting on the resolution.

(2) For the purposes of subsection (1)(c), the amount of the balance, until the security is realised, shall be determined in the prescribed manner.

(3) A creditor desiring to vote at the first meeting of creditors shall first make preliminary proof that a debt provable under the bankruptcy is due to him or her.

(4) A proof of debt under subsection (3) may be made by affidavit in the prescribed form before the registrar or, Commissioner for Affidavits or justice who may, for that purpose, administer oaths and who —

- (a) on the proof being made to his or her satisfaction; and
- (b) if required by the creditor,  
shall deliver a certificate to the creditor in Form 6.

(5) A certificate under subsection (4) shall be filed in the registry, and entitles the creditor named in the certificate to vote at the meeting as a creditor in respect of a debt of the amount stated in the certificate.



**56. Election, etc, of trustees and committees of inspection**

- (1) The first meeting of creditors —
  - (a) may, by resolution —
    - (i) appoint a fit person resident in Norfolk Island, whether a creditor or not, to be the trustee of the property of the bankrupt at such remuneration (if any) as the creditors from time to time determine; or
    - (ii) leave his or her appointment to the committee of inspection appointed under paragraph (b); and
  - (b) may, by resolution, appoint some other fit person or persons —
    - (i) not exceeding five in number; and
    - (ii) being creditors qualified to vote at the first meeting of creditors or authorised in the prescribed form by creditors so qualified to vote, to form a committee of inspection for the purpose of superintending the administration by the trustee of the bankrupt's property; and
  - (c) may, by resolution, give directions as to the manner in which the property is to be administered by the trustee.
- (2) The meeting may —
  - (a) appoint more than one person to be the trustee and, where more than one person is appointed, shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of those persons; and
  - (b) may appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee.
- (3) Where, in accordance with subsection (2), more persons than one are appointed to be the trustee, they are joint tenants of the property of the bankrupt.
- (4) If the first meeting of creditors appoints a trustee or trustees by resolution, it shall declare —
  - (a) the security (if any) to be given; and
  - (b) to whom the security shall be given,by the person or persons so appointed before he or she enters, or they enter, as the case may be, the office of trustee.

**57. Election of new trustee in case of improper voting**

- (1) Where the proof of a creditor who has voted at the election of a trustee and without whose vote the trustee would not have been elected is afterwards expunged or reduced, the Court may, on the application of a majority in value of the creditors who have proved, order a fresh meeting to be held for the election of a new trustee.
- (2) A meeting held under subsection (1) shall be summoned and held —
  - (a) at such place as the Court thinks proper; and
  - (b) in a manner as near as possible to that in which the first meeting of creditors was called and held.

**58. Court order for election of new trustee**

On sufficient cause being shown, the Court may order a meeting for the election of a new trustee to be held at such time and place, and in such manner, as it thinks proper.

**59. Certificate of appointment of trustee**

(1) The appointment of a trustee shall be reported to the registrar, and on being satisfied that the requisite security (if any) has been entered into by the trustee the registrar shall give a certificate declaring him or her to be trustee of the bankruptcy named in the certificate.

(2) A certificate under subsection (1) is conclusive evidence of the appointment of the trustee.

(3) The appointment of a trustee dates from the date of the certificate under subsection (1).

(4) Where the official trustee holds the office of trustee or the trustee is changed, a certificate of the registrar —

(a) may be made declaring the person named in the certificate to be the trustee; and

(b) is conclusive evidence that the person named in the certificate is the trustee.

(5) or all purposes of any law requiring registration, enrolment or recording of transfers of property, the certificate of appointment of a trustee

(a) shall be deemed to be a transfer of property; and

(b) may be registered, enrolled and recorded accordingly.

**60. Lack of trustee**

If during a bankruptcy there is no trustee acting, the official trustee shall act as the trustee.

**61. Lack of committee of inspection**

If during a bankruptcy there is no committee of inspection, an act, thing, direction or consent that is authorised or required by this Act to be done or given by a committee may be done or given by the Court on the application of the trustee.

**62. Filling up numbers of members of committee of inspection**

Where the number of members of a committee of inspection is for the time being less than five, the creditors may increase the number to not more than five.

**63. Defect in election**

A defect or irregularity in the election of a trustee or of a member of the committee of inspection does not invalidate any act *bona fide* done by him or her, and an act or proceeding of the trustee or of the creditors is not invalid by reason of any failure of the creditors to elect all or any members of the committee of inspection.

*Division 4.2 — Retirement, Removal, Replacement, etc*

**64. Trustees**

(1) Where a vacancy occurs in the office of trustee by removal, death, resignation or otherwise, the creditors in general meeting shall fill the vacancy.

(2) A meeting for the purposes of subsection (1) shall be convened by —

(a) the continuing trustee (if there is more than one); or

(b) the registrar on the requisition of a creditor.

(3) The Court may, on cause shown, suspend or remove a trustee.

(4) By a special resolution at a meeting specially called for the purpose (of which the prescribed notice has been given), the creditors may remove the trustee and appoint another person to fill his or her office.

(5) Where a trustee is determined bankrupt or is or becomes resident out of Norfolk Island, he or she ceases to be trustee and, if there is no other trustee, the registrar shall call a meeting of creditors for the appointment of another trustee in his or her place.

**65. Committees of inspection**

(1) Where a vacancy occurs in the office of a member of a committee of inspection by removal, death, resignation or otherwise, the trustee shall convene a meeting of creditors for the purpose of filling the vacancy.

(2) A member of the committee of inspection may resign his or her office by written notice signed by him or her and delivered to the trustee.

(3) By a special resolution at a meeting (of which the prescribed notice, stating the object of the meeting, has been given), the creditors may remove a member of the committee of inspection.

(4) Where a member of the committee of inspection is determined bankrupt or ceases to reside in Norfolk Island, he or she ceases to be a member of the committee.

*Division 4.3 — Miscellaneous*

*Subdivision 4.3.1 — Trustees*

**66. Status of trustees**

(1) The official title of the trustee of a bankrupt shall be —  
“the trustee of the property of (*name of bankrupt*), a bankrupt”.

(2) The trustee may, under his or her official title —

(a) hold property; and

(b) make contracts; and

(c) sue and be sued; and

(d) enter into engagements binding on himself or herself and his or her successors in office; and

(e) do all other acts necessary or expedient to be done in the execution of his or her office.

**67. Compliance with directions of first meeting of creditors**

The trustee shall conform to any directions given under section 56(1)(c) by the first meeting of creditors unless the Court, for some just cause, otherwise orders.

**68. Requirement of consent of committee of inspection**

- (1) At any time —
- (a) the Court may make an order; or
  - (b) the creditors may pass a special resolution,

declaring that all or any of the things authorised by this Act to be done by the trustee with the consent of the committee of inspection may be done by the trustee without that consent.

(2) Where an order or resolution is made or passed under subsection (1), the provisions of this Act relating to the committee of inspection cease to apply as to things so authorised.

**69. Indemnity to trustees**

- (1) A trustee is not personally liable by reason only —
- (a) that any of the matters on which a determination of bankruptcy has been founded is insufficient to support the determination; or
  - (b) of any receipt by him or her in his or her official capacity of any money or negotiable instrument if he or she has dealt with it —
    - (i) as directed by the Court; or
    - (ii) as required by this Act or an order made under this Act.

(2) Where an action is brought against a trustee in respect of any money or negotiable instrument received by him or her in his or her official capacity, a Judge may, on proof that the trustee has acted in the manner referred to in subsection (1)(b) —

- (a) stay or set aside the proceedings in the action so far as the trustee is concerned; and
- (b) make such order as to costs as he or she thinks proper.

**70. Vesting of property in trustees on appointment**

(1) On the appointment of a trustee under this Part, the property of the bankrupt is immediately divested from the official trustee and is vested in the trustee so appointed.

(2) The property of the bankrupt passes from trustee to trustee and vests in the trustee for the time being during his or her continuance in office without any conveyance, assignment or transfer.

*Subdivision 4.3.2 — Committees of Inspection*

**71. Quorum of committees**

The creditors may, by resolution, fix the quorum required to be present at a meeting of the committee of inspection.

**72. Effect of vacancies in committees**

Subject to section 71, the continuing members of a committee of inspection may act notwithstanding any vacancy in the committee.

**PART 5.—PROPERTY OF BANKRUPTS DEVOLVING ON TRUSTEES***Division 5.1 — Dealing with Proceeds of Sales under Execution***73. Holding of proceeds generally**

Where the property of any person has been taken and sold in execution in respect of a sum of not less than \$1000.00, the Sheriff, or bailiff or other officer of the Court, or of the Court of Petty Sessions, as the case may be, shall retain the proceeds of the sale in his or her hands for a period of 14 days.

**74. Holding of proceeds where petition presented**

In a case to which section 73 applies, if notice is served on the Sheriff, bailiff or other officer, within the period referred to in that section, of a bankruptcy petition having been presented against the person whose property has been sold, the Sheriff, bailiff or officer shall hold the proceeds of the sale, after deducting sufficient to defray the costs and expenses of the execution creditor, on trust to pay it to the trustee.

**75. Dealing with proceeds where no bankruptcy**

In a case to which section 73 applies, if —

- (a) no notice of a petition having been presented has been served on the Sheriff, bailiff or other officer referred to in that section within the period of 14 days referred to in that section; or
  - (b) a notice of a petition has been served but the person against whom the petition has been presented is not determined a bankrupt on that petition or any other petition of which notice has been given,
- the Sheriff, bailiff or officer may deal with the proceeds of the sale in the same manner as he or she might have done if no notice of a bankruptcy petition had been served on him or her.

*Division 5.2 — Salaries, Pensions, etc***76. Payment to creditors of part of salary, etc**

(1) Where a bankrupt —

- (a) is or has been employed or engaged in the Public Sector; or
  - (b) is in receipt of any pension or compensation granted by an Act,
- the trustee, during the bankruptcy, or the registrar, after the close of the bankruptcy, shall receive for distribution among the creditors so much of the bankrupt's salary, emolument or pension as the Court, on the application of the trustee, thinks just and reasonable but must not make an order for the payment of an amount that would exceed that payable under a law of the Commonwealth from a pension or like receipt.

(2) Any amount received in accordance with subsection (1) shall be paid in such manner and at such times as the Court, with the written consent of the Minister, directs.

(3) Where a bankrupt is in receipt of a salary or increase otherwise than as set out in subsection (1), the Court shall, on the application of the trustee, from time to time make such order as it thinks just for the payment of the salary or income, or any part of it —

- (a) to the trustee during the bankruptcy; or
  - (b) to the registrar, if necessary, after the close of the bankruptcy,
- to be applied by him or her in such manner as the Court directs.

*Division 5.3 — Avoidance, etc, of Certain Transactions*

**77. Transfers, etc, constituting acts of bankruptcy**

(1) Subject to this section, a conveyance, assignment, gift, delivery or transfer of any property, or other dealing with property, that would constitute under this Act an act of bankruptcy is void against the trustee of the bankrupt.

(2) A transfer of all the debtor's property for the benefit of all his or her creditors, any dealing with property so transferred and an act or thing *bona fide* made or done by the trustee of such a transfer is valid and is not affected by the determination unless the trustee of the transfer had notice, before or at the time of the dealing, act or thing, that proceedings had been taken, or were about to be taken, for the purpose of obtaining a determination of bankruptcy against the debtor.

(3) Where an execution has been levied by seizure and sale the proceeds of which have been lawfully paid over under this Act to the person at whose suit the execution was issued —

- (a) the payment is valid; and
  - (b) the person receiving it is not affected by the determination,
- unless at the time of payment to him or her, he or she had notice that a petition for determination had been presented against the debtor.

**78. Voluntary settlements**

(1) For the purposes of this section, “settlement” includes a transfer of property.

(2) A settlement of property made by any person, other than a settlement made —

- (a) before and in consideration of marriage; or
  - (b) in favour of a purchaser or encumbrancer in good faith and for valuable consideration; or
  - (c) on or for the spouse or children of the settlor of property that has accrued to the settlor after marriage in right of his or her spouse,
- is void as against the trustee under this Act if the settlor becomes bankrupt —

- (d) within 3 years after the date of the settlement; or
  - (e) within 4 years after the date of the settlement unless the parties claiming under the settlement can prove that at the time of making the settlement the settlor was able to pay all his or her debts without the aid of the property comprised in the settlement.
- (3) A covenant or contract made by a person in consideration of marriage for the future settlement, on or for his or her spouse or children, of any money or property —
- (a) in which, at the date of his or her marriage, he or she had no estate or interest, vested or contingent, in possession or remainder; and
  - (b) that was not money or property of or in right of his or her spouse,

is, on his or her becoming bankrupt before the property or money has been actually transferred or paid under the contract or covenant, void against the trustee under this Act.

### **79. Fraudulent preferences**

(1) Where a debtor who is unable to pay, from his or her own money, his or her debts as they become due, has —

- (a) made a transfer, gift or delivery of property; or
- (b) given a charge on property; or
- (c) made a payment; or
- (d) incurred an obligation; or
- (e) taken or suffered any judicial proceedings,

in favour of a creditor or of a person in trust for a creditor, with a view to giving the creditor a preference over the other creditors, and —

- (f) a petition for a determination of bankruptcy is presented against him or her within the next 12 months; and
- (g) a determination of bankruptcy is made on the petition,

the transfer, gift, delivery, charge, payment, obligation or proceedings shall be deemed to be fraudulent and is or are void as against the trustee appointed under this Act.

(2) Subsection (1) does not affect the rights of a purchaser, payee or encumbrancer in good faith and for valuable consideration.

(3) Pressure by a creditor does not exempt a transaction from the operation of subsection (1).

### **80. Other preferences to creditors**

(1) Where a debtor who is unable to pay his or her debts as they become due has—

- (a) made a transfer, gift or delivery of property; or
- (b) given a charge on property,

in favour of a creditor, or of a person in trust for a creditor, otherwise than for a reasonable and sufficient consideration given at the time of its making or giving, and —

- (c) a petition for a determination of bankruptcy is presented against the debtor within 12 months after the date of its making or giving; and
- (d) a determination of bankruptcy is made on the petition,

the transfer, gift, delivery or charge shall be deemed to be a fraudulent preference and is void as against the trustee of the bankrupt under this Act, and is not available to the creditor as against the trustee.

(2) Any property to which subsection (1) applies, or the full value of the property, is recoverable by the trustee from —

- (a) the creditor; or
- (b) any person who holds it in trust for the creditor; or
- (c) any person to whom the creditor or person holding the property in trust has transferred, delivered or mortgaged the property, if, at the time of the transfer, delivery or mortgage, he or she had notice of the fraudulent preference.

**81. Other void transfers, etc**

(1) A transfer, gift or delivery of property or a charge made on property, made or given by a debtor who is unable to pay, from his or her own moneys, his or her debts as they become due, the effect of which is —

- (a) to defeat or delay the creditors of the debtor; or
- (b) to diminish the property to be divided among his or her creditors,

shall be deemed to be fraudulent and is void —

- (c) if a petition for determination of bankruptcy is presented against the debtor within 12 months — as against the petitioning creditor; and
- (d) if determination of bankruptcy is made on the petition — as against the trustee in the bankruptcy,

unless it is proved that the transfer, gift, delivery or charge was in fact made in good faith.

(2) Pressure by a creditor does not protect a transaction from the operation of section 78(2), and such a transaction does not acquire any validity by reason only that it was made or done under an agreement made before the determination.

**82. Saving of certain transactions**

(1) This Act does not invalidate —

- (a) a payment made in good faith and for value received to a bankrupt before the date of the order of determination by a person who did not, at the time of the payment, have notice of any act of bankruptcy committed by the bankrupt and available against him or her for a determination of bankruptcy; or
- (b) any payment or delivery of money or goods belonging to a bankrupt made to him or her, before the date of the order of determination, by a depository of the money or goods who did not, at the time of the payment or delivery, have notice of any act of bankruptcy committed by the bankrupt and available against him or her for a determination of bankruptcy; or
- (c) any contract or dealing with a bankrupt made in good faith and for valuable consideration before the date of the order of determination by a person who did not, at the time of the making of the contract or dealing, have notice of any act of bankruptcy committed by the bankrupt and available against him or her for a determination of bankruptcy.

(2) Subject to the provisions of this Act relating to —

- (a) the proceeds of the sale and seizure of goods; or
- (b) the avoidance of —
  - (i) settlements; and
  - (ii) transfers, charges, payments and judicial proceedings, on the ground of their constituting fraudulent preferences or otherwise,

the following transactions by and in relation to the property of a bankrupt are valid notwithstanding any prior act of bankruptcy —

- (c) a disposition, or a contract with respect to the disposition, of property by transfer, charge, delivery of goods, payment of money or otherwise, made by a bankrupt in good faith and for valuable consideration before the date of the



order of determination with any person who did not, at the time of the making of the disposition, have notice of any act of bankruptcy committed by the bankrupt and available against him or her for a determination of bankruptcy;

- (d) any execution or attachment against the property of the bankrupt executed in good faith by seizure and sale before the date of the order of determination, if the person on whose account the execution or attachment was issued did not, at the time of the seizure and sale, have notice of any act of bankruptcy committed by the bankrupt and available against him or her for a determination of bankruptcy.

*Division 5.4 — Transfer, etc, of Certain Property*

**83. Property outside Norfolk Island**

Where a bankrupt has any property outside Norfolk Island, the Court may, on the application of the trustee, order the bankrupt —

- (a) to execute all such deeds and other instruments; and  
 (b) to do and concur in all such acts, matters and things,

as are necessary to enable the trustee to realise or make available the property or the proceeds of the property, or such part of the property or the proceeds of the property as the Court thinks proper for distribution among the creditors of the bankrupt.

**84. Property held by bankers, etc**

(1) A banker, attorney or agent of a bankrupt shall pay and deliver to the trustee all moneys and securities in his or her possession or power as banker, attorney or agent, unless by law he or she is entitled to retain them as against the bankrupt or the trustee.

(2) A person who contravenes or fails to comply with subsection (1) is guilty of a contempt of court, and may, on the application of the trustee, be punished accordingly.

(3) For the purposes of subsection (1), a person is not entitled to withhold possession of any books of account, papers or writings relating to the estate as against the trustee, or to claim a lien on them.

*Division 5.5 — Discovery of Assets*

**85. Order to attend for examination and produce documents**

(1) On the application of the trustee or of a creditor at any time after an order of determination has been made against a bankrupt, the Court may —

- (a) order —  
 (i) the bankrupt or his or her spouse; or  
 (ii) any person who is —  
     (A) known or suspected to have in his or her possession any of the estate or effects belonging to the bankrupt; or  
     (B) supposed to be indebted to the bankrupt; or  
 (iii) any person whom the Court thinks able to give information concerning the bankrupt or his or her trade, dealings or property,

to attend before it, or before any magistrate, at a time or times to be specified in the order; and

- (b) order any person referred to in paragraph (a) to produce any documents in his or her custody or control relating to the bankrupt or his or her trade, dealings or property.
- (2) If a person in respect of whom an order under subsection (1) is made refuses, after having been tendered a reasonable sum for expenses —
- (a) to come before the Court or the examining magistrate at the time appointed; or
  - (b) to produce the documents,
- without a lawful impediment made known to and allowed by the Court or examining magistrate at the time of sitting, the Court or examining magistrate may, by warrant addressed to a member of the Police Force or a prescribed officer, cause the person to be arrested and brought up for examination.

### **86. Examinations**

- (1) The Court or an examining magistrate may examine, or cause to be examined, on oath, orally or by written interrogatories, any person brought before it or him or her under section 85 concerning the bankrupt, or his or her trade, dealings or property.
- (2) A person examined under subsection (1) who refuses to answer to the satisfaction of the Court or the examining magistrate, as the case may be, is guilty of an offence.

Penalty: 20 penalty units or 6 months imprisonment.

### **87. Incriminating questions**

A question put to a bankrupt on any examination under this Act is not unlawful by reason only that the answer may expose him or her to punishment under another Act and any answer so given may not be used as evidence in any proceedings under any other Act.

### **88. Order for payment of indebtedness to bankrupt found on examination**

On the application of the trustee, the Court or examining magistrate may order a person who appears on examination to be indebted to the bankrupt to pay to the trustee the amount, or any part of the amount, appearing to be due —

- (a) with or without costs of the examination; and
- (b) at such time and in such manner as the Court or examining magistrate thinks expedient,

in full discharge of the full amount, or otherwise, as the Court or examining magistrate thinks proper.

**89. Reward for discovery of concealed property**

A person who makes discovery, or gives information to the trustee that leads to the discovery, of any concealed property of a bankrupt not previously known by the trustee is entitled to such reward, not exceeding 10% of the value of the property so discovered, as the Court allows.

*Division 5.6 — Seizure and Attachment***90. Seizure under order of Court**

- (1) A person acting under warrant of the Court may —
  - (a) seize and attach any property of the bankrupt in the custody or possession of the bankrupt or of any other person; and
  - (b) for that purpose, break open —
    - (i) any house, building or room of the bankrupt where the bankrupt is supposed to be; or
    - (ii) any building or receptacle of the bankrupt where any of his or her property is supposed to be.
- (2) Where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him or her, the Court may grant a search warrant to a member of the Police Force or a prescribed officer of the Court, who may execute the warrant according to its tenor.
- (3) The person making a seizure or attachment under this section shall leave with the person in whose possession any property is attached —
  - (a) a copy of the warrant; and
  - (b) an inventory of the property with a notice annexed that the property has been attached by him or her.
- (4) Any property that is attached under this section may be —
  - (a) removed; or
  - (b) secured on the premises by sealing up any repository, room or closet,and in the latter case some person may be left on the premises in custody of the property.

*Division 5.7 — Miscellaneous***91. Redirection of letters addressed to bankrupts**

On the application of the trustee, the Court may order that, for such time (not exceeding three months from the date of the order of determination) as it thinks proper, letters posted and addressed to the bankrupt at any place or any of the places referred to in the order shall be redirected, sent or delivered by the Norfolk Island Post Office to the trustee, or otherwise as the Court directs.

**PART 6 — ADMINISTRATION OF PROPERTY OF BANKRUPTS***Division 6.1 — General***92. Duties of bankrupt**

(1) It is the duty of a bankrupt to aid, to the best of his or her ability, in the realisation of his or her property and the distribution of the proceeds among his or her creditors.

(2) The bankrupt shall, on or before the day appointed by the order of determination for the purpose, deliver to the trustee the statement referred to in section 49(b), and shall also —

- (a) give such inventory of his or her property, and such lists of his or her creditors and debtors and of the debts due to and from them respectively; and
- (b) submit to such examination, on oath or otherwise, by the trustee in respect of his or her property or his or her creditors; and
- (c) attend such meetings of his or her creditors; and
- (d) wait at such times on the trustee; and
- (e) execute such powers of attorney, transfers, deeds and instruments; and
- (f) generally do all such acts and things in relation to his or her property and the distribution of the proceeds among his or her creditors,

as are —

- (g) reasonably required by the trustee; or
- (h) prescribed; or
- (i) directed by the Court by any special order made —
  - (i) in reference to any particular bankruptcy; or
  - (ii) on the occasion of any special application by the trustee or creditor.

(3) For the purpose of subsection (2)(b), the trustee may administer oaths.

(4) A bankrupt who wilfully fails —

- (a) to perform the duties imposed on him or her by this section; or
- (b) to deliver up possession to the trustee of any part of the property in his or her possession or under his or her control that is divisible among his or her creditors under this Act,

is, in addition to any other punishment to which he or she may be subject, guilty of a contempt of court.

**93. Trustees' discretion in administration**

Subject to this Act, and to any directions under section 94 and any other prescribed directions, the trustee shall exercise his or her own discretion in the management of the estate and its distribution among the creditors.

**94. Directions to trustees by committees of inspection and meetings of creditors**

(1) In the administration of the property of the bankrupt and in the distribution of the property among his or her creditors, the trustee shall have regard to any directions given —

- (a) by resolution of the creditors at a general meeting; or
- (b) by the committee of inspection.

(2) For the purposes of subsection (1), directions given by the creditors at a general meeting override directions given by the committee of inspection.

### **95. Meetings of committees of inspection**

(1) The trustee —

- (a) shall call a meeting of the committee of inspection at least once in every two months; and
- (b) may call special meetings of the committee as he or she thinks necessary.

(2) At a meeting of the committee of inspection under subsection (1)(a), the committee may audit the accounts of the trustee and determine whether any or what dividend is to be paid.

### **96. Meetings of creditors**

(1) The trustee shall from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes.

(2) During the continuance of a bankruptcy, the Court may from time to time summon general meetings of the creditors to ascertain their wishes, and if it thinks fit it may direct the registrar to preside at any such meeting.

(3) A general meeting of the creditors may be summoned by a member of the committee of inspection.

(4) The provisions of this Act relating to the first meeting of creditors in a bankruptcy apply to any subsequent general meeting of creditors, except that —

- (a) subject to subsection (2), a meeting may be presided over by any person chosen by the creditors present at the meeting; and
- (b) any creditor whose debt has been proved or the value of whose debt has been ascertained at, or subsequent to, the first meeting of creditors shall be allowed to be present and to vote at the meetings.

### **97. Applications by trustees to the Court for directions**

(1) The trustee may, by a written statement verified by affidavit, apply to the Court for, and is entitled to have, its opinion, advice or direction on any question respecting the management of the bankrupt estate or his or her duty in connection with the estate.

(2) Notice of an application under subsection (1) shall be given to all persons interested, or to such of them as the Court directs.

(3) A trustee who acts on the opinion, advice or direction of the Court obtained under subsection (1) shall be deemed to have acted rightly in respect of the subject-matter of the application, unless he or she has been guilty of a wilful fraud, concealment or misrepresentation in obtaining the opinion, advice or direction.

**98. Trustee as receiver**

In relation to, and for the purpose of, acquiring or retaining possession of the property of a bankrupt, a trustee is in the same position as if he or she were a receiver of that property appointed by the Court in its equitable jurisdiction, and on application by the trustee, the Court may enforce the acquisition or retention of the property as if he or she were a receiver.

**99. Appeals**

(1) The bankrupt or a creditor, debtor or other person aggrieved by any act or decision of a trustee may appeal to the Court.

(2) On an appeal under subsection (1), the Court may —

- (a) confirm, reverse or modify the act or decision complained of; and
- (b) make such order as it thinks just.

*Division 6.2 — Dealings with Property of Bankrupts*

**100. Duty of trustees to take possession of books and other personal property**

As soon as possible, the trustee shall take possession of —

- (a) the deeds, books and documents of the bankrupt; and
- (b) all other property capable of manual delivery.

**101. General powers of trustees**

(1) Subject to this Act, the trustee may —

- (a) receive and decide on proof of debts in the prescribed manner; and
- (b) carry on the business of the bankrupt so far as is necessary for the beneficial winding-up of the business; and
- (c) sell all the property of the bankrupt, including the goodwill of the business (if any) and the book debts due or growing due to the bankrupt, by public auction or private contract, and if he or she thinks fit transfer the whole of the property to any person or company or to sell it in parcels; and
- (d) give receipts for any money received by him or her, which receipts effectually discharge the person paying the moneys from all responsibility in respect of the application of the money; and
- (e) prove, rank, claim and draw a dividend in the matter of the bankruptcy of a debtor of the bankrupt; and
- (f) execute all powers of attorney, deeds and other instruments that are expedient or necessary for the purpose of giving effect to the provisions of this Act; and
- (g) exercise any other powers the capacity to exercise which is vested in him or her under this Act.

(2) Subject to subsection (3) and to section 68, the trustee may, with the sanction of the committee of inspection —

- (a) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his or her debts; and
- (b) appoint the bankrupt —
  - (i) to superintend the management of the property; or
  - (ii) to carry on his or her trade (if any) for the benefit of the creditors; or

- (iii) to aid in administering the property in such manner and on such terms as the creditors direct; and
  - (c) bring or defend any action, suit or other legal proceedings relating to the property of the bankrupt; and
  - (d) refer any dispute to arbitration; and
  - (e) on the receipt of such sums, payable at such times and generally on such terms as are agreed on, compromise any debt, claim or liability, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the bankrupt and any debtor or person who has incurred any liability to the bankrupt; and
  - (f) make any compromise or other arrangement that he or she thinks expedient —
    - (i) with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy; or
    - (ii) with respect to any claim arising out of or incidental to the property of the bankrupt that is made or capable of being made —
      - (A) on the trustee by any person; or
      - (B) by the trustee on any person; and
  - (g) divide among the creditors, in its existing form and according to its estimated value, any property that from its peculiar nature or other special circumstances cannot advantageously be realised by sale; and
  - (h) employ a shorthand writer to take notes of the proceedings at a meeting of creditors or an examination held under this Act.
- (3)** Sanction under subsection (2) may be —
- (a) a general permission to do all or any of the things referred to in that subsection; or
  - (b) permission to do all or any of those things in a specified case.

## **102. Compositions and schemes of settlement**

**(1)** With the sanction of a special resolution of the creditors present at a meeting of which the prescribed notice specifying the object of the meeting has been given, and subject to the approval of the Court —

- (a) signing the instrument containing the terms of the composition or scheme; or
  - (b) embodying the terms in an order of the Court,
- the trustee may —
- (c) accept a composition offered by the bankrupt; or
  - (d) assent to a general scheme of settlement of the affairs of the bankrupt,
- on such terms as are thought expedient, and with or without a condition that the order of determination is to be annulled.

**(2)** Where —

- (a) an order annulling the determination is made a condition of a composition with the bankrupt, or of a general scheme for the liquidation of his or her affairs; and
  - (b) the Court approves the composition or general scheme,
- the Court shall annul the determination on application made by or on behalf of an interested person.

(3) On motion made in a summary manner by an interested person, the provisions of any composition or general scheme made under this Act may be enforced by order of the Court.

(4) Disobedience of an order made under subsection (3) is a contempt of court.

(5) The approval of the Court is conclusive as to the validity of a composition or scheme under this section, and a composition or scheme so approved is binding on all the creditors so far as relates to any debts due to them and provable under the bankruptcy.

### **103. Employment of lawyers and agents**

(1) The trustee may —

(a) employ a lawyer or other agent; and

(b) where the trustee is himself or herself a lawyer, contract to be paid a certain sum by way of percentage or otherwise as a remuneration for his or her services as trustee, including all professional services.

(2) Notwithstanding any law to the contrary, a contract referred to in subsection (1)(b) is lawful.

### **104. Disclaimer of onerous property**

(1) Where any property of the bankrupt acquired by the trustee under this Act consists of —

(a) land burdened with onerous covenants; or

(b) unmarketable shares in companies; or

(c) unprofitable contracts; or

(d) any other property that is unsaleable or not readily saleable because it binds the possessor —

(i) to the performance of an onerous act; or

(ii) to the payment of a sum of money,

the trustee may, by writing under his or her hand, disclaim the property.

(2) The trustee may exercise the powers conferred by subsection (1) notwithstanding that he or she has endeavoured to sell the property, or has taken possession of it or exercised any act of ownership in relation to it.

(3) On the execution of a disclaimer under subsection (1) —

(a) if the property disclaimed is a contract, it shall be deemed to be determined from the date of the order of determination; and

(b) if the property disclaimed is a lease, it shall be deemed to have been surrendered on the date of the disclaimer; and

(c) if the property disclaimed is shares in a company, they shall be deemed to be forfeited and to have reverted to the company on and from the date of the disclaimer; and

(d) any other disclaimed property reverts, subject to subsection (4), to the person entitled on the determination of the estate or interest of the bankrupt.

(4) In a case to which subsection (3)(d) applies, whether or not there is any person in existence who is entitled to the estate or interest of the bankrupt, no estate or interest in the property remains in the bankrupt.



(5) A person interested in any disclaimed property may apply to the Court, and the Court may —

- (a) order possession of the disclaimed property to be delivered up to the applicant; or
- (b) make such other order as to the possession of the property as is just.

(6) A person injured by this section (other than a company shares in which are forfeited under this section) shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may prove it as a debt under the bankruptcy.

(7) Subject to subsection (8), the trustee is not entitled to disclaim any property under this section where —

- (a) a written application has been made to him or her by a person interested in the property requiring him or her to decide whether he or she will disclaim or not; and
- (b) for not less than 28 days after the receipt of the application, or such further time as is allowed by the Court, the trustee has declined or neglected to give notice, whether or not he or she disclaims the property.

(8) Where at the date of the determination the bankrupt is the lessee of any premises, the trustee may, instead of disclaiming immediately, elect to retain the premises for a period —

- (a) not exceeding three months; and
- (b) ending not later than the expiration of the lease,

and at the end of that period may disclaim the lease.

### **105. Rights to transfer shares, etc**

Where any portion of the property of a bankrupt consists of stock, shares in ships, shares or any other property transferable in the books of any company, office or person, the right to transfer the property is vested absolutely in the trustee to the same extent as it would have been in the bankrupt if he or she had not become bankrupt.

### **106. Things in action**

Where any portion of the property of a bankrupt consists of things in action, any action, suit or other proceedings instituted by the trustee for the recovery of the things shall be instituted in his or her official title, and for the purpose of the action, suit or other proceeding any such thing in action —

- (a) is assignable in law; and
- (b) shall be deemed to have been duly assigned to the trustee in his or her official capacity.

### **107. Transfers subject to rights of redemption, mortgages, etc**

(1) Where the bankrupt has made a transfer, assurance, delivery, deposit or pledge of any deeds, writings, goods or chattels subject to a condition for redemption or redelivery on payment of money or otherwise at a future day that has not arrived at the date of presenting the petition, the trustee —

- (a) may, before the time appointed for the redemption has arrived, make payment or tender of money or other performance according to the condition, as fully as the bankrupt could have done at the time so appointed; and
- (b) on the tender, payment or other performance is entitled —
  - (i) to have and receive the deeds, writings, goods or chattels so transferred, assured, delivered, deposited or pledged; and
  - (ii) to recover them from the person to whom they were transferred, assured, delivered, deposited or pledged or any other person in whose possession they may be and who has notice of the condition.
- (2) Where a debt or sum of money due to or by a bankrupt is charged on any land by way of equitable mortgage, the Court may —
  - (a) on the application of the trustee or equitable mortgagee; and
  - (b) on notice to all parties interested,make an order for the sale of the land.
- (3) With the leave of the Court, a mortgagee may bid at the sale of any mortgaged property.

#### **108. Payments into bank**

- (1) The trustee shall pay all sums received by him or her —
  - (a) into such bank and to such account as the majority, in number and value, of the creditors at a meeting appoint; and
  - (b) failing an appointment under paragraph (a), into such bank and to such account as the Court appoints.
- (2) If, after a bank has been appointed under subsection (1), the trustee keeps any sum exceeding \$100.00 in his or her hands for more than 10 days —
  - (a) he or she shall pay interest at the rate of 20% per annum on the excess over that sum; and
  - (b) on the application of any creditor, he or she shall be dismissed from office by the Court,unless he or she proves to the satisfaction of the Court that his or her reason for retaining the money was sufficient.
- (3) If a trustee is dismissed under subsection (2)(b), he or she —
  - (a) has no claim for remuneration; and
  - (b) is liable to any expenses to which the creditors are put by or in consequence of his or her dismissal.

#### **109. Trustees' books, etc**

- (1) The trustee shall keep in such manner as the Rules of Court of the Supreme Court direct —
  - (a) proper books of account showing his or her receipts and disbursements and dealings with the estate of the bankrupt; and
  - (b) books in which he or she shall from time to time make entries or minutes of proceedings at meetings and of such other matters as the Rules of Court direct.

(2) Subject to the control of the Court, any creditor of the bankrupt may, personally or by his or her agent, inspect any books kept by the trustee under subsection (1).

*Division 6.3 — Payments to Bankrupts, Apprentices, etc*

**110. Allowances in respect of maintenance of bankrupts, etc, and for services**

(1) With the consent of —

- (a) the creditors testified by a resolution passed in general meeting; or
- (b) the committee of inspection,

the trustee may, from time to time during the bankruptcy, make out of the estate such allowance to the bankrupt as is approved by the creditors or committee of inspection —

- (c) for the support of the bankrupt and his or her family; or
- (d) if he or she is engaged in winding-up his or her estate — in consideration of his or her services.

(2) Notwithstanding subsection (2) the trustee must, if funds are available after allowing for the costs of administration, effect payment of child support payments due by a bankrupt after the date of determination of bankruptcy.

**111. Apprentices, etc**

(1) Subject to subsection (4), where —

- (a) at the time of the presentation of the petition for determination a person is apprenticed or is an articed clerk to the bankrupt; and
- (b) the bankrupt, or the apprentice or articed clerk, gives to the trustee written notice to that effect, the order of determination is a complete discharge of the indenture or articles.

(2) If any money has been paid, as a fee, to the bankrupt by or on behalf of the apprentice or articed clerk, the trustee may, on application by the apprentice or clerk, or by a person on behalf of the apprentice or clerk, pay out of the property of the bankrupt, to or for the use of the apprentice or clerk, such sum as the trustee thinks reasonable.

(3) Before making a payment under subsection (2), the trustee shall take into account —

- (a) the amount paid by or on behalf of the apprentice or articed clerk; and
- (b) the time during which he or she served with the bankrupt under the indenture or articles before the commencement of the bankruptcy; and
- (c) the other circumstances of the case.

(4) On application by or on behalf of the apprentice or articed clerk, the trustee may, if it appears expedient, transfer the indenture or articles to some other person.

(5) A decision of the trustee under subsection (2) is subject to appeal to the Court.

*Division 6.4 — Proof of Debt***112. Debts provable in bankruptcy**

(1) Subject to subsections (2) and (3), all debts and liabilities, present or future, certain or contingent, to which the bankrupt —

(a) is subject at the date of the order of determination; or

(b) becomes subject during the continuance of the bankruptcy by reason of any obligation incurred before the date of the order of determination,

are debts provable in bankruptcy.

(2) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise are not provable in a bankruptcy.

(3) A person who has notice of an act of bankruptcy available for determination against the bankrupt shall not prove for a debt or liability contracted by the bankrupt after the date of his or her having the notice.

**113. Manner of proof**

(1) All debts shall be proved before the trustee.

(2) Proof of debt may be made by affidavit sworn before the registrar, a justice or a Commissioner for Affidavits, or in any other manner that is prescribed or that the trustee thinks satisfactory.

(3) An estimate of the value of any debt or liability provable under section 112 that by reason of its being subject to a contingency or contingencies, or for any other reason, does not bear a certain value shall be made —

(a) where the Rules of Court of the Supreme Court are applicable — in accordance with those Rules; and

(b) where those Rules are not applicable — in the discretion of the trustee.

(4) A person aggrieved by an estimate made by a trustee under subsection (3) may appeal to the Court.

(5) On an appeal under subsection (4) the Court may —

(a) if it thinks the value of the debt or liability is incapable of being fairly estimated — make an order to that effect; or

(b) if it thinks that the value of the debt or liability is capable of being fairly estimated — direct the value to be assessed before it or some other competent court, and give all necessary directions for that purpose.

(6) For the purposes of this Act, a debt or liability to which subsection (5)(a) applies is a debt not provable in the bankruptcy.

(7) For the purposes of this Act, the value of a debt or liability as assessed under subsection (5)(b) is provable as a debt in the bankruptcy.

**114. Proof of future debts**

(1) Where proof has been made in respect of a debt, or a fixed or ascertained amount, that has not accrued due at the date of determination, the proof shall be allowed for the full amount of the debt.

(2) For the purpose of counting the vote of the creditor, in estimating the value of a debt referred to in subsection (1) a rebate, at the prescribed rate, by way of discount

shall be made, computed from the time of voting to the time at which the debt would have become payable according to the terms on which it was contracted.

### **115. Proof of rents and other periodical payments**

(1) When any rent or other payment falls due at stated periods and the order of determination is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part up to the day of the determination as if the rent or payment grew due from day to day.

(2) Subsection (1) does not affect the operation of section 122.

### **116. Proof in respect of certain contracts**

Where a bankrupt is, at the date of the order of determination, liable in respect of distinct contracts —

- (a) as member of two or more distinct firms; or
  - (b) as a sole contractor and also as a member of a firm,
- the fact that —
- (c) the firms are in whole or in part composed of the same individuals; or
  - (d) the sole contractor is also one of the joint contractors,
- does not prevent proof in respect of those contracts against the properties respectively liable on them.

### **117. Secured creditors**

(1) On giving up his or her security, a creditor who holds a specific security on the property or any part of the property of the bankrupt —

- (a) may prove for his or her whole debt; and
  - (b) is entitled to a dividend in respect of the balance due to him or her after realising or giving credit for the value of his or her security in the manner and at the time prescribed.
- (2) With the consent of the committee of inspection, the trustee may, within 30 days after proof has been tendered by a secured creditor, require the creditor to give up his or her security on payment of the specified value.

(3) On payment in accordance with subsection (2), the creditor shall give up his or her security, and shall do, make and execute all necessary acts, transfers and assurances for that purpose.

(4) A secured creditor who has proved may, at any time before he or she is required under subsection (3) to give up his or her security, correct his or her valuation of the security by making a fresh proof of his or her debt.

- (5) A creditor who —
- (a) holds a security to which this section applies; and
  - (b) does not comply with this section,
- shall be excluded from all share in any dividend.

### **118. Allowance of interest**

Interest, computed up to the date of determination, on a debt provable in bankruptcy may be allowed by the trustee in the same circumstances as those in which interest would have been allowable if an action had been brought for the debt.

**119. Expunging, etc, of proofs**

On the application of a creditor or of the bankrupt, or on his or her own motion, and after the prescribed notice, the trustee may at any time expunge or reduce any proof of debt.

*Division 6.5 — Set-offs***120. Claims to and payment of set-offs**

(1) Subject to subsection (2), where there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and any other person proving or claiming to prove a debt in his or her bankruptcy —

- (a) an account shall be taken of what is due from the one party to the other in respect of the mutual dealings; and
- (b) the sum due from the one party shall be set off against any sum due from the other party,

and the balance of the account (and no more) shall be claimed or paid on either side respectively.

(2) A person is not entitled under subsection (1) to claim the benefit of a set-off against any property of a bankrupt in a case where, at the time of giving credit to the bankrupt or of incurring the debt to the bankrupt, he or she had notice of an act of bankruptcy committed by the bankrupt and available against him or her for determination.

*Division 6.6 — Ranking of Debts***121. Preferential debts**

(1) The following are preferential debts —

- (a) the costs of the trustee in administering the bankrupt estate (including the reimbursement of costs to a petitioning creditor in accordance with section 31(2));
- (b) child support payments ordered by a court of the Commonwealth or Norfolk Island;
- (c) subject to subsection (2), wages or salary of a person (other than a person employed under an employment contract under the *Employment Act 1988*) in the employment of the bankrupt, but not exceeding three months' wages or salary and not exceeding \$3,000.00;
- (d) wages of a person employed under an employment contract under the *Employment Act 1988*;
- (e) moneys owing to the Administration or to a public sector agency.

(2) Subsection (1)(c) applies only in respect of wages or salary claimed for the three months immediately preceding the date of the order of determination.

(3) Preferential debts —

- (a) Subject to section 122 — shall be paid in priority to all other debts; and
- (b) rank equally between themselves; and
- (c) shall be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they abate in equal proportions between themselves.

(4) Except as provided for by this section, all debts provable under the bankruptcy shall be paid at an equal rate.

### **122. Preference for certain rents**

(1) Distress for rent shall not be made, levied or proceeded in against the property of a debtor after —

- (a) an order of determination has been made against him or her; or
- (b) a petition has been presented by him or her under Division 3.2.

(2) The landlord or person to whom rent is payable is entitled to receive out of the estate, in priority to all other creditors —

- (a) so much rent as is then due; and
- (b) a sum in place of rent proportioned to the period (if any) that has elapsed between the last date at which rent became due and the date of the order of determination,

but the amount so received shall not exceed the amount of three months' rent.

(3) The landlord or person entitled to rent may prove for any surplus that is due above the amount received under subsection (2).

#### *Division 6.7 — Dividends*

### **123. Declaration of dividend**

(1) From time to time, as the committee of inspection determines, the trustee shall declare a dividend and distribute it among the creditors who have proved in the bankruptcy.

(2) If at any time the trustee does not declare a dividend for six months, he or she shall summon a meeting of the creditors and explain to them his or her reasons for not declaring a dividend.

(3) The trustee shall cause notice of all dividends and moneys payable to creditors, and when and where they are to be paid, to be published in the Gazette, and in such other newspapers as are prescribed.

### **124. Provision for distant creditors and for debts claimed but not yet proved**

In the calculation and distribution of a dividend, the trustee shall make provision for —

- (a) debts provable in bankruptcy appearing from the bankrupt's statements or otherwise to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time —
  - (i) to tender their proofs; or
  - (ii) to establish them if disputed; and
- (b) debts provable in bankruptcy the subject of claims not yet determined.

**125. Late proofs of debt**

(1) A creditor who has not proved his or her debt before the declaration of a dividend is entitled to be paid out of any moneys in the hands of the trustee, before the moneys are made applicable to the payment of any future dividend, any dividends that he or she has failed to receive.

(2) A creditor to whom subsection (1) applies is not entitled to disturb, on the ground that he or she did not participate in the distribution, the distribution of any dividend declared before his or her debt was proved.

**126. Dividends in relation to future debts**

(1) In the case of a debt or amount to which section 114 applies, the creditor is entitled to receive dividends on it equally with the other creditors, but after deducting for the purposes of the first dividend a rebate, at the prescribed rate, by way of discount.

(2) The rebate referred to in subsection (1) shall be calculated —

- (a) on so much of the debt as remains unpaid at the time of the declaration of the first dividend; and
- (b) from the time of the declaration to the time at which the debt would have become payable according to the terms on which it was contracted.

**127. Actions for dividends**

(1) An action or suit for a dividend does not lie against a trustee.

(2) If a trustee refuses to pay a dividend, the Court may order the trustee —

- (a) to pay the dividend; and
- (b) to pay out of his or her own money —
  - (i) interest on the dividend for the time that it is withheld; and
  - (ii) the costs of the application.

**128. Forfeiture of unclaimed dividends**

Where a dividend remains unclaimed for five years —

(a) it is vested in the Administration and shall be paid by the trustee into the Public Account; and

(b) at any time after a dividend is vested in the Administration under paragraph

(a), a Judge may —

- (i) in the case of the disability or absence overseas of the person entitled to the sum so vested; or
- (ii) for any other reason appearing to him or her sufficient,

recommend that the sum be repaid out of money provided for the purpose.



*Division 6.8 — Final Dividends and Distribution of Surplus*

**129. Final dividends**

When the trustee has converted into money all of the property of the bankrupt or so much of it as can, in the joint opinion of himself or herself and the committee of inspection, be realised without needlessly protracting the bankruptcy, he or she shall declare a final dividend.

**130. Distribution of net surplus**

Subject to Part 7, the bankrupt is entitled to any surplus of his or her estate remaining after payment of—

- (a) his or her debts, with interest at the prescribed rate; and
- (b) the costs, charges and expenses of the bankruptcy.

**PART 7 — CLOSE OF BANKRUPTCY AND DISCHARGE OF BANKRUPT, ETC**

*Division 7.1 — Close of bankruptcy.*

**131. Last examination of bankrupt**

(1) On the application of—

- (a) the trustee; or
- (b) if the trustee omits to make an application, the bankrupt,

the Court shall—

- (c) appoint a day, not earlier than one month from the date of the order of determination, for the bankrupt to attend in court to pass his or her last examination; and
- (d) shall cause the prescribed notice of the examination to be given.

(2) The Court may extend the time appointed under subsection (1).

(3) The Court may adjourn the last examination for such period as it thinks proper, if—

- (a) the examination and accounts of the bankrupt are not satisfactory and it appears to the Court that his or her failure to give further or better information or accounts is attributable to any neglect or default on his or her part; or
- (b) it appears to the Court that the bankrupt has wilfully disobeyed any order of the Court in his or her bankruptcy; or
- (c) the Court thinks that the examination should be adjourned.

(4) The Court may order that the last examination shall be held before a magistrate.

(5) A magistrate before whom an examination is held under subsection (4) has, for the purposes of the examination, all the powers of the Court under subsections (1), (2) and (3).

**132. Close of bankruptcy**

- (1) Where —
- (a) all of the property of the bankrupt, or so much of it as can, in the joint opinion of the trustee and the committee of inspection, be realised without needlessly protracting the bankruptcy, has been realised for the benefit of his or her creditors; or
  - (b) a composition or arrangement has been completed,
- the trustee shall make a report to the Court to that effect.
- (2) If on a report under subsection (1) the Court is satisfied that —
- (a) the whole of the property of the bankrupt has been realised for the benefit of his or her creditors; or
  - (b) so much of it as can be realised without needlessly protracting the bankruptcy has been so realised; or
  - (c) a composition or arrangement has been completed,
- the Court shall make an order that the bankruptcy is closed.
- (3) A copy of an order under subsection (2) shall be published in the Gazette.
- (4) The production of the copy of the Gazette containing a copy of an order under subsection (2) is conclusive evidence of the order having been made and of its date and contents.

*Division 7.2 — Discharge of bankrupt***133. Certificates of discharge**

A bankrupt may obtain from the Court a certificate of discharge —

- (a) in accordance with section 134 — in the circumstances set out in that section:  
or
- (b) in accordance with section 135 — with certain consents or after two years from the date of the determination; or
- (c) in accordance with section 136 — as of right, with certain consents after three years from the date of the determination; or
- (d) in accordance with section 142(3).

**134. Discharge for absence of responsibility or full settlement**

(1) Subject to subsection (3), at any time after the bankrupt has passed his or her last examination, or at any earlier time with the consent of the creditors testified by a special resolution, the bankrupt may, on the prescribed notice, apply to the Court for a certificate of discharge.

(2) A certificate of discharge shall not be given under this section unless it is proved to the Court that —

- (a) the bankruptcy arose from circumstances for which the bankrupt cannot justly be held responsible; or
- (b) a special resolution of his or her creditors has been passed to the effect that —
  - (i) the bankruptcy arose from circumstances for which he or she cannot justly be held responsible; and

(ii) the creditors desire that a certificate of discharge be granted to him or her;  
or

(c) the gross amount realised in the estate is equal to the total amount of debts proved in the estate.

(3) If —

(a) the bankrupt has made default in giving up to his or her creditors the property that he or she is required to give up by this Act; or

(b) a prosecution has been commenced against him or her under any law relating to the punishment of fraudulent debtors,

the Court may —

(c) suspend, for such time as it thinks just; or

(d) withhold,

the certificate of discharge.

**135. Discharge after one year with consent of creditors, or after two years in any case**

(1) Subject to subsection (2), on the application of a bankrupt who has not obtained a certificate of discharge (whether or not an application has been made under Section 134), and after the prescribed notice has been given, the Court may grant a certificate of discharge —

(a) with the consent, testified in writing, of a majority in number of the creditors who have proved in the estate and whose debts amount to \$1000.00 or more each — at the expiration of the period of 12 months after the date of the determination; or

(b) without the consent of any creditor — at the expiration of two years after that date,

and may, for that purpose vary any previous decision.

(2) On an application under subsection (1), the bankrupt shall make oath that —

(a) he or she has made a full and fair discovery of his or her estate; and

(b) he or she has not granted or promised any payment or security for the purpose of obtaining the consent of his or her creditors; and

(c) he or she has not entered into any collusive agreement for the purpose of obtaining that consent.

(3) On an application under subsection (1), the Court may withhold or suspend the certificate for such period as it thinks just.

**136. Right to discharge after three years**

(1) At the expiration of three years from the date of the order of determination, a bankrupt who has not obtained a certificate of discharge may —

(a) after giving the prescribed notice; and

(b) with the written consent of a majority of the creditors who have proved in the estate and whose debts amount to \$1000.00 or more each,

apply to the Court for a certificate of discharge.

(2) On an application under subsection (1), the bankrupt shall make oath that —

(a) he or she has made a full and fair discovery of his or her estate; and

- (b) he or she has not granted or promised any payment or security for the purpose of obtaining the consent of his or her creditors; and
  - (c) he or she has not entered into any collusive agreement for the purpose of obtaining that consent.
- (3) On proof to the satisfaction of the Court that the consent has been obtained without fraud or collusion, the Court shall grant the certificate of discharge.

### **137. Conditional grant of certificate**

If on an application for a certificate of discharge, the Court is of the opinion that the certificate ought not to be granted unconditionally, it may grant the certificate subject to any condition concerning any salary, pension, emolument, profit, wages, earnings or income that may afterwards become due to, or be earned by, the bankrupt, and generally concerning property acquired at a later date.

### **138. Form, etc, of certificate**

A certificate of discharge —

- (a) shall be in the prescribed form; and
- (b) shall be under the hand of the registrar and the seal of the Court; and
- (c) shall not be drawn up or take effect until —
  - (i) after the expiration of the time allowed for appeal; or
  - (ii) if an appeal is brought — after the decision on the appeal; and
- (d) shall be dated —
  - (i) the day after the expiration of the time allowed for appeal; or
  - (ii) the day of the decision on the appeal,as the case requires.

### **139. Effect of certificate of discharge**

- (1) Subject to subsections (2) and (3), a certificate of discharge releases the bankrupt from all debts provable under the bankruptcy with the exception of debts —
- (a) due to the Administration or a public sector agency; or
  - (b) with which the bankrupt stands charged at the suit of —
    - (i) the Administration or any other person, for an offence against a law relating to any branch of the public revenue; or
    - (ii) the Sheriff or other public officer, on a bail bond or recognisance entered into for the appearance of a person prosecuted for any such offence.
- (2) A bankrupt shall not be discharged from debts referred to in subsection (1) unless the Chief Executive Officer, with the approval of the Minister, consents in writing to the discharge.
- (3) A certificate of discharge does not release the bankrupt from any debt or liability —
- (a) that was incurred by means of fraud or breach of trust; or
  - (b) that has not been enforced as a result of fraud; or
  - (c) that was due by him or her as trustee of a bankrupt estate in respect of any sum of money improperly retained or employed by him or her as trustee.

(4) A certificate of discharge does not release any person who, at the date of the order of determination —

- (a) was a partner; or
  - (b) was jointly bound; or
  - (c) had made a joint contract,
- with the bankrupt.

#### **140. Evidence of discharge**

In any proceedings instituted against a bankrupt in respect of a debt from which he or she is released by a certificate of discharge —

- (a) the certificate is sufficient evidence of the bankruptcy and of the validity of the bankruptcy proceedings; and
- (b) the bankrupt may —
  - (i) plead that the cause of action occurred before his or her discharge; and
  - (ii) give this Act and the special matter in evidence.

#### **141. Payments, etc, to influence creditors**

(1) A payment, contract, covenant or security for the payment of money, made or given by a bankrupt or other person to or in trust for a creditor for the purpose of persuading or inducing him or her, or with intent to persuade or induce him or her —

- (a) to forbear from opposing the grant of a certificate of discharge; or
  - (b) to consent to the grant of a certificate of discharge; or
  - (c) not to appeal against the grant of a certificate of discharge,
- is void.

(2) In a case to which subsection (1) applies —

- (a) any money paid may be recovered; and
- (b) any money agreed to be paid or secured is not recoverable.

#### *Division 7.3 — Undischarged Bankrupts*

#### **142. Position of undischarged bankrupts.**

(1) In this section, “undischarged bankrupt” means a bankrupt —

- (a) whose bankruptcy has closed under Division 7.1; and
- (b) who has not been granted a certificate of discharge under Division 7.2.

(2) No portion of a debt provable under the bankruptcy is enforceable against the property of an undischarged bankrupt until the expiration of the period of three years from the close of the bankruptcy.

(3) If during the period referred to in subsection (2) the bankrupt pays to his or her creditors such additional sum as, together with the assets realised in the estate, makes up 100% of all debts proved in the bankruptcy, he or she is entitled to a certificate of discharge in the same manner as if that amount had originally been paid out of his or her property on the debts.

(4) If at the expiration of the period referred to in subsection (2) the bankrupt has not obtained a certificate of discharge, any balance remaining unpaid in respect of a debt proved in the bankruptcy (but without interest in the meantime) shall be deemed to be a subsisting debt in the nature of a judgment debt, and —

- (a) subject to the rights of persons who have become creditors of the debtor since the close of his or her bankruptcy; and
  - (b) with the consent of the Court,
- may be enforced against any property of the debtor, but only to the extent, and at the time and in the manner, directed by the Court after the giving of such notice and the doing of such acts as are prescribed for the purpose.

*Division 7.4 — Annulment of Determination*

**143. Annulment on payment in full**

If a bankrupt, or a person on behalf of a bankrupt —

- (a) pays all his or her creditors in full; or
  - (b) obtains a release of the debts due by him or her to his or her creditors,
- the bankrupt may apply to the Court for an order annulling the determination, and on being satisfied that all the creditors of the bankrupt have been paid in full or have released their debts the Court may make such an order, on such terms as to commission or remuneration, or charges already incurred, as it thinks just.

**144. Consequences of annulment**

(1) Where a determination in bankruptcy is annulled, whether under section 143 or under any other provision of this Act —

- (a) subject to paragraph (b), all sales and dispositions of property and payments duly made, and all acts previously done, by the trustee or any person acting under his or her authority, or by the Court, are valid; and
- (b) the property of the bankrupt —
  - (i) vests in such person as the Court appoints; or
  - (ii) in default of an appointment under subparagraph (i), reverts to the bankrupt,

for all his or her estate or interest in it, on such terms and subject to such conditions (if any) as the Court, by order, declares.

(2) A copy of the order of the Court annulling the determination of a debtor as a bankrupt shall be —

- (a) published without delay in the Gazette; and
- (b) notified as the Court may order.

**PART 8 — RELEASE OF TRUSTEES**

**145. Application for release**

(1) When a bankruptcy is closed, the trustee shall call a meeting of the creditors to consider an application to be made to the Court for his or her release.

(2) At the meeting called under subsection (1), the trustee —

- (a) shall lay before the assembled creditors an account showing the manner in which the bankruptcy has been conducted, with a list of the unclaimed dividends (if any) and of the property (if any) outstanding; and
- (b) shall inform the meeting that he or she proposes to apply to the Court for release.

(3) A copy of the account referred to in subsection (2)(a) shall be transmitted by the trustee to the official trustee at least 14 days before the trustee applies to the Court for his or her release.

(4) The official trustee shall make to the Court a report on the account referred to in subsection (2)(a), and on such other matters as he or she thinks should be reported.

(5) The creditors present at the meeting called under subsection (1) may express their opinion as to the conduct of the trustee, and any of them, or the official trustee, may appear before the Court and oppose the release of the trustee.

(6) After hearing anything put forward against the release of the trustee, the Court shall grant or withhold the release.

(7) If the Court withholds the release, it shall —

(a) make any order that it thinks just charging the trustee with the consequences of any act or default that he or she has done or made contrary to his or her duty; and

(b) suspend his or her release until the order has been complied with and the Court thinks it just to grant his or her release.

#### **146. Effect of release**

(1) Subject to subsection (2), the order of the Court releasing the trustee discharges him or her from all liability in respect of any act done, or default made, by him or her —

(a) in the administration of the affairs of the bankrupt; or

(b) in relation to his or her conduct as trustee of the bankrupt.

(2) An order releasing a trustee may be revoked by the Court on proof that it was obtained by fraud.

#### **147. Disposal of unclaimed dividends and outstanding property**

(1) Unclaimed dividends and any other moneys arising from the property of the bankrupt remaining under the control of the trustee at the close of the bankruptcy, or accruing after the close, shall be accounted for and paid over to such account as is directed by the Rules of Court of the Supreme Court.

(2) Any person entitled to unclaimed dividends or other moneys to which subsection (1) applies may claim them as directed by the Rules of Court of the Supreme Court.

(3) The trustee shall deliver a list of any of the bankrupt's outstanding property to the prescribed persons, and where practicable shall realise the property and apply it for the benefit of the creditors in the prescribed manner.

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**PART 9 — PARTNERSHIP BANKRUPTCIES, JOINT AND SEPARATE ESTATES, ETC**

**148. Amalgamation of proceedings against partners**

Where one member of a partnership has been determined a bankrupt and another determination is made against a member of the same partnership —

- (a) unless the Court otherwise directs, the property of the last-mentioned member vests in the trustee appointed in respect of the property of the first-mentioned member; and
- (b) the Court may give such directions for amalgamating the proceedings in respect of the properties of the members of the partnership as it thinks just.

**149. Proof, etc, by creditors of partnerships**

Where one member of a partnership is determined bankrupt, a creditor to whom the bankrupt is indebted jointly with the other member of the partnership, or with any of them —

- (a) may prove his or her debt for the purpose of voting at any meeting of creditors and is entitled to vote; and
- (b) shall not receive any dividend out of the separate property of the bankrupt until all of the separate creditors have received the full amount of their respective debts.

**150. Joint and separate dividends**

Where joint and separate properties are being administered —

- (a) dividends of the properties shall, subject to any order to the contrary made by the Court on the application of an interested person, be declared together; and
- (b) the expenses of and incidental to the dividends shall be fairly apportioned by the trustee between the joint and separate properties in relation to the work done for, and the benefit received by, each property.

**PART 10 — PROCEEDINGS IN BANKRUPTCY**

*Division 10.1 — General Powers and Practice of the Court*

**151. Dealing with matters in Chambers**

A Judge —

- (a) may sit in Chambers for the despatch of such business as may be heard in Chambers without detriment to the public advantage arising from the discussion of questions in open court; and
- (b) when sitting in Chambers has the same powers and jurisdiction as when sitting in open court.

**152. Power of review**

The Court may review, rescind or vary any order made by it under this Act.



**153. Cases stated**

(1) In any bankruptcy or other proceedings under this Act, the parties may, at any stage of the proceedings, state any question in a special case for the opinion of the Court.

(2) If it is stated in a special case under subsection (1) that a decision of the Court made under that subsection shall be final, no appeal lies from the decision.

**154. Costs**

Subject to this Act, the Court may award costs in any matter under this Act.

**155. General powers of the Court**

Subject to this Act, the Court has full power to decide all questions of priorities and all other questions, whether of law or fact —

(a) arising in any case of bankruptcy coming within the cognisance of the Court;  
or

(b) that the Court thinks it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in a case of bankruptcy.

**156. Staying of proceedings**

On proof to its satisfaction that any proceedings in bankruptcy ought to be stayed—

(a) because negotiations are pending for the liquidation of the affairs of the bankrupt by arrangement, or for the acceptance of a composition by the creditors, under Part 14.; or

(b) for any other sufficient reason,

the Court may at any time make an order staying the proceedings, altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

**157. Committal to prison**

(1) Where the Court commits a person to prison, the committal may be to such place as the Court thinks expedient.

(2) If the officer-in-charge of a prison refuses to receive a prisoner committed under subsection (1), he or she is guilty of an offence.

Penalty: 5 penalty units.

*Division 10.2 — Supplemental Procedural Provisions***158. Consolidation of proceedings**

Where two or more bankruptcy petitions are presented against the same debtor or against debtors who are members of the same partnership, the Court may consolidate the proceedings or any of them on such terms as it thinks proper.

**159. Failure to proceed**

If a petitioner does not proceed with due diligence on his or her petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required in the case of a petitioning creditor.

**160. Proceedings by corporations**

A corporation may prove a debt, vote and otherwise act in any bankruptcy by a duly authorised agent.

**161. Proceedings by creditors who are partners**

In the case where creditors are partners, anything authorised by this Act to be done by a creditor may be done by any of the members of the partnership in the name and on behalf of the partnership.

**162. Appointment of agents by creditors**

(1) Subject to subsection (2), a creditor may, in the prescribed manner, by instrument appoint a person to represent him or her in all matters relating to a debtor or his or her affairs in which the creditor is concerned under this Act.

(2) An appointment under subsection (1) shall not be made by way of sale of a debt or thing in action.

(3) A representative appointed under subsection (1) stands in the same position, for all purposes of this Act, as the creditor who appointed him or her.

**163. Death of bankrupt**

Where a debtor who has been determined a bankrupt dies, the Court may order that the proceedings in the matter be continued as if he or she were alive.

*Division 10.3 — Evidentiary Provisions***164. Form of evidence**

In all matters under this Act, the Court may, in its discretion, take the whole or any part of the evidence —

- (a) orally on oath; or
- (b) by written interrogatories; or
- (c) on affidavit,

and may issue commissions for the purpose of taking evidence at any place inside or outside Norfolk Island.

**165. Evidence of proceedings at meetings of creditors**

(1) The registrar or any other person presiding at a meeting of creditors under this Act shall cause minutes of all resolutions and proceedings of the meeting —

- (a) to be kept and duly entered in a book; and
- (b) from time to time to be duly filed in the Court.

- (2) Where minutes are kept in accordance with subsection (1) —
- (a) any such minute purporting to be signed by the chairman of the meeting at which a resolution was passed or any proceedings were had; or
  - (b) a copy of the minutes certified as prescribed by this Act,
- shall be received as evidence in all legal proceedings.
- (3) Until the contrary is proved —
- (a) a meeting of creditors in respect of the proceedings of which minutes have been kept shall be deemed to have been duly held and convened; and
  - (b) all resolutions passed or proceedings had at the meeting shall be deemed to have been duly passed and had.

### **166. Evidence of proceedings in bankruptcy**

- (1) In this section, “instrument to which this section applies” means —
- (a) any petition or copy of a petition in bankruptcy; or
  - (b) any order or copy of an order made by the Court under this Act; or
  - (c) any certificate or copy of a deed or arrangement in bankruptcy; or
  - (d) any other instrument or copy of an instrument, affidavit or document made or used in the course of any proceedings under this Act.
- (2) Where an instrument to which this section applies —
- (a) appears to be sealed with the seal of the Court; or
  - (b) purports to be —
    - (i) signed by a Judge; or
    - (ii) sealed with the seal of the registrar,in proceedings under this Act,

it is receivable in evidence in all legal proceedings.

### **167. Depositions, etc**

- (1) Any evidence or depositions taken under this Act before an examining magistrate shall be transmitted to the Court.
- (2) Any evidence or depositions referred to in subsection (1), and any other evidence or depositions taken in the bankruptcy, are, with all just exceptions, admissible and may be used in the bankruptcy as required.

### **168. Transcripts of oral testimony**

- (1) Where an examination of the bankrupt or of witnesses is held under this Act before the Court, the Court may, on the application of the trustee or of a creditor, direct the evidence of the bankrupt or witnesses, or of any of them, to be recorded or taken down by a shorthand writer appointed by the Court and a copy of the recording shall be provided to the witness
- (2) A shorthand writer appointed under subsection (1) shall be sworn faithfully to report the evidence.

(3) In a case to which subsection (1) applies, a transcript of the recording or notes of the shorthand writer or reporter, certified by the person transcribing the recording or by the shorthand writer or reporter to be correct, shall be admitted to prove the oral evidence of the witnesses in the same manner as depositions signed by them could be admitted.

(4) Any expenses incurred for the purposes of this section are in the first instance the responsibility of the person making the application under subsection (1).

#### **169. Death of witness**

In the case of the death of a witness (including the bankrupt or his or her spouse) whose evidence has been taken by the Court or an examining magistrate in any proceedings under this Act, the deposition or a copy of the deposition of the deceased person, purporting to be —

- (a) sealed with the seal of the Court; or
  - (b) signed by the examining magistrate,
- shall be admitted as evidence of the matters deposed.

### **PART 11 — PROCEEDINGS BY AND AGAINST DEBTORS**

#### **170. Continuance of certain actions by bankrupts**

(1) Notwithstanding this Act, a bankrupt may continue in his or her own name and for his or her own benefit any action for personal injury or a wrong done to himself or herself or to a member of his or her family that was commenced by him or her before the determination of bankruptcy.

(2) The whole or any part of the sum recovered in an action referred to in subsection (1) during the bankruptcy shall, if the Court so orders, be paid over by the bankrupt to the trustee.

#### **171. Actions against bankrupts**

(1) At any time after the presentation of a petition against a debtor, the Court may —

- (a) restrain further proceedings in any action, suit, execution or other legal process against the debtor in respect of a debt provable in bankruptcy; or
- (b) allow any such proceedings, whether in progress at the commencement of the bankruptcy or commenced during its continuance, to proceed on such terms as the Court thinks just.

(2) At any time after the presentation of a petition against a debtor, the Court may also —

- (a) appoint a receiver or manager of the property or business, or any part of the property or business, of the debtor; and
  - (b) direct immediate possession to be taken of the property or business, or of any part of it.
- (3) An application under this section may be made *ex parte*.

**172. Rights, etc, under third party insurance**

(1) In this section, “insured person” means a person who is insured under a policy of insurance against liabilities that he or she may incur to third parties.

(2) Where —

- (a) an insured person becomes bankrupt or makes a composition or arrangement with his or her creditors; and
- (b) before or after he or she becomes bankrupt the liability for which he or she is insured is incurred,

his or her rights against the insurer under the policy in respect of the liability are, notwithstanding anything in law to the contrary, transferred to the third party to whom the liability was so incurred.

(3) Where rights are transferred to a third party under subsection (2), the insurer is under the same liability to the third party as he or she would have been under to the insured, but —

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, this section does not affect the rights of the insured against the insurer in respect of the excess; and
- (b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, this section does not affect the rights of the third party against the insured in respect of the balance.

**173. Proceedings by trustees and partners of bankrupts**

(1) Where a member of a partnership is determined bankrupt, the Court may, with the consent of the creditors testified by a special resolution, authorise the trustee to commence and prosecute any legal proceedings in the names of the trustee and of the bankrupt’s partner or partners.

(2) In a case to which subsection (1) applies —

- (a) the proceedings may be taken as if they had been commenced with the consent of the partner or partners; and
- (b) any release by the partner or partners of the debt or demand to which the proceedings relate is void.

(3) Notice of an application under subsection (1) for authority to commence the proceedings shall be given to the partner or partners, and —

- (a) he or she or they may show cause against it; and
- (b) on his or her or their application the Court may, if it thinks fit, direct that he or she or they shall —
  - (i) receive his or her or their proper share of the proceeds of the proceedings; and
  - (ii) if he or she or they do not claim any benefit from those proceeds — be indemnified against costs in respect of the proceedings.

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**PART 12 — ABSCONDING DEBTORS****174. Absconding, etc, after granting of bankruptcy notice and before determination of bankruptcy**

(1) If after a bankruptcy notice has been granted and before a petition for determination of bankruptcy is presented against the debtor it appears to the Court that there is probable reason for believing that the debtor is about to leave Norfolk Island or to quit his or her place of residence, in order to avoid —

- (a) payment of the debt for which the notice has been granted; or
- (b) service of a petition of bankruptcy; or
- (c) appearing to a petition; or
- (d) examination in respect of his or her affairs,

or otherwise to avoid, delay or embarrass proceedings in bankruptcy, the Court may, by warrant addressed to a member of the Police Force or to a prescribed officer of the Court, cause the debtor to be arrested and safely kept in the prescribed manner for such time as the Court orders.

(2) Subsection (1) does not alter or qualify the right of the debtor —

- (a) to apply to the Court, in the prescribed manner, to dismiss the debtor's summons; or
  - (b) to pay, secure or compound for the debt within the prescribed time,
- without being deemed to have committed an act of bankruptcy.

(3) Where, as referred to in subsection (2) —

- (a) a payment or composition is made; or
- (b) a security is offered,

that the Court thinks reasonable, the debtor shall, unless the Court otherwise orders, be discharged out of custody.

(4) An arrest under this section is not valid unless the debtor has been served with the debtor's summons before or at the time of his or her arrest.

(5) A payment or composition of a debt that is made, or a security that is given, for a debt, after an arrest made under this section, is exempted from the provisions of this Act relating to fraudulent preferences.

**175. Absconding, etc, after petition**

Where —

- (a) after a petition of bankruptcy is presented against a debtor it appears to the Court that there is probable reason for believing that he or she—
  - (i) is about to leave Norfolk Island or to quit his or her place of residence in order to avoid —
    - (A) service of the petition; or
    - (B) appearing to the petition; or
    - (C) an examination in respect of his or her affairs,or otherwise to delay or embarrass the proceedings in bankruptcy; or
- (ii) is about to remove his or her goods or chattels in order to prevent or delay possession of them being taken by the trustee; or

- (iii) has concealed or is about to conceal or destroy any of his or her goods or chattels or any books, documents or writings that might be of use to his or her creditors in the course of his or her bankruptcy; or
  - (b) after service of the petition on a debtor or after an determination of bankruptcy against him or her, he or she —
    - (i) removes any goods or chattels in his or her possession above the value of \$500.00 without the leave of the trustee; or
    - (ii) without good cause shown, fails to attend an examination ordered by the Court,
- the Court may, by warrant addressed to a member of the Police Force or to a prescribed officer of the Court —
- (c) cause the debtor to be arrested and any books, papers, money, goods and chattels in his or her possession to be seized; and
  - (d) cause him or her and them to be safely kept as prescribed until such time as the Court orders.

### **PART 13 — MISCELLANEOUS**

#### **176. Expenses of registry**

Where the registrar attends under this Act at any place for the purpose of presiding at a meeting of creditors or of otherwise acting under this Act, his or her traveling and incidental expenses incurred in doing so, and those of any clerk or officer attending him or her, shall, after being settled by the Court, be paid out of the bankrupt's property, if it is sufficient, and otherwise are part of the expenses of the Court.

#### **177. Assignees of things in action**

A person to whom any thing in action belonging to a bankrupt is assigned under this Act may bring or defend in his or her own name any proceeding relating to it.

#### **178. Contracts with bankrupts and other persons jointly**

Where a bankrupt is a party to a contract jointly with any other person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

#### **179. Exemptions from duty**

The following matters are exempt from duty under any Act including the *Land Administration Fees Act 1996*, except in respect of fees under this Act —

- (a) a deed, transfer, assignment or other assurance relating solely to —
    - (i) freehold or leasehold property; or
    - (ii) any mortgage, charge or other encumbrance on, or any estate, right or interest in, property,
- that —
- (iii) is part of the estate of a bankrupt; and
  - (iv) after the execution of the deed, transfer assignment or other assurance is or remains (whether at law or in equity) the estate of the bankrupt or of the trustee of the bankrupt; and

- (b) a power of attorney, proxy, writ, order, certificate, affidavit, bond or other instrument relating solely to the property of a bankrupt or to any proceedings under this Act.

**180. Proceedings in respect of things done under this Act**

(1) Proceedings against a person for anything done under this Act may be brought only within 9 months of the cause of action arising.

(2) Where it appears that —

- (a) the matter complained of was done by the authority of this Act; or
- (b) the proceedings were brought after the time specified in subsection (1),

the verdict shall be given for the defendant.

**181. Order for prosecution**

Where —

- (a) a trustee in a bankruptcy reports to the Court that in his or her opinion a bankrupt has been guilty of an offence against this Act; or
- (b) it is represented to the Court by a creditor or member of a committee of inspection that there is ground to believe that the bankrupt has been guilty of an offence against this Act,

and the Court is satisfied that the report or representation is true and that there is reasonable probability that the bankrupt may be convicted, the Court —

- (c) shall order the trustee to prosecute the bankrupt for the offence; and
- (d) may hold the bankrupt to bail to appear before a magistrate to answer the charge to be preferred against him or her for the offence.

**182. Expenses of prosecution**

(1) Where —

- (a) the prosecution of a bankrupt is ordered by the Court under this Act; or
- (b) the bankrupt is committed for trial by order of the Court,

the expenses of the prosecution shall, on production of the order, be borne by the Administration.

(2) In any other case, the expenses of the prosecution of a bankrupt for an offence against this Act, up to the time of his or her committal for trial, shall be borne by the person instituting the prosecution.



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**PART 14 — ARRANGEMENTS AND COMPOSITIONS***Division 14.1 — Liquidations by Arrangements***183. Resolution for liquidation by arrangement**

(1) A debtor who is unable to pay his or her debts may summon a general meeting of his or her creditors.

(2) A meeting summoned under subsection (1) may, by a special resolution, declare that the affairs of the debtor are to be liquidated by arrangement and not in bankruptcy.

(3) A meeting summoned under subsection (1), or a subsequent meeting held at an interval of not more than one week, may appoint a trustee, with or without a committee of inspection.

(4) Unless prevented by sickness or other cause satisfactory to the meeting, the debtor shall —

- (a) be present at the meeting at which the special resolution is passed; and
- (b) answer any inquiries made of him or her; and
- (c) subject to subsection (5), produce to the meeting a statement showing the whole of his or her assets and debts, and the names and addresses of the creditors to whom his or her debts are due.

(5) If the debtor is prevented from being at the meeting summoned under subsection (1), a person shall, on his or her behalf, produce the statement referred to in subsection (4).

**184. Registration of resolution**

(1) A special resolution passed under section 183(2), together with —

- (a) the statement of the assets and debts of the debtor produced under section 183(4) or (5); and
- (b) the name of the trustee appointed; and
- (c) the names of the members of the committee of inspection (if any),

shall be sent to the registrar.

(2) On receipt of the special resolution, the registrar shall —

- (a) inquire whether the resolution was passed in the manner prescribed by section 181; and
- (b) if satisfied that it was duly passed and that a trustee has been appointed (with or without a committee of inspection) — without delay register the resolution and the statement of the assets and debts.

(3) The resolution and statement shall be open for inspection on the prescribed conditions.

(4) The liquidation shall be deemed to have commenced as from the date of the appointment of the trustee.

(5) In the absence of fraud, the registration under this section of a special resolution is conclusive evidence that —

- (a) the resolution was duly passed; and
- (b) all the requirements of this Act in respect of the resolution were complied with,

but, on sufficient cause being shown, the registration may be cancelled by the Court on the application of a creditor.

### **185. Meetings of creditors**

(1) Subject to subsection (2), the provisions of this Act relating to —

- (a) the first meeting of creditors; and
- (b) subsequent meetings of creditors,

in the case of a bankruptcy, including —

- (c) the description of creditors entitled to vote at such meetings; and
- (d) the debts in respect of which the creditors are entitled to vote,

apply respectively to the first meeting of creditors and to subsequent meetings of creditors, for the purposes of this Part.

(2) Every meeting of creditors shall be presided over by a chairman elected at the meeting, and no creditor is entitled to vote at a meeting until, by a statutory declaration, he or she has proved —

- (a) a debt provable in the bankruptcy to be due to him or her; and
- (b) the amount of the debt; and
- (c) any prescribed particulars.

### **186. Certificate of appointment of trustee**

A certificate by the registrar in respect of the appointment of a trustee under section 183 has the same effect as a certificate under section 59 has in the case of a bankrupt.

### **187. Property of debtor divisible among creditors**

(1) On the appointment of a trustee under section 183, the property of the debtor that would, if he or she were made bankrupt, be divisible among his or her creditors vests in the trustee.

(2) Property referred to in subsection (1) is divisible among the creditors, and all settlements, transfers, charges, payments, obligations and proceedings that would be void against the trustee in the case of a bankruptcy are void against the trustee appointed under section 183.

### **188. Powers of trustee and distribution of property**

(1) For the purposes of this Division —

- (a) the trustee has the same powers and shall perform the same duties as a trustee under a bankruptcy; and
- (b) the property of the debtor shall be distributed in the same manner as in a bankruptcy.

(2) Where a committee of inspection is not appointed, the trustee may act on his or her own discretion in cases where he or she would otherwise have been bound to refer to the committee.

**189. Accounting for moneys, etc, by trustees**

(1) The creditors in a liquidation under this Division may, at their first or any general meeting, prescribe the bank into which the trustee is to pay any moneys received by him or her and the sum that he or she may retain in his or her hands.

(2) The provisions of this Act with respect to the audit of the accounts of trustees elected by creditors in bankruptcy apply to the case of a debtor whose affairs are under liquidation under this Division.

**190. Close of liquidation, discharge of debtor and release of trustee**

(1) Notwithstanding section 191, the provisions of this Act with respect to —

- (a) the close of a bankruptcy; and
- (b) the discharge of a bankrupt; and
- (c) the release of a trustee of a bankrupt,

do not apply to or in relation to a liquidation under this Division.

(2) The close of a liquidation under this Division may be fixed, and the discharge of the debtor and the release of the trustee may be granted, by a special resolution of the creditors in general meeting, but a trustee shall not be released unless his or her accounts have been audited as provided for by section 189(2).

(3) The trustee shall report the discharge of the debtor to the registrar, and a certificate of discharge given by the registrar has the same effect as a certificate of discharge given to a bankrupt under Division 7.2.

**191. Application of bankruptcy provisions**

(1) Subject to section 190(1) and to subsection (2), the provisions of this Act relating to bankruptcy apply, so far as they are applicable, to and in relation to a liquidation under this Division.

(2) In the application, by virtue of subsection (1), to a liquidation under this Division, of the provisions of this Act relating to bankruptcy —

- (a) the appointment under Section 183 of a trustee shall be deemed to be —
  - (i) the presentation of a petition in bankruptcy; or
  - (ii) the service of such a petition; or
  - (iii) an order of determination in bankruptcy,

as the case requires, under those provisions; and

- (b) a reference in those provisions to a bankrupt shall be read as a reference to a debtor whose affairs are under liquidation under this Division; and
- (c) a reference in those provisions to a bankruptcy shall be read as a reference to a liquidation under this Division.

**192. Determination of bankruptcy**

Where, on satisfactory evidence, it appears to the Court that a liquidation under this Division cannot —

- (a) because of legal difficulties; or
- (b) because there is no trustee for the time being; or
- (c) for any other sufficient reason,

proceed without injustice or undue delay to the creditors or to the debtor, the Court may, on the petition of the debtor or of a creditor who is competent under this Act to present a petition for determination, adjudge the debtor to be a bankrupt, and proceedings in bankruptcy may be taken accordingly.

*Division 14.2 — Compositions with Creditors*

**193. Calculation of a majority of creditors for purposes of Division 14.2**

In the calculation, for the purposes of the definition “extraordinary resolution” in section 1 in its application to this Division, of a majority for the purposes of a composition under this Division —

- (a) the value of the debts of secured creditors shall, as nearly as circumstances permit, be estimated in the same way; and
- (b) the same description of creditors are entitled to vote at a general meeting, as in a bankruptcy.

**194. Resolution for composition**

(1) Without any proceedings in bankruptcy, the creditors of a debtor who is unable to pay his or her debts may, by an extraordinary resolution, resolve that a composition be accepted in satisfaction of the debts due to them from the debtor.

(2) Unless prevented by sickness or other cause satisfactory to the meeting, the debtor shall —

- (a) be present at both meetings at which the extraordinary resolution is passed; and
- (b) answer any inquiries made of him or her; and
- (c) subject to subsection (3), produce to the meeting a statement showing the whole of his or her assets and debts, and the names and addresses of the creditors to whom his or her debts are due.

(3) If the debtor is prevented from being at the meetings under subsection (1) a person shall, on his or her behalf, produce the statement referred to in subsection (2).

**195. Registration of resolution**

(1) An extraordinary resolution passed under section 194(1), together with the statement as to the assets and debts of the debtor produced under section 194(2) or (3), shall be sent to the registrar.

(2) On receipt of the extraordinary resolution, the registrar shall —

- (a) inquire whether the resolution was passed in the manner prescribed by section 194; and
- (b) if satisfied that it was duly passed — without delay register the resolution and statement of assets and debts,

but until registration has taken place the resolution has no effect.

(3) Before an extraordinary resolution is registered under subsection (2), the debtor shall make oath —

- (a) that he or she has fully and truly, to the best of his or her knowledge disclosed —
  - (i) all his or her assets and liabilities; and
  - (ii) the names of his or her creditors; and

- (iii) the amount of their debts; and
- (b) that he or she has not —
  - (i) granted or promised any payment or security; or
  - (ii) made or promised any preference of any creditor; or
  - (iii) entered into any collusive agreement, for the purpose of obtaining assent to the resolution,

and the oath shall be presented to the registrar and shall be registered with the resolution.

(4) Any creditor of the debtor may inspect the statement at prescribed times and on payment of such fee (if any) as is prescribed.

(5) In the absence of fraud, the registration under this section of an extraordinary resolution is conclusive evidence that —

- (a) the resolution was duly passed; and
- (b) all the requirements of this Act in respect of the resolution were complied with,

but, on sufficient cause being shown, the registration may be cancelled by the Court on the application of a creditor.

#### **196. Variation of composition**

(1) The creditors may, by an extraordinary resolution, add to or vary the provisions of any composition previously accepted by them, but without prejudice to the rights of any persons taking interests under those provisions who do not assent to the addition or variation.

(2) An extraordinary resolution passed under subsection (1) shall be presented to the registrar in the same manner and with the same consequences as the extraordinary resolution by which the composition was accepted in the first instance.

#### **197. Effect and enforcement of compositions**

(1) Subject to section 196, the provisions of a composition accepted by an extraordinary resolution under this Division are binding on all the creditors whose names and addresses and the amount of whose debts are shown in the statement of the debtor produced to the meetings at which the resolution was passed, but do not affect or prejudice the rights of any other creditors.

(2) The provisions of a composition under this Division may be enforced by the Court on motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on the motion is a contempt of court.

#### **198. Statements concerning bills of exchange and promissory notes**

- (1) Where —
  - (a) a debt arises on a bill of exchange or promissory note; and
  - (b) the debtor is ignorant of the holder of the bill or note,he or she shall set out in statement of his or her debts —
  - (c) the amount of the bill or note; and
  - (d) the date on which it falls due; and
  - (e) the name of the acceptor or person to whom it is payable; and
  - (f) any other particulars within his or her knowledge concerning it.

(2) The insertion of the particulars referred to in subsection (1)(c) to (f) is, for the purposes of this Division, a sufficient description of the creditor in respect of the debt.

(3) Any mistake made inadvertently by the debtor in the statement of his or her debts may be corrected, after the prescribed notice has been given, with the consent of a general meeting of his or her creditors.

### **199. Determination of bankruptcy**

Where, on satisfactory evidence, it appears to the Court that a composition under this Division cannot —

- (a) because of legal difficulties; or
- (b) for any other sufficient reason,

proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor a bankrupt, and proceedings in bankruptcy may be taken accordingly.

#### *Division 14.3 — General*

### **200. Debts incurred by fraud**

Where a debtor makes an arrangement or composition with his or her creditors under this Part, he or she remains liable for the unpaid balance of any debt —

- (a) that he or she incurred or increased; or
- (b) of which, before the date of the arrangement or composition, he or she obtained forbearance,

by fraud, unless the defrauded creditor has assented to the arrangement or composition otherwise than by proving his or her debt and accepting dividends.

### **201. Form of Gazette notice**

All proceedings and notices directed or authorized by this Act or the Rules of Court of the Supreme Court applicable to bankruptcy (other than notices by the trustee) to be inserted in the Gazette shall be marked with the seal of the Court and certified by the registrar.

## **PART 15 — ASSISTANCE BY THE COURT TO A COURT HAVING JURISDICTION IN BANKRUPTCY MATTERS IN AUSTRALIA OR A FOREIGN COUNTRY**

### **202. Application of this Part**

This Part applies only in relation to a court in Australia or in a foreign country, declared under section 203 to be a foreign country to which this Part applies.

### **203. Minister may declare foreign countries, etc**

Where the Minister is satisfied that substantial reciprocal provisions are provided in a foreign country for its courts to provide assistance to the Court in bankruptcy matters, he or she may, by notice in the Gazette, declare that foreign country to be a foreign country to which this Part applies.

**204. Assistance by the Court to Courts of a foreign country**

(1) Subject to this Part, the Court shall assist a court of Australia and of a foreign country having jurisdiction in relation to bankruptcy laws.

(2) In granting assistance under subsection (1), the Court shall have regard to the rules of international private law.

**205. Request for assistance to be made in writing**

A request by a court of Australia and by a foreign court to the Court for assistance under this Part shall be in writing.

**PART 16 - REGULATIONS****206. Rules and Regulations**

- (1) The Administrator may make Regulations prescribing matters —
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the Regulations may —
- (a) provide for information and documents to be given to persons for entry in the Index; and
  - (b) provide for the means of service of documents; and
  - (c) provide for the publication of notice of specified events; and
  - (d) provide for the charging and payment of fees in relation to —
    - (i) proceedings under this Act; and
    - (ii) inspection and copying of documents given to the official trustee; and
    - (iii) the making of other requests or applications under this Act or the presentation or lodgment of other documents under this Act; and
  - (e) prescribe penalties not exceeding 10 penalty units for offences against the Regulations.
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**SCHEDULE**
**Form 1 — Debtor's Petition****NORFOLK ISLAND***Bankruptcy Act 2006***DEBTOR'S PETITION**

(Heading as for other proceedings in the Supreme Court).

The petition of . . . (*name*), of . . . (*address*), shows that the petitioner is unable to meet his/her engagements with his/her creditors.

The petitioner therefore prays that he/she be determined bankrupt.

**Form 2 — Bankruptcy Notice****NORFOLK ISLAND***Bankruptcy Act 2006***BANKRUPTCY NOTICE**

To: (*name*) .....(the debtor) of: .....(*address*)

This Bankruptcy Notice is an important document. You should get legal advice if you are unsure of what to do after you have read it.

1. (*name*) .....(the creditor) of: .....(*address*)  
claims you owe the creditor a debt of \$( *amount* ), as shown in the Appendix.
2. The creditor claims that the debt is due and payable by you. A copy of the judgments or orders relied upon by the creditor is attached. At the time of applying for this Notice, execution of the judgments or orders had not been stayed.
3. You are required, within 21 days after service on you of this Bankruptcy Notice —
  - (a) to pay to the creditor the amount of the debt; or
  - (b) to make an arrangement to the creditor's satisfaction for settlement of the debt.
4. Payment of the debt can be made to: .....(*name*) of:.....(*address*)  
*Note The address must be within Norfolk Island.*
5. Bankruptcy proceedings may be taken against you if, within the time stated in paragraph 3, above —
  - (a) you do not comply with the requirements of either paragraph 3(a) or paragraph 3(b) above; and
  - (b) the Court (that is, Supreme Court) does not extend, or is not deemed to have extended, the time for compliance with this Bankruptcy Notice (see paragraph 6, below).
6. The Court may extend the time for compliance with this Bankruptcy Notice if, within the time stated in paragraph 3 above, you apply to the Court on one or both of the following grounds —
  - (a) that you have instituted proceedings to set aside the judgments or orders in respect of which this Bankruptcy Notice has been issued;
  - (b) that you have filed with the Court an application (on one or more grounds, apart from the grounds mentioned in paragraph 7, below) to set aside this Bankruptcy Notice.



7. In addition, within the time specified in paragraph 3 above, you may file an application to the Court for an order to set aside this Bankruptcy Notice on the specific grounds that —

- (a) you have a counter-claim, set-off or cross demand equal to or exceeding the sum specified in this Bankruptcy Notice as owing to the creditor; and
- (b) in the action or proceeding in which the judgments or orders mentioned in paragraph 2 of this Bankruptcy Notice was obtained, you could not have set up that counter-claim, set-off or cross demand\*.

\*This means that, because of a legal obstacle, you could not have raised that counter-claim, set-off or cross demand in defence of the creditor’s court action against you. It is not enough if, for example, you simply neglected or overlooked the matter.

8. You should note the following points carefully —

- (a) If you file, at the Court, an application mentioned in paragraph 6(a) or (b), you must still comply with this Bankruptcy Notice within the time stated in paragraph 3 above unless the Court extends the time for you to comply.
- (b) If you file, at the Court, an application mentioned in paragraph 7(a), you need not comply with this Bankruptcy Notice until the Court decides whether you have grounds for a counter-claim, set-off or cross demand. Whether you will have to comply at that stage will depend on the Court’s decision.

**Appendix**

Column 1	Column 2
1. Amount of judgments or orders	
plus 2. Legal costs if ordered to be paid and a specific amount was not included in the judgments or orders (see <u>Note 1</u> , below)	
plus 3. If claimed in this Bankruptcy Notice, interest accrued since the date of judgments or orders (see <u>Note 2</u> , below)	
4. Subtotal	
less 5. Payments made and/or credits allowed since date of judgments or orders	
6. Total debt owing	

(NB: Amounts, where applicable, are to be inserted in column 2)

Notes to the Appendix

Note 1 : Legal costs (item 2 of the Appendix)

If legal costs are being claimed in this Bankruptcy Notice, a certificate of taxed or assessed costs in support of the amount claimed must be attached to this Bankruptcy Notice.

Note 2: Interest accrued (item 3 of the Appendix)

If interest is being claimed in this Bankruptcy Notice, details of the calculation of the amount of interest claimed are to be set out in a document attached to this Bankruptcy Notice. The document must state:

- (a) the provision under which the interest is being claimed; and
- (b) the principal sum on which, the period for which, and the interest rate or rates at which, the interest is being claimed.

(NB: If different rates are claimed for different periods, full details must be shown)

The person who applied for this notice to be issued is —  
.....(*name*) who confirms by the following signature that he or she is the  
creditor/the creditor’s authorised agent \*: (\* delete as appropriate )

..... ( *signature* )

and whose address for service is — .....( *address* )

Telephone and fax numbers  
(including STD code):

FOR OFFICIAL USE ONLY

Dated this ..... ( *date* ) .....day of ..... ( *month* ) ..... ( *year* )

This notice was issued by the Registrar of the Supreme Court of Norfolk Island,  
Administration Offices, Kingston, Norfolk Island, South Pacific

..... (signature or stamp of Official Receiver or delegate or  
authorised officer)

**Form 3 — Creditor's Petition**

**NORFOLK ISLAND**

*Bankruptcy Act 2006*

**CREDITOR'S PETITION**

(Heading as for other proceedings in the Supreme Court).

The petition of . . . (*name*), of . . . (*address*), shows that . . . . . (*name of debtor*), of . . .  
(*address*),.....(*description*), is indebted to him or her in the sum of \$ . . . .

The petitioner is informed and believes that (*name of debtor*) lately and while so indebted to the  
petitioner committed the following act or acts of bankruptcy —

The petitioner therefore prays that (*name of debtor*) may be determined bankrupt.

**Form 4 — Affidavit Verifying Petition**

**NORFOLK ISLAND**

*Bankruptcy Act 2006*

**AFFIDAVIT VERIFYING PETITION**

I, . . . . .(name)of . . . (address), swear that the statements in the above (or annexed) petition are to the best of my belief true in substance and in fact.

**Form 5 — Summons Endorsed on Petition**

**NORFOLK ISLAND**

*Bankruptcy Act 2006.*

**SUMMONS ENDORSED ON PETITION**

To ... (name of debtor) —

You are required to enter an appearance to this petition within . . . days (exclusive of the day of service) after the service of it on you, otherwise you will be determined bankrupt.

**Form 6 — Certificate of Proof of Debt**

**NORFOLK ISLAND**

*Bankruptcy Act 2006*

**CERTIFICATE OF PROOF OF DEBT**

In the Bankrupt Estate of (name of bankrupt) .....

..... (name of creditor) has proved before me a debt of \$ . . . in this estate.

Dated . . . 20...

.....  
(Title of Certifying Officer)

**NOTES**

The *Bankruptcy Act 2006* as shown in this consolidation comprises Act No. 2 of 2007 and amendments as indicated in the Tables below.

<b>Enactment</b>	<b>Number and year</b>	<b>Date of commencement</b>	<b>Application saving or transitional provision</b>
<i>Bankruptcy Act 2006</i>	2, 2007	23.2.07	
<i>Interpretation (Amendment) Act 2012</i> [to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]	14, 2012	28.12.12	

**Table of Amendments**

ad = added or am = amended rep = repealed rs = repealed and  
inserted substituted

<b>Provisions affected</b>	<b>How affected</b>
7	am 14, 2012
8	am 14, 2012
76	am 14, 2012
139	am 14, 2012
203	am 14, 2012

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