Bankruptcy (Estate Charges) Act 1997

Act No. 12 of 1997 as amended

This compilation was prepared on 4 July 2006
taking into account amendments up to Act No. 34 of 2006

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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Contents

Part 1—Preliminary 1

1 Short title [*see* Note 1] 1
2 Commencement [*see* Note 1] 1
3 Act to bind the Commonwealth Crown 1
4 Interpretation 1

Part 2—Interest charge 2

5 Interest charge 2

Part 3—Realisations charge 3

6 Realisations charge 3
6A Charge not payable on estate surplus 3
7 Amount of charge payable 4
7A Certain amounts treated as being received by person 4
8 Working out the amount on which charge is payable 4

Part 4—Miscellaneous 6

9 Regulations 6

Notes 7

An Act to impose charges in relation to certain matters under the *Bankruptcy Act 1966*

Part 1—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Bankruptcy (Estate Charges) Act 1997*.

2 Commencement [*see* Note 1]

(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence within 6 months after the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Act to bind the Commonwealth Crown

This Act binds the Crown in right of the Commonwealth. However, it does not bind the Crown in right of a State, of the Australian Capital Territory, of the Northern Territory or of Norfolk Island.

4 Interpretation

(1) In this Act:

charge period means a financial year.

(2) Unless the contrary intention appears, other expressions used in this Act have the same meanings as in the *Bankruptcy Act 1966*.

Part 2—Interest charge

5 Interest charge

(1) An amount of interest to which a person is entitled, in his or her personal capacity, under subsection 169(1B) of the *Bankruptcy Act 1966* is payable to the Commonwealth as a charge.

(1A) No charge is payable by a person in respect of an account for a charge period if the amount of that charge would be less than $10, or a higher amount prescribed by the regulations.

(2) In subsection (1), the reference to subsection 169(1B) of the *Bankruptcy Act 1966* includes a reference to that subsection as applied by the following provisions of that Act:

(a) section 210 (which applies section 169 to a controlling trustee under Division 2 of Part X of that Act);

(b) subsection 231(5) (which applies section 169 to a personal insolvency agreement);

(e) subsection 248(1) (which applies section 169 to administration of estates under Part XI of that Act).

(3) The charge is payable by the person.

(4) The charge is payable within 35 days after the end of the charge period in which the interest was paid.

Part 3—Realisations charge

6 Realisations charge

(1) A charge, calculated in accordance with sections 7 and 8, is imposed in respect of amounts received by a person (including the Official Trustee) who, during a charge period:

(a) is the trustee of the estate of a bankrupt under the *Bankruptcy Act 1966*; or

(aa) is the trustee of a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*; or

(b) is controlling trustee in relation to a debtor whose property has become subject to control under Division 2 of Part X of the *Bankruptcy Act 1966*; or

(c) is the trustee of a personal insolvency agreement executed in relation to a debtor under Part X of the *Bankruptcy Act 1966*; or

(d) is the trustee of the estate of a deceased person under Part XI of the *Bankruptcy Act 1966*.

(1A) No charge is payable by a person for a charge period in respect of a particular estate, personal insolvency agreement, composition or debtor (as the case requires) if the amount of that charge would be less than $10, or a higher amount prescribed by the regulations.

(2) The charge is payable by the person to the Commonwealth.

(3) The charge is payable within 35 days after the end of the charge period.

6A Charge not payable on estate surplus

(1) If:

(a) the person receives an amount in respect of a bankrupt's estate; and

(b) as a result of receiving the amount, the person becomes able to pay off all the bankrupt's debts;

then the following amounts are not taken into account in determining the amount on which charge is payable:

(c) any excess of the received amount over the amount needed to pay off all the bankrupt's debts;

(d) any amount later received by the person in respect of the estate.

(2) In this section:

bankrupt's debts has the same meaning as in subsection 153A(6) of the *Bankruptcy Act 1966*.

7 Amount of charge payable

(1) The amount of charge payable for a charge period is the percentage, determined by the Minister by legislative instrument, of the amount on which charge is payable for the period.

(2) The Minister may make a legislative instrument determining the percentage.

(3) The percentage determined must not be more than 15%.

7A Certain amounts treated as being received by person

For the purposes of this Part, an amount is treated as received by the person if it is applied or dealt with on behalf of the person, or in accordance with the person's directions.

8 Working out the amount on which charge is payable

(1) The ***amount on which charge is payable*** for a charge period is the amount realised less the permitted deductions.

(2) The ***amount realised*** is the total amount received by the person in the capacity referred to in subsection 6(1) during the charge period, but not including:

(a) amounts paid to the person by creditors under an indemnity in respect of costs; or

(b) amounts paid to the person under section 305 of the *Bankruptcy Act 1966*.

(3) The ***permitted deductions*** are all amounts paid by the person in the capacity referred to in subsection 6(1) during the charge period that are:

(a) amounts paid by the person in carrying on the business of the bankrupt, deceased person or debtor; or

(b) amounts paid to secured creditors.

(4) Once an amount has been taken into account for the purposes of subsection (2) as an amount received, the whole or part of the amount is not to be taken into account again as an amount received for the purposes of another application of that subsection.

Part 4—Miscellaneous

9 Regulations

The Governor-General 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.

Notes to the *Bankruptcy (Estate Charges) Act 1997*

Note 1

The *Bankruptcy (Estate Charges) Act 1997* as shown in this compilation comprises Act No. 12, 1997 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Bankruptcy (Estate Charges) Act 1997	12, 1997	13 March 1997	14 Apr 1997 (*see Gazette* 1997, No. S136)	
Bankruptcy (Estate Charges) Amendment Act 2001	158, 2001	1 Oct 2001	*(a)*	Sch. 1 (items 10–16) S. 2 (as am. by 61, 2002 Sch. 1 [item 11])
as amended by				
Bankruptcy (Estate Charges) Amendment Act 2002	61, 2002	3 July 2002	(*see* 61, 2002 below)	—
Bankruptcy (Estate Charges) Amendment Act 2002	61, 2002	3 July 2002	Schedule 1 (items 1–10, 12, 13): *(b)* Remainder: Royal Assent	Sch. 1 (items 12, 13)
Bankruptcy (Estate Charges) Amendment Act 2004	81, 2004	23 June 2004	Schedule 1: 1 Dec 2004 (*see* s. 2(1) and *Gazette* 2004, No. GN34) Remainder: Royal Assent	Sch. 1 (item 4)
Bankruptcy Legislation Amendment (Fees and Charges) Act 2006	34, 2006	3 May 2006	Schedule 2: 1 July 2006	Sch. 2 (item 3)

Act Notes

(a) Section 2 of the *Bankruptcy (Estate Charges) Amendment Act 2001* provides as follows:

> 2 This Act commences immediately after the commencement of section 1 of the *Bankruptcy (Estate Charges) Amendment Act 2002.*

Section 1 commenced on 3 July 2002.

(b) Subsection 2(1) (items 2 and 4) of the *Bankruptcy (Estate Charges) Amendment Act 2002* provides as follows:

> (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
2. Schedule 1, items 1 to 10	Immediately after section 1 of the *Bankruptcy (Estate Charges) Amendment Act 2001* commences	3 July 2002
4. Schedule 1, items 12 and 13	Immediately after section 1 of the *Bankruptcy (Estate Charges) Amendment Act 2001* commences	3 July 2002

Table of Amendments

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

Provision affected	How affected
Part 1	
S. 4	am. No. 158, 2001; No. 34, 2006
Part 2	
S. 5	am. No. 158, 2001; No. 61, 2002; No. 81, 2004
Part 3	
S. 6	am. No. 158, 2001; No. 61, 2002; No. 81, 2004
S. 6A	ad. No. 158, 2001 am. No. 61, 2002
S. 7	rs. No. 34, 2006
Heading to s. 7A	am. No. 61, 2002
S. 7A	ad. No. 158, 2001 am. No. 61, 2002
S. 8	am. No. 61, 2002
Part 4	
Part 4	ad. No. 158, 2001
S. 9	ad. No. 158, 2001

Table A

Table A

Application, saving or transitional provisions

Bankruptcy (Estate Charges) Amendment Act 2001 (No. 158, 2001)

Schedule 1

10 Definitions

In this Part:

commencing time means the time when this Act commences.

Estate Charges Act means the *Bankruptcy (Estate Charges) Act 1997*.

11 Item 1

(1) If this Act commences during an old charge period ending on 30 April, then:

(a) that charge period is extended until 30 June; and

(b) the amendment made by item 1 applies from 1 July following that 30 June.

(2) If this Act commences during an old charge period ending on 31 October, then:

(a) that charge period is extended until 31 December; and

(b) the amendment made by item 1 applies from 1 January following that 31 December.

(3) In this item:

old charge period means a charge period within the meaning of the Estate Charges Act (ignoring the amendment made by item 1).

12 Items 2 and 5

The amendments made by items 2 and 5 apply to charge periods that end after the commencing time.

13 Items 3 and 6

The amendments made by items 3 and 6 apply to charge periods that end after the commencing time.

14 Item 4

The amendment made by item 4 applies to compositions and schemes of arrangement that are accepted by creditors after the commencing time.

15 Item 7

The amendment made by item 7 applies to amounts received after the commencing time.

16 Item 8

The amendment made by item 8 applies to amounts that are applied or dealt with after the commencing time.

Bankruptcy (Estate Charges) Amendment Act 2002 (No. 61, 2002)

Schedule 1

12 Items 1 to 3

The amendments made by items 1, 2 and 3 apply to interest paid, after the commencement of those items, into the account held by a person for the purposes of section 169 of the *Bankruptcy Act 1966*.

13 Items 4 to 10

The amendments made by items 4, 5, 6, 7, 8, 9 and 10 apply to amounts received after the commencement of those items.

Bankruptcy (Estate Charges) Amendment Act 2004 (No. 81, 2004)

Schedule 1

4 Transitional

(1) In this item:

post-commencement composition means a composition that was accepted after the commencement of this item by a special resolution of a meeting of creditors under section 204 of the *Bankruptcy Act 1966* as that section continues to apply because of item 213 of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2004*.

Table A

post-commencement deed means a deed of assignment or a deed of arrangement that was executed after the commencement of this item by a debtor and a trustee under Part X of the *Bankruptcy Act 1966* as that Part continues to apply because of item 213 of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2004*.

pre-commencement composition has the same meaning as in item 212 of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2004*.

pre-commencement deed has the same meaning as in item 212 of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2004*.

(2) Despite the amendment made by item 1 of this Schedule, section 5 of the *Bankruptcy (Estate Charges) Act 1997* continues to apply, in relation to an amount to which a person is entitled because the person is:

(a) the trustee of a pre-commencement deed; or
(b) the trustee of a pre-commencement composition; or
(c) the trustee of a post-commencement deed; or
(d) the trustee of a post-commencement composition;

as if that amendment had not been made.

(3) Despite the amendments made by items 2 and 3 of this Schedule, Part 3 of the *Bankruptcy (Estate Charges) Act 1997* continues to apply, in relation to an amount received by a person because the person is:

(a) the trustee of a pre-commencement deed; or
(b) the trustee of a pre-commencement composition; or
(c) the trustee of a post-commencement deed; or
(d) the trustee of a post-commencement composition;

as if those amendments had not been made.

Bankruptcy Legislation Amendment (Fees and Charges) Act 2006 (No. 34, 2006)

Schedule 2

3 Application of amendments

The amendments of the *Bankruptcy (Estate Charges) Act 1997* made by this Schedule apply in relation to the financial year starting on 1 July 2006 and later financial years.