Bankruptcy (Estate Charges) Act 1997

No. 12, 1997

Compilation No. 8

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Prepared by the Office of Parliamentary Counsel, Canberra

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About this compilation

This compilation

This is a compilation of the *Bankruptcy (Estate Charges) Act 1997* that shows the text of the law as amended and in force on 1 July 2016 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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

Part 1—Preliminary

1 Short title

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

2 Commencement

(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.

3A Act does not extend to Norfolk Island

This Act does not extend to Norfolk Island.

4 Interpretation

(1) In this Act:

charge period means a financial year.

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

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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) or 185LD(3) 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.

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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

(ab) is the administrator of a debt agreement under Part IX 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.

(1B) Charge is not payable by a person in the person's capacity as administrator of a debt agreement under Part IX of the *Bankruptcy Act 1966* if the person is the debtor to whom the debt agreement relates.

(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.

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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.

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Section 8

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.

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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.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Bankruptcy (Estate Charges) Act 1997	12, 1997	13 Mar 1997	14 Apr 1997 (s 2(1) and gaz 1997, No S136)	
Bankruptcy (Estate Charges) Amendment Act 2001	158, 2001	1 Oct 2001	3 July 2002 (s 2)	Sch 1 (items 10–16)
as amended by				
Bankruptcy (Estate Charges) Amendment Act 2002	61, 2002	3 July 2002	Sch 1 (item 11): 3 July 2002 (s 2(1) item 3)	—
Bankruptcy (Estate Charges) Amendment Act 2002	61, 2002	3 July 2002	Sch 1 (items 1–10, 12, 13): 3 July 2002 (s 2(1) items 2, 4)	Sch 1 (items 12, 13)
Bankruptcy (Estate Charges) Amendment Act 2004	81, 2004	23 June 2004	Sch 1: 1 Dec 2004 (s 2(1) item 2)	Sch 1 (item 4)
Bankruptcy Legislation Amendment (Fees and Charges) Act 2006	34, 2006	3 May 2006	Sch 2: 1 July 2006 (s 2(1) item 4)	Sch 2 (item 3)
Bankruptcy (Estate Charges) Amendment Act 2007	43, 2007	10 Apr 2007	1 July 2007 (s 2)	Sch 1 (item 4)
Insolvency Law Reform Act 2016	11, 2016	29 Feb 2016	Sch 1 (items 99–178): awaiting commencement (s 2(1) item 2)	Sch 1 (items 101–178)
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 5 (item 20): 1 July 2016 (s 2(1) item 7)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3A	ad No 33, 2016
s 4	am No 158, 2001; No 34, 2006
Part 2	
s 5	am No 158, 2001; No 61, 2002; No 81, 2004; No 43, 2007; No 11, 2016
Part 3	
s 6	am No 158, 2001; No 61, 2002; No 81, 2004; No 43, 2007
s 6A	ad No 158, 2001
	am No 61, 2002
s 7	rs No 34, 2006
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

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