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No. 9 2001–02

**Bankruptcy (Estate Charges) Amendment Bill
2001**

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 9 2001-02

Bankruptcy (Estate Charges) Amendment Bill 2001

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25 July 2001

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Bankruptcy (Estate Charges) Amendment Bill 2001

Date Introduced: 7 June 2001

House: House of Representatives

Portfolio: Attorney-General

Commencement: At the same time as the *Bankruptcy Legislation Amendment Act 2001*.

Purpose

To amend the *Bankruptcy (Estate Charges) Act 1997* to:

- exempt any surplus in a bankrupt estate from the scope of the realisation charge
- align charge periods with the financial year
- remove current payment obligations for the interest charge and the realisations charge if the amount payable would be less than \$10, and
- close some charge-avoidance opportunities.

Background

This Bill accompanies the Bankruptcy Legislation Amendment Bill 2001. The Background to both Bills is contained in the Bills Digest on the Bankruptcy Legislation Amendment Bill 2001, No. 9 of 2001–02.

Under section 6 of the *Bankruptcy (Estate Charges) Act 1997*, a realisations charge is payable by the trustee, whether the Official Trustee or a private registered trustee, to the Commonwealth. The charge is payable on the administration of all bankrupt estates including deceased estates, and also in relation to deeds of assignment, deeds of arrangement or compositions entered into by debtors under Part X of the *Bankruptcy Act 1966*. It is not payable on Part IX debt agreements or compositions or schemes of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Main Provisions

Realisations charge

Currently, the realisations charge is payable within 21 days of the end of the ‘charge period’ (subsection 6(3)). The charge periods are 1 November to 30 April, and 1 May to 31 October in any year (subsection 4(1)). **Item 1** amends the charge periods to align them with the financial year. In future, the charge periods will be 1 January to 30 June, and 1 July to 31 December in any year. As a transitional measure, the charge period during which the Bill commences will be extended by two months to either 30 June or 31 December to enable subsequent charge periods to line up with the financial year (**item 11**).

Item 6 also extends the charge payment period from 21 days to 35 days, to account for possible inconvenience because of the holiday period in January. This will apply to charge periods ending after the Bill commences (**item 13**).

Item 4 extends the realisations charge to apply also to amounts received by a trustee of a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*. This is because these measures had been favoured over Part X arrangements because of the charge on the latter but not on the former.¹ This will apply to all compositions or schemes of arrangement that are accepted by creditors after the Bill commences (**item 14**).

The realisations charge will not be payable on any surplus money in the bankrupt’s estate (**item 7**). The charge is calculated as a percentage of the total amount received by the trustee. Currently, this includes any amounts which are surplus to the amount required to pay off the bankrupt’s debts in full. The proposed amendment will exempt any surplus amount from the charge. This will apply to amounts received after the Bill commences (**item 15**).

Item 8 contains an anti-avoidance provision which will treat amounts of money which are ‘applied or dealt with on behalf of the trustee’ as being amounts received by the trustee, and thus subject to the realisation charge. This is designed to counter avoidance arrangements which are sometimes entered into, whereby the trustee directs money to be paid in a certain manner without actually receiving the money.² This will apply to amounts applied or dealt with after the Bill commences (**item 16**).

Interest charge

Currently, any interest paid on money banked by the trustee before distributing it is payable as a charge to the Commonwealth (section 5). **Item 3** extends the charge payment period from 21 days after the charge period to 35 days. This will apply to charge periods ending after the Bill commences (**item 13**).

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Low charge amounts

Neither the realisations charge (**item 5**) nor the interest charge (**item 2**) is payable if it would be less than \$10 in any particular 6 month charge period. This is designed to 'reduce handling costs for trustees and the Commonwealth alike'.³ The regulations may substitute a higher amount for the current amount of \$10. This will apply to charge periods ending after the Bill commences (**item 12**).

Endnotes

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- 1 *Explanatory Memorandum*, p. 3.
 - 2 *Explanatory Memorandum*, p. 4.
 - 3 *Explanatory Memorandum*, p. 2.

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