



Bankruptcy Legislation Amendment (Fees and Charges) Act 2006

No. 34, 2006

**An Act to amend the law relating to bankruptcy,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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An Act to amend the law relating to bankruptcy, and for related purposes

[Assented to 3 May 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Bankruptcy Legislation Amendment (Fees and Charges) Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	3 May 2006
2. Schedule 1, Part 1	1 July 2006.	1 July 2006
3. Schedule 1, Part 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of Schedule 1 to the <i>Bankruptcy Legislation Amendment (Anti-avoidance) Act 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2006
4. Schedules 2 and 3	1 July 2006.	1 July 2006
5. Schedule 4	The day on which this Act receives the Royal Assent.	3 May 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Fees and remuneration

Part 1—Amendments commencing on 1 July 2006

Bankruptcy Act 1966

1 Subsections 54(4), 55(9), 56G(2) and 57(11)

Omit “prescribed by the regulations”, substitute “determined by the Minister by legislative instrument”.

2 Paragraph 154A(3)(b)

Repeal the paragraph, substitute:

(b) the fee determined by the Minister by legislative instrument.

3 Application of amendment of paragraph 154A(3)(b)

The amendment of paragraph 154A(3)(b) of the *Bankruptcy Act 1966* made by this Part applies to applications made on or after 1 July 2006 under section 154A of the *Bankruptcy Act 1966*.

4 Paragraph 155C(1)(b)

Omit “charge imposed by section 5 of the *Bankruptcy (Registration Charges) Act 1997*”, substitute “fee determined by the Minister by legislative instrument”.

5 Application of amendment of paragraph 155C(1)(b)

The amendment of paragraph 155C(1)(b) of the *Bankruptcy Act 1966* made by this Part applies to registrations resulting from applications made on or after 1 July 2006 under section 154A of the *Bankruptcy Act 1966*.

6 Paragraph 155D(1)(b)

Omit “charge imposed by section 6 of the *Bankruptcy (Registration Charges) Act 1997*”, substitute “fee determined by the Minister by legislative instrument”.

7 Subsection 155D(3)

Omit “charge on”, substitute “fee for”.

8 Subsection 155D(3)

Omit “the charge” (wherever occurring), substitute “the fee”.

9 Application of amendments of section 155D

The amendments of section 155D of the *Bankruptcy Act 1966* made by this Part apply to extensions under that section resulting from applications made on or after 1 July 2006 as described in that section.

10 After section 155J

Insert:

155K Payment of fees etc. for application, registration and extension

If a person gives the Commonwealth a cheque or payment order in payment of a fee under section 154A, 155C or 155D, the amount is taken not to be paid until the cheque or payment order is paid by the institution on which it is drawn.

11 Subsection 163(1)

Omit “prescribed by the regulations”, substitute “determined by the Minister by legislative instrument”.

12 Subsection 163(2) (note)

Omit “prescribed”.

13 Application of amendments of section 163

The amendments of section 163 of the *Bankruptcy Act 1966* made by this Part apply to remuneration of the Official Trustee for work arising from any of the following events happening on or after 1 July 2006:

- (a) the making of a direction under section 50 of that Act;
- (b) a person becoming bankrupt;
- (c) lodgment of a proposal for a composition or scheme of arrangement under section 73 of that Act;
- (d) the giving of a proposal for a debt agreement under section 185C of that Act;
- (e) signature of an authority under section 188 of that Act;
- (f) the making of an order for the Official Trustee to act as the trustee of an estate.

14 Subsection 163A(2)

Omit “the to the Official Receiver the fee prescribed by the regulations”, substitute “to the Official Receiver the fee determined by the Minister by legislative instrument”.

15 Application of amendment of section 163A

The amendment of section 163A of the *Bankruptcy Act 1966* made by this Part applies to the fee for the exercise of a power at the request of a trustee made on or after 1 July 2006.

16 Subsections 188B(3), 226(3) and (4) and 246(5)

Omit “prescribed by the regulations”, substitute “determined by the Minister by legislative instrument”.

17 Paragraph 315(2)(j)

After “fees”, insert “, but not the setting of amounts of fees other than fees mentioned in paragraph 81(17)(b),”.

18 Saving regulations providing for charging and payment of fees

- (1) This item explains the effect of the amendment of paragraph 315(2)(j) of the *Bankruptcy Act 1966* made by this Part on regulations that:
 - (a) were in force just before 1 July 2006; and
 - (b) provided for the charging or payment of fees in relation to things described in that paragraph.
- (2) The amendment affects the regulations only so far as they provided for the setting of amounts of fees other than fees mentioned in paragraph 81(17)(b).

Note: The amendment causes the regulations to cease setting the amounts of fees (other than fees mentioned in paragraph 81(17)(b)) on 1 July 2006.

- (3) To avoid doubt, the amendment does not affect the regulations so far as they provide for other aspects of the charging and payment of fees.

19 At the end of Part XVI

Add:

316 Legislative instruments determining fees

- (1) The Minister may make legislative instruments determining the amounts of one or more of the following:
 - (a) fees for the purposes of one or more of subsections 54(4), 55(9), 56G(2) and 57(11), paragraphs 154A(3)(b), 155C(1)(b) and 155D(1)(b) and subsections 163A(2), 188B(3), 226(3) and (4) and 246(5) (as they apply of their own force or as they apply because of another provision);
 - (b) other fees relating to one or more of the following:
 - (i) proceedings under this Act;
 - (ii) inspection of material entered in the National Personal Insolvency Index;
 - (iii) obtaining extracts of material entered in the National Personal Insolvency Index;
 - (iv) inspection and copying of documents given to Official Receivers;
 - (v) the making of other requests or applications under this Act or the presentation or lodgment of other documents under this Act;
 - (c) remuneration of the Official Trustee.
- (2) Fees determined must not be such as to amount to taxation.

Part 2—Amendments with contingent commencement

Bankruptcy Act 1966

20 Subparagraph 77C(3)(b)(iii)

Omit “prescribed by the regulations”, substitute “determined by the Minister by legislative instrument”.

21 Paragraph 316(1)(a)

After “57(11),”, insert “subparagraph 77C(3)(b)(iii),”.

Schedule 2—Estate charges

Bankruptcy (Estate Charges) Act 1997

1 Subsection 4(1) (definition of *charge period*)

Omit “period of 6 months commencing on 1 January or 1 July”, substitute “financial year”.

2 Section 7

Repeal the section, substitute:

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%.

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.

Schedule 3—Repeal of the Bankruptcy (Registration Charges) Act 1997

Part 1—Repeal

Bankruptcy (Registration Charges) Act 1997

1 The whole of the Act

Repeal the Act.

2 Application

- (1) The repeal of section 4 of the *Bankruptcy (Registration Charges) Act 1997* by this Part applies to applications made on or after 1 July 2006 under section 154A of the *Bankruptcy Act 1966*.
- (2) The repeal of section 5 of the *Bankruptcy (Registration Charges) Act 1997* by this Part applies to registrations resulting from applications made on or after 1 July 2006 under section 154A of the *Bankruptcy Act 1966*.
- (3) The repeal of section 6 of the *Bankruptcy (Registration Charges) Act 1997* by this Part applies to extensions under section 155D of the *Bankruptcy Act 1966* resulting from applications made on or after 1 July 2006 as described in section 155D of the *Bankruptcy Act 1966*.

Part 2—Consequential provisions

Bankruptcy Act 1966

3 Subsection 155E(3)

Repeal the subsection, substitute:

- (3) The application must be accompanied by any information or documents prescribed by the regulations.

4 Transitional provision

- (1) Regulations that were in force for the purposes of paragraph 155E(3)(a) of the *Bankruptcy Act 1966* just before the commencement of the amendment of section 155E of that Act made by this Part have effect as if they had been made for the purposes of subsection 155E(3) of that Act as amended by this Part.
- (2) This item does not prevent the amendment or repeal of those regulations by regulations under the *Bankruptcy Act 1966*.

5 Part XV (heading)

Repeal the heading, substitute:

Part XV—Provisions relating to the Bankruptcy (Estate Charges) Act 1997

6 Section 278 (definition of *registration charge*)

Repeal the definition.

7 Section 278 (definition of *Registration Charges Act*)

Repeal the definition.

8 Subsections 279(1) and (2)

Omit “and the Registration Charges Act”.

9 Subsection 285(1)

Omit “, registration charge”.

Schedule 4—Minor and technical amendments

Bankruptcy Act 1966

1 Subsection 5(1) (definition of *approved form*)

Omit “a”, substitute “an electronic or other”.

2 Paragraph 6A(2)(a)

Repeal the paragraph, substitute:

(a) is in an approved form; and

3 Paragraph 6A(2)(c)

Omit “, signed by the debtor or bankrupt,”.

4 Subsections 6B(1) and (2)

Repeal the subsections, substitute:

(2) A reference in paragraph 246(1)(a) or subsection 247(1) to a statement of a deceased person’s affairs and of administration of the deceased person’s estate is a reference to a statement, in an approved form, of those affairs and of that administration.

5 Subsection 58(1) (note)

Omit “Note:”, substitute “Note 1:”.

6 At the end of subsection 58(1)

Add:

Note 2: Even if property has vested under this section, it may, under the *Proceeds of Crime Act 2002*:

- (a) become subject to a restraining order; and
- (b) be taken into account in making a pecuniary penalty order; and
- (c) become subject to a charge to secure the payment of an amount under a pecuniary penalty order, if it is subject to a restraining order; and
- (d) be dealt with by the Official Trustee, if it is subject to a restraining order and a court has directed the Official Trustee to pay the Commonwealth an amount under a pecuniary penalty order out of property subject to the restraining order.

7 Subsection 77C(1)

Repeal the subsection, substitute:

- (1) The Official Receiver may, by written notice given to a person, require the person to do one or both of the following:
 - (a) give the Official Receiver information the Official Receiver requires for the purposes of the performance of the functions of the Official Receiver or a trustee under this Act;
 - (b) attend before the Official Receiver, or an officer authorised in writing by the Official Receiver to exercise powers under this paragraph, and do one or both of the following:
 - (i) give evidence relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act;
 - (ii) produce all books in the person's possession relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act.

It does not matter whether or not the person is a bankrupt or is employed in or in connection with a Department, or an authority, of the Commonwealth or of a State or Territory.

8 Saving

The repeal and substitution of subsection 77C(1) of the *Bankruptcy Act 1966* by this Schedule does not affect:

- (a) a requirement under that subsection involving a notice given before the repeal; or
- (b) an authorisation of an officer to exercise powers under paragraph 77C(1)(b) of that Act that was given before the repeal.

9 Paragraph 139ZG(2)(a)

Omit "Official Receiver", substitute "trustee".

10 Subsection 140(8)

Omit "send to each creditor who has proved his or her debt a cheque for the amount due to him or her and", substitute "pay each creditor who has proved his or her debt the amount due to the creditor and send the creditor".

11 Paragraph 188(2)(aa)

Omit “authority; and”, substitute “authority.”.

12 Paragraph 188(2)(b)

Repeal the paragraph.

13 Subsection 267B(1)

Omit “paragraph 77C(1)(a)”, substitute “subsection 77C(1)”.

*[Minister’s second reading speech made in—
House of Representatives on 16 February 2006
Senate on 29 March 2006]*

(2/06)
