

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BANKRUPTCY (ESTATE CHARGES) BILL 1996

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General and Minister for
Justice, the Honourable Daryl Williams AM QC MP)



BANKRUPTCY (ESTATE CHARGES) BILL 1996

Outline

The Bankruptcy (Estate Charges) Bill 1996 proposes the introduction of charges in respect of the estate administration function carried out by registered trustees and the Official Trustee under the *Bankruptcy Act 1966*.

The realisations charge was previously imposed in the rules made under the *Bankruptcy Act 1966*. As a result of the enactment of the Bankruptcy Legislation Amendment Bill 1996 rules will no longer be made under that Act. Instead, regulations will be made in relation to appropriate matters. The opportunity presented by the changes resulting from the need to revise the rules has been taken to enact separate legislation in respect of charges relating to bankruptcy, rather than imposing them by regulation.

The interest charge is a new charge imposed in respect of interest earned on funds held in trust by registered trustees in relation to estates and other matters administered by them. The introduction of the proposed charge will place these estates on the same footing as those administered by the Official Trustee, where funds held on behalf of estates and debtors are held in the common investment fund and the interest is paid to consolidated revenue.

Notes on Items

Short Title

The Bankruptcy (Estate Charges) Bill 1996 (the bill), when enacted, will be known as the *Bankruptcy (Estate Charges) Act 1996* .

Commencement

2. The bill will commence at the end of six months from the date of Royal Assent unless brought into operation earlier by Proclamation by the Governor-General.

Act to bind the Crown

3. Clause 3 provides that the proposed Act will bind the Crown in right of the Commonwealth but not in right of a State, the Australian Capital Territory, the Northern Territory or Norfolk Island.

Interpretation

4. Clause 4 of the bill defines terms which are used throughout the bill.

“charge period” The amount of the charge is payable in arrears at the end of each six monthly period commencing on 1 November 1996 and each subsequent six monthly period.

All other expressions used in the bill have the same meaning as in the *Bankruptcy Act 1966* (the Act) (proposed subsection 4(2)).

Part 2 - Interest Charge

Interest charge

5. Clause 5 provides that an amount of interest to which a trustee 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. Proposed subsection 2 makes it clear that this section applies to interest in relation to any monies held by a trustee in respect of both bankrupt estates and administrations under Parts X and XI of the Act.

6. The charge is payable by the trustee(sub clause (3) and is payable within 21 days after the end of the charge period in which the interest was paid (proposed subclause (4)). The amount may be paid earlier than the end of the period.

Part 3 - Realisations Charge

Realisations charge

7. Sub-rules 179(2) and (3) of the Bankruptcy Rules imposed a fee upon furnishing an account in respect of the estate of a bankrupt or deceased person or in respect of a debtor. The fee was calculated as a percentage of a prescribed amount which was, in effect, equal to amounts realised by the trustee less amounts paid to secured creditors, any surplus returned to the bankrupt or debtor, and amounts paid by the trustee in carrying on the business of the bankrupt, deceased person or debtor.

8. Clause 6 proposes the imposition of a similar charge which will replace the fee imposed by subrules 179(2) and (3). The proposed charge would be imposed in respect of amounts received by either a registered trustee or the Official Trustee who is, during the charge period a trustee of the estate of a bankrupt, a controlling trustee in relation to a debtor whose property has become subject to control under Division 2 of Part X, the trustee of a deed of assignment or deed of arrangement or composition in relation to a debtor under Part X or the trustee of the estate of a deceased person.

9. The charge would be payable by the trustee to the Commonwealth within 21 days after the end of the charge period.

Amount of charge payable

10. Clause 7 provides that the amount of charge payable for a charge period is an amount equal to 8% of the amount on which charge is payable or a greater amount not exceeding 15% if a different percentage is prescribed by the regulations.

Working out the amount on which charge is payable

11. Clause 8 describes the method for calculating the **amount on which charge is payable**. This amount is the amount realised less the permitted deductions.

12. The **amount realised** is the total amount received by the trustee in his or her capacity referred to in paragraph 8 above, during the charge period, less amounts paid to the trustee by creditors under an indemnity in respect of costs or amounts paid to the trustee under section 305 of the *Bankruptcy Act 1966*.

13. Once this amount is calculated amounts paid by the trustee in carrying on the business of the bankrupt, deceased person or debtor and amounts paid to secured creditors are deducted before calculating the amount of the charge.

Example:

amount received by the trustee during the charge period		\$500,000
	less	
amounts paid by creditors for costs		\$5,000
	equals	\$495,000
	deduct	
amount paid to secured creditors in respect of securities		\$50,000
Amount on which charge is payable		\$445,000

14. The amount of the charge will be a first call on the estate.

15. Sub clause 8(4) provides that once an amount has been taken into account for the purposes of subsection (2) as an amount received it is not to be taken into account again. This will avoid payment of the charge twice in circumstances where an amount may be transferred between accounts, for example where a trustee ceases to act for an estate of a bankrupt and a new trustee is appointed.



