



Bankruptcy Amendment (Discharge from Bankruptcy) Act 2023

No. 94, 2023

**An Act to amend the law in relation to discharge
from bankruptcy, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Bankruptcy Amendment (Discharge from Bankruptcy) Act 2023

No. 94, 2023

An Act to amend the law in relation to discharge from bankruptcy, and for related purposes

[Assented to 22 November 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Bankruptcy Amendment (Discharge from Bankruptcy) Act 2023*.

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 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | 23 November 2023 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note: The provisions of the *Bankruptcy Regulations 2021* amended or inserted by this Act, and any other provisions of that instrument, may be amended or repealed by regulations made under section 315 of the *Bankruptcy Act 1966* (see subsection 13(5) of the *Legislation Act 2003*).

Schedule 1—Discharge from bankruptcy

Part 1—Amendments

Bankruptcy Act 1966

1 Subsection 6A(1)

After “sections”, insert “57B,”.

2 Section 33A (heading)

Repeal the heading, substitute:

33A Alteration of dates relating to statements of affairs and debtor’s petitions

3 Subsections 33A(1) and (2)

Repeal the subsections, substitute:

- (1) If the Court is satisfied that a person believed on reasonable grounds that a statement of affairs that relates to the person’s bankruptcy was filed for the purposes of section 54, 55, 56B, 56F or 57 at a time before it was actually filed, the Court may order that the statement of affairs is to be treated as having been filed at a time before it was actually filed.
- (2) If:
 - (a) the Court is satisfied that a person believed on reasonable grounds that a debtor’s petition that relates to the person’s bankruptcy had been presented before it was actually presented; and
 - (b) the debtor’s petition has been accepted by the Official Receiver;the Court may order that the debtor’s petition is to be treated for the purposes of sections 149 and 149A as having been accepted by the Official Receiver at a time before it was actually accepted.

4 Subsection 33A(3)

After “an order”, insert “under subsection (1) or (2)”.

5 After subsection 54(2)

Insert:

- (2A) If the Official Receiver accepts under subsection 57B(1) an updated statement of affairs filed in accordance with a notice under subsection 57B(3) for the purposes of paragraph (1)(a) or (2)(a) of this section, the bankrupt must give a copy of the statement to the trustee within 14 days from the day the bankrupt receives notice of the acceptance.

Penalty: 50 penalty units.

6 Subsection 54(3)

Omit “(1) and (2)”, substitute “(1), (2) and (2A)”.

7 Paragraph 55(3)(c)

Repeal the paragraph, substitute:

(c) both:

- (i) the Official Receiver has given the debtor notice under subsection 57B(3) that the Official Receiver has refused to accept a statement of affairs filed for the purposes of paragraph (2)(b) of this section; and
- (ii) an updated statement of affairs has not been filed for the purposes of that paragraph within the period specified in the notice.

8 Before paragraph 55(3AA)(a)

Insert:

- (aa) the Official Receiver has accepted under subsection 57B(1) a statement of affairs filed by the debtor for the purposes of paragraph (2)(b) of this section; and

9 Paragraph 56B(4)(c)

Repeal the paragraph, substitute:

(c) both:

- (i) the Official Receiver has given notice under subsection 57B(3) that the Official Receiver has refused to accept a statement of affairs filed for the purposes of paragraph (3)(a) or (b) of this section; and

- (ii) an updated statement of affairs has not been filed for the purposes of whichever of those paragraphs is applicable within the period specified in the notice.

10 Subsection 56F(1B)

Omit “Subsection (1) does not apply”, substitute “It is an exception to an offence against subsection (1)”.

11 Paragraph 57(3)(c)

Repeal the paragraph, substitute:

- (c) both:
 - (i) the Official Receiver has given notice under subsection 57B(3) that the Official Receiver has refused to accept a statement of affairs filed for the purposes of paragraph (2)(a) or (b) of this section; and
 - (ii) an updated statement of affairs has not been filed for the purposes of whichever of those paragraphs is applicable within the period specified in the notice.

12 After Division 3 of Part IV

Insert:

Division 3A—Acceptance of statements of affairs by Official Receiver

57B Acceptance of statements of affairs by Official Receiver

- (1) The Official Receiver must either accept, or refuse to accept, a statement of affairs that is filed for the purposes of any of the following provisions (including an updated statement of affairs filed within the period specified for the purposes of paragraph (4)(c) in a notice under subsection (3)) within 14 days from the day the statement of affairs is filed:
 - (a) subsection 54(1) or (2);
 - (b) paragraph 55(2)(b);
 - (c) paragraph 56B(3)(a) or (b);
 - (d) paragraph 56F(1)(a) or (b);
 - (e) paragraph 57(2)(a) or (b).

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Note: Subsections (6) and (7) provide certain exceptions to this rule.

- (2) The Official Receiver must accept the statement of affairs, unless the Official Receiver thinks that the statement of affairs is inadequate.

Note: The Court may review an act done by the Official Receiver (see subsection 15(5) and section 303).

- (3) The Official Receiver must give written notice of the decision under subsection (1) to:
- (a) for a statement of affairs filed for the purposes of subsection 54(1) or paragraph 55(2)(b), 56B(3)(a), 56F(1)(a) or 57(2)(a)—the person whose affairs the statement relates to; or
 - (b) for a statement of affairs filed for the purposes of subsection 54(2)—each of the joint debtors; or
 - (c) for a statement of affairs filed for the purposes of paragraph 56B(3)(b)—each of the petitioning members of the partnership; or
 - (d) for a statement of affairs filed for the purposes of paragraph 56F(1)(b)—the member, or each of the members, of the partnership who gave the statement of affairs; or
 - (e) for a statement of affairs filed for the purposes of paragraph 57(2)(b)—each of the petitioning debtors.
- (4) If the Official Receiver refuses to accept the statement of affairs, the notice must:
- (a) specify the respects in which the Official Receiver thinks the statement of affairs is inadequate; and
 - (b) invite the person or persons to file an updated statement of affairs with the Official Receiver; and
 - (c) specify a period within which the updated statement may be filed, which must be at least 14 days from the day the notice is given.

Note: For variation of the notice (for example, to extend the period specified in the notice within which the updated statement may be filed), see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (5) An updated statement of affairs filed within the period specified for the purposes of paragraph (4)(c) in a notice under subsection (3) is taken for all purposes:
-

- (a) to have been filed for the purposes of the provision referred to in paragraph (1)(a), (b), (c), (d) or (e); and
 - (b) to replace the statement of affairs that the Official Receiver refused to accept.
- (6) This section does not apply to a statement of affairs filed in connection with a debtor's petition if:
- (a) subsection 55(3B) or 57(3B) applies in relation to the debtor's petition; or
 - (b) subsection 56C(1) applies in relation to the debtor's petition and the statement of affairs is not required to be filed under paragraph 56F(1)(a).
- (7) This section (other than subsection (8)) ceases to apply to a statement of affairs filed in connection with a debtor's petition if the Official Receiver rejects the debtor's petition.
- (8) Without limiting paragraph 12(1)(d), a report under that paragraph for a financial year must include the number of statements of affairs (including updated statements of affairs) filed with the Official Receiver during the financial year for which there is a failure to comply with subsection (1) of this section.
- (9) In this section:
- filed* includes presented, lodged or given.

13 Paragraph 77(1)(bb)

Repeal the paragraph, substitute:

- (bb) as soon as practicable after the later of the following times:
 - (i) the time the bankrupt's statement of affairs was accepted under subsection 57B(1);
 - (ii) the time the bankrupt became a bankrupt;advise the trustee of any material change that occurred between the time the statement was filed and the later of the times mentioned in subparagraph (i) or (ii); and

14 Paragraph 77(1)(bc)

Omit "occurred later", substitute "occurs at or after the later of the times mentioned in subparagraph (bb)(i) or (ii)".

15 Section 149

Repeal the section, substitute:

149 Automatic discharge

- (1) A bankrupt is discharged from bankruptcy, by force of this subsection, at the end of the period of 3 years from whichever of the following dates is applicable:
 - (a) for a bankruptcy because of a sequestration order—the date the statement of the bankrupt’s affairs accepted under subsection 57B(1) was filed;
 - (b) for a bankruptcy because of a debtor’s petition (other than a bankruptcy to which paragraph (c) of this subsection applies)—the date the Official Receiver accepted the debtor’s petition;
 - (c) for a bankruptcy, because of a debtor’s petition against a partnership, of a member of the partnership who did not join in presenting the petition—the date the statement of the bankrupt’s affairs accepted under subsection 57B(1) was filed.
- (2) Subsection (1) applies subject to section 149A (objection to discharge of bankruptcy).

Note: See Part 2 of Schedule 1 to the *Bankruptcy Amendment (Discharge from Bankruptcy) Act 2023* for provisions relating to the discharge from bankruptcy of persons that became bankrupt before the commencement of that Part.

16 Subsection 149A(1)

Omit all the words after “withdrawn or cancelled,” substitute “the bankrupt is taken to be discharged by force of subsection 149(1) at the end of the prescribed number of years from the prescribed date”.

17 Subparagraph 149A(2)(b)(ii)

Omit “the date on which the bankrupt filed his or her statement of affairs”, substitute “the date applicable under whichever of paragraph 149(1)(a), (b) or (c) applies”.

18 Subparagraph 149A(3)(b)(i)

Omit “whichever of subsections 149(2), (3) and (4) applies in relation to the bankrupt”, substitute “subsection 149(1)”.

19 After paragraph 267(1)(d)

Insert:

(daa) is filed in accordance with a notice given under subsection 57B(3); or

Bankruptcy Regulations 2021

20 Before paragraph 76(2)(a)

Insert:

(aa) in the case of a statement of affairs mentioned in item 2 of the table, subsection (1) applies only if the Official Receiver accepts the statement; and

21 Subsection 76(2) (cell at table item 2, column 1)

Repeal the cell, substitute:

A statement of the affairs of a person against whose estate a sequestration order is made, that is given for the purposes of subsection 54(1) of the Act

22 Subsection 76(2) (table item 3, column 2, paragraph (e))

Repeal the paragraph, substitute:

(e) the day on which the statement of the debtor’s affairs accepted by the Official Receiver was given to the Official Receiver for the purposes of paragraph 55(2)(b) of the Act

23 Subsection 76(2) (table item 4, column 2, paragraph (c))

Omit “(see subsection 56C(5) of the Act)”.

24 Subsection 76(2) (table item 4, column 2, subparagraphs (e)(i) and (ii))

Repeal the subparagraphs, substitute:

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- (i) the statement of affairs of each of those partners, given for the purposes of paragraph 56B(3)(a) of the Act, that was accepted by the Official Receiver;
- (ii) the statement of the partnership affairs, given for the purposes of paragraph 56B(3)(b) of the Act, that was accepted by the Official Receiver

25 Subsection 76(2) (table item 5, column 2, paragraph (c))

Omit “(see subsection 57(3C) of the Act)”.

26 Subsection 76(2) (table item 5, column 2, subparagraphs (e)(i) and (ii))

Repeal the subparagraphs, substitute:

- (i) the statement of affairs of each of those debtors, given for the purposes of paragraph 57(2)(a) of the Act, that was accepted by the Official Receiver;
- (ii) the statement of their joint affairs, given for the purposes of paragraph 57(2)(b) of the Act, that was accepted by the Official Receiver

Part 2—Application, transitional and validation provisions

Division 1—Definitions

27 Definitions

In this Part:

affected bankruptcy period means the period:

- (a) starting on 1 July 1992 (the day section 27 of the *Bankruptcy Amendment Act 1991* commenced); and
- (b) ending on the day before commencement.

amended Act means the *Bankruptcy Act 1966*, as amended by Part 1 of this Schedule.

amended Regulations means the *Bankruptcy Regulations 2021*, as amended by Part 1 of this Schedule.

commencement means the commencement of this item.

discharge reference date for a bankruptcy means:

- (a) unless paragraph (b) or (c) applies:
 - (i) for a bankruptcy because of a sequestration order—the date of filing of the version of the statement of the bankrupt’s affairs that the Official Receiver accepted for filing; or
 - (ii) for a bankruptcy because of a debtor’s petition (other than a bankruptcy to which subparagraph (iii) applies)—the date the Official Receiver accepted the debtor’s petition; or
 - (iii) for a bankruptcy, because of a debtor’s petition against a partnership, of a member of the partnership who did not join in presenting the petition—the date of filing of the version of the statement of the bankrupt’s affairs that the Official Receiver accepted for filing; or
- (b) if there is in force an order of a court made before commencement:
 - (i) declaring the date on which the statement of the bankrupt’s affairs was filed with Official Receiver to be a particular date; or

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- (ii) ordering that the statement of the bankrupt's affairs be treated as having been filed with the Official Receiver at a time before it was actually filed; or
- (iii) otherwise affecting the date on which the bankrupt filed his or her statement of affairs for the purposes of sections 149 and 149A of the *Bankruptcy Act 1966*, as in force at any time during the affected bankruptcy period;
the date applicable under that order; or
- (c) if there is in force an order of a court, made on or after commencement, that the person's discharge reference date is to be treated as having been a date that is earlier than the date that would otherwise apply (see item 32)—the date applicable under that order.

do a thing includes:

- (a) make, or refuse to make, a decision (however described and whether or not under a law); and
- (b) exercise a power, perform a function, comply with an obligation or discharge a duty; and
- (c) refuse to do a thing covered by paragraph (b); and
- (d) enter into, or refuse to enter into, an agreement or transaction (however described); and
- (e) do, or refuse to do, anything else;

and **purport to do a thing** has a corresponding meaning.

Official Receiver includes:

- (a) an Official Receiver within the meaning of the *Bankruptcy Act 1966*, as in force at any time during the affected bankruptcy period; and
- (b) a Registrar in Bankruptcy, or a Deputy Registrar in Bankruptcy, within the meaning of the *Bankruptcy Act 1966*, as in force at any time during the affected bankruptcy period; and
- (c) an authorised employee; and
- (d) an officer (within the meaning of the *Bankruptcy Act 1966*, as in force at any time during the affected bankruptcy period) with duties that include supporting:
 - (i) an Official Receiver covered by paragraph (a) of this definition; or

- (ii) a Registrar in Bankruptcy, or a Deputy Registrar in Bankruptcy, covered by paragraph (b) of this definition; in the performance of their functions, or in the exercise of their powers, under the *Bankruptcy Act 1966*.

Division 2—Application of the amended Act and amended Regulations

28 Application of the amended Act

Requirement to accept or refuse to accept statement of affairs

- (1) The provisions of the amended Act covered by subitem (2) apply in relation to a statement of affairs filed for the purposes of a provision mentioned in any of paragraphs 57B(1)(a) to (e) of the amended Act:
 - (a) on or after commencement; or
 - (b) before commencement, if the Official Receiver had not, before commencement:
 - (i) accepted the statement of affairs for filing; or
 - (ii) refused to accept for filing the most recent version of the statement of affairs given to the Official Receiver before commencement.
- (2) This subitem covers the following provisions of the amended Act:
 - (a) paragraphs 55(3)(c) and (3AA)(a);
 - (b) paragraph 56B(4)(c);
 - (c) paragraph 57(3)(c);
 - (d) subsection 57B(1).
- (3) Subsection 57B(1) of the amended Act applies under subitem (1):
 - (a) in relation to a statement of affairs filed before commencement—as if the 14 day period referred to in that subsection ran from commencement; and
 - (b) in any case—subject to the operation of subsections 57B(6) and (7) of the amended Act.

Discharge from bankruptcy

- (4) Sections 149 and 149A of the amended Act apply in relation to a bankrupt whose statement of affairs is filed:

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- (a) on or after commencement; or
- (b) before commencement, if the Official Receiver had not, before commencement:
 - (i) accepted the statement of affairs for filing; or
 - (ii) refused to accept for filing the most recent version of the statement of affairs given to the Official Receiver before commencement.

Court alteration of dates

- (5) Section 33A of the amended Act applies in relation to a bankrupt whose statement of affairs is filed:
 - (a) on or after commencement; or
 - (b) before commencement, if the Official Receiver had not, before commencement:
 - (i) accepted the statement of affairs for filing; or
 - (ii) refused to accept for filing the most recent version of the statement of affairs given to the Official Receiver before commencement.

Note: For the operation of section 33A of the *Bankruptcy Act 1966*, as that section applies to persons whose statements of affairs were accepted by the Official Receiver for filing before commencement, see item 32 of this Schedule.

Advising trustee of material changes

- (6) Paragraphs 77(1)(bb) and (bc) of the amended Act apply in relation to a bankrupt whose statement of affairs is filed:
 - (a) on or after commencement; or
 - (b) before commencement, if the Official Receiver had not, before commencement:
 - (i) accepted the statement of affairs for filing; or
 - (ii) refused to accept for filing the most recent version of the statement of affairs given to the Official Receiver before commencement.

29 Application of the amended Regulations

Section 76 of the amended Regulations applies in relation to a statement of affairs filed for the purposes of subsection 54(1) or paragraph 55(2)(b), 56B(3)(a) or (b) or 57(2)(a) or (b) of the amended Act:

- (a) on or after commencement; or
- (b) before commencement, if the Official Receiver had not, before commencement:
 - (i) accepted the statement of affairs for filing; or
 - (ii) refused to accept for filing the most recent version of the statement of affairs given to the Official Receiver before commencement.

Division 3—Alteration of discharge dates

30 Discharge date for bankrupts not discharged from bankruptcy before commencement

- (1) This item applies in relation to a bankrupt:
 - (a) whose statement of affairs was accepted by the Official Receiver for filing before commencement; and
 - (b) who had not been discharged from bankruptcy by force of subsection 149(1) of the *Bankruptcy Act 1966* before commencement.
- (2) Sections 149 and 149A of the *Bankruptcy Act 1966*, as in force immediately before commencement, continue to apply in relation to the bankrupt on and after commencement.
- (3) Those sections so apply as if the references in those sections to the date on which the bankrupt filed his or her statement of affairs were references to the discharge reference date for the bankruptcy.

Note: This subitem may result in the date on which the bankrupt is discharged from bankruptcy being later than the date that would otherwise apply.

31 Discharge date for bankrupts discharged from bankruptcy before commencement

- (1) This item applies in relation to a person who was discharged from bankruptcy before commencement by force of subsection 149(1) of the *Bankruptcy Act 1966*, as in force at any time during the affected bankruptcy period, if the discharge reference date for the bankruptcy is later than the date on which the bankrupt filed his or her statement of affairs for the purposes of sections 149 and 149A of the *Bankruptcy Act 1966*, as then in force.

Alteration of discharge date

- (2) By force of this subitem, the date of the discharge is taken to be, and always to have been, the date on which the person would have been discharged from the bankruptcy had the references in sections 149 and 149A of the *Bankruptcy Act 1966*, as then in force, to the date on which the bankrupt filed his or her statement of affairs been references to the discharge reference date for the bankruptcy.
- (3) However, subitem (2) does not render invalid or ineffective anything done by or in relation to the person, or in relation to the bankruptcy, before commencement on the basis that the date of the discharge was, or would be, the date that would have applied under sections 149 and 149A of the *Bankruptcy Act 1966*, as in force at any time during the affected bankruptcy period, had subitem (2) not been enacted.
- (4) In addition, no action, suit or proceeding (whether civil or criminal) lies against a person in relation to any act or omission that the person did, or omitted to perform, before commencement on that basis.
- (5) Subitem (2) does not apply in relation to the person or the bankruptcy if:
 - (a) on commencement, there is an order of a court in force:
 - (i) declaring the date of the discharge to be a particular date; or
 - (ii) otherwise affecting the date of the discharge; or
 - (b) the bankruptcy is in a class determined under subitem (6).
- (6) For the purposes of paragraph (5)(b), the Minister may, by legislative instrument, determine classes of bankruptcies in relation to which subitem (2) does not apply.

Validation

- (7) Subitem (8) applies if a thing done, or purportedly done, by or in relation to the person, or in relation to the bankruptcy, before commencement would, apart from this item, be wholly or partly invalid or ineffective only because the thing was done or purportedly done on the basis that the date on which the person filed his or her statement of affairs for the purposes of sections 149 and 149A of the *Bankruptcy Act 1966*, as in force at any time during the affected bankruptcy period, was the discharge reference date.
-

- (8) Without limiting subitem (2), the thing done, or purportedly done, is taken for all purposes to be valid and effective, and to have always been valid and effective.

Application of this item to proceedings

- (9) For the purposes of applying this item in relation to civil or criminal proceedings, this item applies in relation to:
- (a) civil and criminal proceedings instituted on or after commencement; and
 - (b) civil proceedings, but not criminal proceedings, instituted before commencement, being proceedings that are concluded:
 - (i) before commencement; or
 - (ii) on or after commencement.

Division 4—Other provisions

32 Court orders affecting the discharge reference date

- (1) This item applies in relation to a person:
- (a) whose statement of affairs was accepted by the Official Receiver for filing before commencement; and
 - (b) who had not been discharged from bankruptcy by force of subsection 149(1) of the *Bankruptcy Act 1966* before commencement.
- (2) Section 33A of the *Bankruptcy Act 1966*, as in force immediately before commencement, applies in relation to the bankrupt on and after commencement as if subsection (2) of that section, in addition to making an order of a kind mentioned in that subsection, also empowered the Court to determine that the person's discharge reference date is to be treated as having been a date that is earlier than the date that would otherwise apply.

33 Entry of information on the National Personal Insolvency Index

- (1) This item applies if:
- (a) before commencement, the Official Receiver accepted a statement of a debtor's affairs for filing; and

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- (b) regulations made under the *Bankruptcy Act 1966*, as in force at any time in the affected bankruptcy period, required the date on which the statement of affairs was filed with or given to the Official Receiver to be entered in the National Personal Insolvency Index.
- (2) By force of this subitem, those regulations are taken to apply, and always to have applied, in relation to the statement of affairs as if the date required to be entered were the discharge reference date for the bankruptcy.

34 Compensation for acquisition of property

- (1) If:
- (a) apart from this item, the operation of this Schedule would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph); and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

[Minister's second reading speech made in—
House of Representatives on 14 November 2023
Senate on 15 November 2023]

(142/23)
