J P DOWNEY & CO.

CHARTERED ACCOUNTANTS

23 January 2018

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Sir / Madam

Bankruptcy Amendment (Enterprise Incentives) Bill 2017

I have been engaged in the practice of insolvency, both corporate and personal, since 1979. I have been a registered trustee in bankruptcy since 1992. I am a Fellow of Chartered Accountants Australia and New Zealand, and a Fellow of the Australian Restructuring Insolvency & Turnaround Association (ARITA).

I take this opportunity to lodge a submission on the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 ('the Bill') to amend the *Bankruptcy Act 1966* (Cth) ('the Act') which proposes to provide for an automatic discharge from bankruptcy after one year (and related amendments).

I have read and generally endorse the submission by ARITA.

I make the following points for your consideration:

- I have serious doubts that a reduction of the default bankruptcy period will achieve the objectives stated in the Explanatory Memorandum to the Bill;
- I hold serious concerns as to the risk of abuse of a one-year bankruptcy period and the likely emergence of serial bankrupts. There may be a risk that this could undermine community confidence in the bankruptcy regime;
- Reducing the default period of bankruptcy could dissuade insolvents from using debt agreements as an alternative to bankruptcy. I share ARITA's concern as to how concurrent reforms to both bankruptcy and debt agreements will affect existing trends and the popularity of bankruptcies versus debt agreements;
- Several years ago, the bankruptcy regime allowed for early discharge after six months for persons meeting certain criteria – (eg total creditors of less than a given limit; no realizable assets; income below the Base Income Threshold Amount and therefore no liability to pay income contributions; no previous bankruptcies; no voidable antecedent transactions;et cetera). The Committee would do well to revisit the reasons and recommendations which brought about the abandonment of this avenue of early discharge. I suspect that those reasons included a perception that the system was being abused, and a belief that

Level 1
22 William Street, Melbourne, Victoria 3000
Telephone: (03) 9642 2811 Fax: (03) 9642 8277
Email: email@jpdowney.com.au
Web: www.jpdowney.com.au

Registered Liquidators
Registered Trustee in Bankruptcy
Member - Australian Restructuring
Insolvency & Turnaround Association (ARITA)

bankruptcy had become an easy way out of financial commitments; these factors together producing an undermining of confidence in the bankruptcy regime within banking and finance circles, and within the wider community. I also suspect that nothing has changed since the abandonment of those early discharge rules;

- If the aim of making discharge available after only one year, rather than three, is to enable discharged bankrupts to act as directors of corporations, (and I think this is a dubious aim in any case) then why not simply allow bankrupts to hold the office of director after the first year of the bankruptcy has elapsed? Then, at least, they will remain under some form of supervision.

- The suggested extension of income contribution obligations for two years following an automatic discharge after one year will, in my opinion, leave the bankruptcy trustee without any effective means of enforcing compliance with the bankrupt's obligations to pay income contribution assessments. Once the "bird has flown", it will be a costly matter to enforce a defaulted contribution obligation. There is also the matter that if the enforcement process results in a second bankruptcy, there may well be additional complexities if the bankrupt has managed to incur new debts in the intervening period. Which creditors will then share in any dividend from the new "compound" estate, and in what proportions? The position could develop into an administrative nightmare.

Yours faithfully

James P Downey FCA RTIF