Like Juggling 27 Chainsaws

Understanding the experience of default judgment debtors in Victoria

A Report prepared for Consumer Action Law Centre
by Dr Eve Bodsworth, Brotherhood of St Laurence

June 2013

Brotherhood of St Laurence
Working for an Australia free of poverty

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‘Like juggling 27 chainsaws’:

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This report was prepared for the Consumer Action Law Centre by Dr Eve Bodsworth, Research and Policy Manager at the Brotherhood of St Laurence's Research and Policy Centre.

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The Steering Committee for this project comprised of the following people and organisations:

Name	Title	Organisation
Gerard Brody	Chief Executive Officer	Consumer Action Law Centre
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Mary Polis (observer for initial part of the project)	Senior Legal Policy Officer, Civil Law Policy	Department of Justice

Key terms

Arrears	Payment that is overdue or made after the due date.
Attachment of earnings	A court order that a debtor’s income is garnisheed to be paid to a third party, usually the creditor
Community legal centres	Non-profit organisations that provide general and specialist legal services (usually at no charge) to members of the community
Complaint [form]	The form used by a person or company to start legal proceedings in the Magistrates’ Court of Victoria
Creditor	A person or company to whom debt is owed
Debtor	A person who owes a debt
Default	To fail in some duty. In the context of debt, to default is to not pay money owing
Default judgment	A court order imposed without a hearing against one party, usually the person being sued (the ‘defendant’), because they did not take a particular required action, usually failing to provide a defence to the initial court complaint made by the other party (‘the plaintiff’)
Financial counsellor	An accredited person who provides free, independent information, support and advocacy to assist people in financial difficulty, generally through a non-profit organisations
Judgment debt	The amount awarded to be paid under a court order
Service of documents	The delivery of a legal document that notifies the recipient that legal action involving them has been commenced
Summons	A document issued by the court requiring the person named in the summons to attend court on a specified date

1. Summary

This report explores the experiences of people who have received 'default judgments' for debt-related problems. Each year 30,000 to 40,000 people receive default judgments against them in the Victorian Magistrates' Court, often for relatively small debts. Default judgment is a court order imposed without a hearing against one party, usually the debtor being sued, because they failed to provide a defence to court action initiated by a creditor.

The impetus for this study focusing on court data and individual consumers' experiences of default judgment came from concerns about prevalence of default judgments and the impact of such legal action on vulnerable debtors. The majority of all civil complaints in the Victorian Magistrates' court result in default judgment (Magistrates' Court of Victoria 2012). Of particular concern is the high number of claims for small debts which result in default judgment, given the potentially harsh and ongoing consequences for vulnerable consumers.

The impact of a default judgment on an individual or family's financial wellbeing can be severe, particularly for people living on low incomes or experiencing other forms of disadvantage. A default judgment can result in the seizure of the debtor's property, including the family home, or ongoing deductions from wages. A default judgment also typically results in continuing contact from debt collectors and may lead to bankruptcy or debt administration. However, for some debtors on very low incomes, a default judgment may be preferable to entering into an unrealistic repayment plan, because there are limitations to enforcing judgment debt against groups such as income support recipients. A default judgment can also have lasting effects for judgment debtors: it will be listed on their credit file for five years, restricting access to further credit and it remains enforceable in Victoria for at least fifteen years.

The research

This research project involved:

- a review of existing literature
- analysis of data collected by the Victorian Magistrates' Court regarding civil debt and the incidence of default judgments
- in-depth interviews of 16 individuals who had received default judgments.

The interviews were structured to allow people to describe the 'story' of their debt and legal problems in their own words.

Key findings

Default judgments are affecting everyday consumers, particularly those experiencing financial vulnerability.

- Most default judgments are issued in relation to relatively small debts.
- Most judgement debtors live in areas of high disadvantage or areas of rapid population growth in outer suburban Melbourne, likely to be related to housing and financial stress.
- The most common creditors seeking default judgments are local councils.

The causes of debt and financial hardship are complex and related to other forms of disadvantage.

- Debt problems arise from the complex intersections of underlying poverty or vulnerability compounded by an unexpected drop in income or rise in expenses.
- Factors contributing to financial vulnerability include the nature of insecure work and unemployment; ongoing receipt of income support payments; mental illness; disability; and caring responsibilities.

The debt recovery process is difficult for debtors to navigate and compounds experience of stress and anxiety.

- The debt recovery process is complex, involving different regulatory frameworks and often multiple parties.
- Vulnerable debtors often avoid dealing with problem debts because they do not know what they could do or are overwhelmed by their other problems.
- The court process confuses many debtors and provides few options for those who cannot afford to repay their debt in full.
- Debtors are often confused about the differences between credit reporting and creditors' rights to issue legal proceedings and the time limits which apply to each area.
- Debtors may not respond to the initiation of court proceedings (i.e. file a defence) because:
  - they do not receive notification at all or on time
  - they do not understand what they are required to do
  - they acknowledge they owed the debt but cannot pay.

Most judgment debtors do not seek assistance or advice until late in the debt recovery process.

- Many judgment debtors acknowledge their debt but felt there is nothing they can do if they cannot pay. Feelings of shame and pride also affected whether debtors seek help.
- Judgment debtors want information from trustworthy sources.

- Debtors, particularly those with old debts, face difficulty finding information about their debts and are often unaware when debts change hands.

Key recommendations

1 **Improve referral pathways for people experiencing disadvantage** by providing resources to build awareness of debt and financial issues and appropriate referral pathways among professional and support workers including health professionals; Centrelink and employment services workers; family violence workers and family lawyers; organisations supporting tradespeople; and self-employed individuals.

2 **Improve community awareness of consumer rights**, obligations and processes relating to debt, targeting vulnerable groups and groups at risk of financial vulnerability (such as home owners in urban growth corridors).

3 **Improve and standardise financial hardship and dispute resolution processes followed by creditors**, including mandatory hardship policies, flexible payment options and encouragement of proactive responses to consumers experiencing financial difficulty.

4 **Promote debt waiver processes for debtors on very low incomes** who are unlikely to improve their financial circumstances in the long term.

5 **Improve information flow to debtors** in relation to the assignment of debts to third parties and during court proceedings.

6 Improve the court process for consumer debtors by providing plain language information about the process and referrals.

7 **Create an additional option for debtors when legal proceedings are issued**, allowing debtors to enter into an agreement to repay in instalments without having default judgment entered against them.

2. Introduction

This report explores the experiences of people who have received 'default judgments' for debt-related problems. Each year 30,000 to 40,000 consumers receive default judgments against them in the Victorian Magistrates' Court, often for relatively small debts. In the 2011–12 financial year, default judgment was sought by creditors for debts as low as $47.60. A 'default judgment' is a court order imposed against one party, usually the person being sued (the 'defendant'), without a hearing. This is because they did not provide a defence to court proceedings started by the other party (the 'plaintiff'). In the Victorian Magistrates' Court[1], the plaintiff can apply for a default judgment if the defendant does not enter a defence within 21 days of receiving (being 'served' with) documents setting out the plaintiff's claim ('complaint'). A default judgment usually requires the defendant to pay the debt in full with interest, as well as the plaintiff's legal fees. In such cases, the person who owes the debt is often referred to as the 'judgment debtor'.

The impact of a default judgment on an individual or family's financial wellbeing can be severe, particularly for people living on low incomes or experiencing other forms of disadvantage. A default judgment can result in the seizure of the debtor's property, including the family home, or ongoing deductions from wages. A default judgment also typically results in continuing contact from debt collectors and may lead to bankruptcy or debt administration.. However, for some debtors on very low incomes, a default judgment may be preferable to entering into an unrealistic repayment plan, because there are limitations to enforcing judgment debt against groups such as income support recipients. A default judgment can also have lasting effects for judgment debtors: it will be listed on their credit file for five years, restricting access to further credit and it remains enforceable in Victoria[2] for at least fifteen years.

The impetus for this study came from concerns about their impact on vulnerable debtors. Some 50–60% of all civil complaints in the Victorian Magistrates' Court result in default judgment (Magistrates' Court of Victoria 2012). Of particular concern is the high number of claims for small debts which result in default judgment. Recent court data from 2011–12 indicates that of 2807 civil claims for amounts of $1000 and under, 75% resulted in creditors requesting default judgment. Of the 19,501 claims for amounts of $10,000 and under, 81% resulted in requests for default judgment. This means that in most small debt claims, the

[1] Default judgments are also made in other jurisdictions; however this report focuses on default judgments imposed by the Magistrates' Court.
[2] See *Dennehy v Reasonable Endeavours Pty Ltd* [2003] FCAFC 158 for discussion of time limits associated with default judgment.

defendant does not enter a defence, so the court makes orders without hearing their ‘side of the story’.

More generally, stories of the lived experience of financial and legal processes are rarely told. Increasingly, people are taking on debt for ‘everyday’ reasons—to cover living expenses and purchase household goods, buy a home, pay for their children’s education and, for small business operators and independent contractors, secure their livelihoods. While many Australians benefit from access to credit, poor health, reliance on income support, loss of income, mental health and drug and alcohol problems can increase the risk of financial crisis which exposes individuals to ‘problem’ debt. Consumer debt recovery processes are often ill-suited to resolving debt problems, particularly for debtors who are poor or socially excluded and may indeed exacerbate the problems and create worse outcomes. This study investigated the everyday experiences of individuals affected by debt and associated recovery processes, particularly ‘default judgments’. It also examined whether debtors sought advice about their debts and legal issues, at what stage, and what were the barriers to seeking and gaining information and support.

It is hoped that this research and the recommendations which flow from it will inform changes to the ways information, advice and support about debt are provided, as well as changes to the default judgment processes in order to improve justice outcomes. It is encouraging that in the period between conducting the research and publication of this report, the Magistrates’ Court Civil Rules Committee indicated that it was considering amending the rules regarding default judgment and sought the Consumer Action Law Centre’s response, which was informed by the findings of this study.

Methodology

This research project had three components:

- A review of existing literature regarding default judgments, the experience of individuals with consumer debt and related legal problems and the help-seeking behaviour of individuals with debt related legal problems.

- Analysis of data collected by the Victorian Magistrates’ Court regarding consumer debt, examining the incidence of default judgments, the profile of default creditors and debtors and the size of debts resulting in default judgment.

- In-depth interviews with 16 individuals who had received default judgments, exploring their experiences of problem debt, negotiations with creditors and debt collectors, and their ways of seeking help and navigating the court process.

In recognition that discussion of financial, legal and other problems could be distressing, the interviews were structured to allow interviewees to describe the 'story' of their debt and legal problems in their own words. An interview guide was also used to ensure that various issues were covered. Accompanying the interviews was a short survey incorporating questions from an earlier Victorian survey of judgment debtors (Schetzer 2008).

Eight of the interviews were conducted face-to-face and eight by telephone, depending on the participant's preference and location. Interviewees were offered $50 to thank them for their time. All names used in this report are pseudonyms and some details have been changed in order to protect interviewees' anonymity. Ethics approval was provided by the Brotherhood of St Laurence's Ethics Committee. The interviews were recorded and transcribed with their informed consent. Information including referrals for financial assistance was offered to interviewees who indicated that they were still experiencing financial difficulty during the interviews.

Interviewees were recruited from Consumer Action's financial counselling and legal services client-base as well as through other Victorian financial counsellors. The initial aim was to recruit interviewees from judgment debtors listed in the ABR Credit Gazette. Consumer Action sent these judgement debtors information about its financial counselling program, inviting them to access free, confidential and independent financial advice and information. It was intended that people who contacted the service as a result would be asked if they were interested in participating in an interview about their experiences. Unfortunately the response rate was very low—an indication in itself of the challenges in providing support to these individuals.

The debt recovery process

While the focus of this research was the incidence and experience of default judgment, it is important to situate default judgments within the context of debt recovery, an often lengthy process involving multiple parties, institutions and rules. This process usually commences when a person has defaulted on payments for a good or service or fallen into arrears repaying a debt. While individual experiences of this process differ—as the often messy, non-linear events in the narratives set out in this report demonstrate—there are typical events that follow actions of debtors and creditors (see the flow chart on page 17).

1 Negotiation between creditor and debtor

Generally there is a period during which the creditor will contact the debtor directly to negotiate payment of the arrears. Alternatively, debtors may contact the creditor to make *hardship arrangements* depending on their financial circumstances. Suppliers of essential services in Victoria are legally obliged to assist such consumers with flexible payment arrangements. Banks and other lenders are required to consider flexible payment arrangements. Other service providers like insurance and phone companies may also provide their customers with financial hardship arrangements for bill and debt payment.

2 Formal notification from creditor to debtor

Creditors are likely to next send formal notices or letters requesting prompt payment. Banks or financial institutions lending money for personal purposes are required in some circumstances to issue a ‘default notice’ to debtors who are behind in their repayments.

3 Debt is referred to ‘debt collection’

Debt collectors and creditors may also commence a process to recover the debt by contacting the debtor to demand payment. Some creditors have in-house debt collection staff; others out-source these activities to an agent, typically a debt collection agency. Despite strong regulation of the sector, there continue to be concerns about debt collection practices in Australia, the most common being harassment and coercion of debtors through repeated phone calls, language which mocks or belittles the debtor, threats to send people to seize goods, and attempts to dissuade debtors from making complaints, such as refusing to refer the debtor to a supervisor (ACCC & ASIC 2009).

4 Assignment of debt to debt collection agencies

Creditors often decide to sell or assign a debt to another entity, typically a debt collection agency which effectively buys the right to recover the money owed. If the debt collector does not succeed in recovering the debt over a period of time, they may then on-sell the debt to another debt collector. The practice of debt assignment appears to have increased during the global financial crisis as organisations sold off outstanding debts to manage cash flow (ACCC & ASIC 2009). State property legislation requires that when a debt is assigned, the assignor must provide written notification to the debtor; however anecdotal evidence from interviewees suggests this often does not take place. The *Privacy Act 1988* (Cth) restricts the use of a debtor’s personal information and the Australian Competition and Consumer Commission’s *Debt Collection Guideline* requires creditors or debt collectors to provide copies of contracts and related documents if the debtor asks for them, placing the onus of proving a debt onto the creditor or debt collector (ACCC & ASIC 2009)[3].

Nevertheless, consumer groups report concerns regarding disputes about the nature and method of debt collection, citing incidents where:

- a consumer is targeted but is not the debtor nor associated with the debt
- the debt has never existed
- the amount owing is incorrect
- the debt has already been paid
- the debt has expired (is no longer legally enforceable)
- the goods or services were not delivered (ACCC & ASIC 2009).

Many of these complaints about poor debt collection practices stem from issues relating to the passing of information from the original creditor to the debt purchaser or the on-selling of debts to multiple collection agencies, as a result of which information is lost down the chain (ACCC & ASIC 2009).

5 Commencement of legal action

Creditors are entitled to commence legal proceedings to recover debts within the statute of limitations period. This period differs depending upon the state where legal proceedings are commenced, and the cause of action. Prior to commencing legal action, a debtor will generally provide notice to the creditor, usually via a letter of demand, that if the debt is not paid within a particular timeframe, proceedings will be commenced. If no agreement regarding payment results from this letter, the creditor may decide to take legal action. To commence legal action in the Magistrates' Court, for example, the creditor must file a statement of claim or 'complaint', which sets out the basic elements of the claim. The creditor must also 'serve' the debtor with a copy of the statement of claim. In order to avoid default judgment, the debtor is required to file a defence to the complaint within 21 days of being served.

6 Default judgment

If the debtor fails to file a defence, then the creditor may apply to the court to make a default judgment in their favour. The judgment will typically require the defendant to pay the debt plus interest and perhaps the creditor's legal costs. From this time, 'penalty interest' also generally begins to accrue on the debt (as of May 2012 the interest rate was 10.5% per year).

[3] Note that recent reforms to the Privacy Act (to take effect in March 2014) mean that lenders can collect additional 'repayment history information', which includes whether someone has paid or missed a consumer credit payment.

7 Enforcement of judgment

Once a creditor has been awarded judgment, they can ‘enforce’ the judgment, or force a debtor to pay it, in various ways. For example, a creditor may apply to seize the debtor’s goods, including their home, or sometimes wages. In certain circumstances the creditor may also, apply to bankrupt the debtor.

8 ‘Judgment proof’

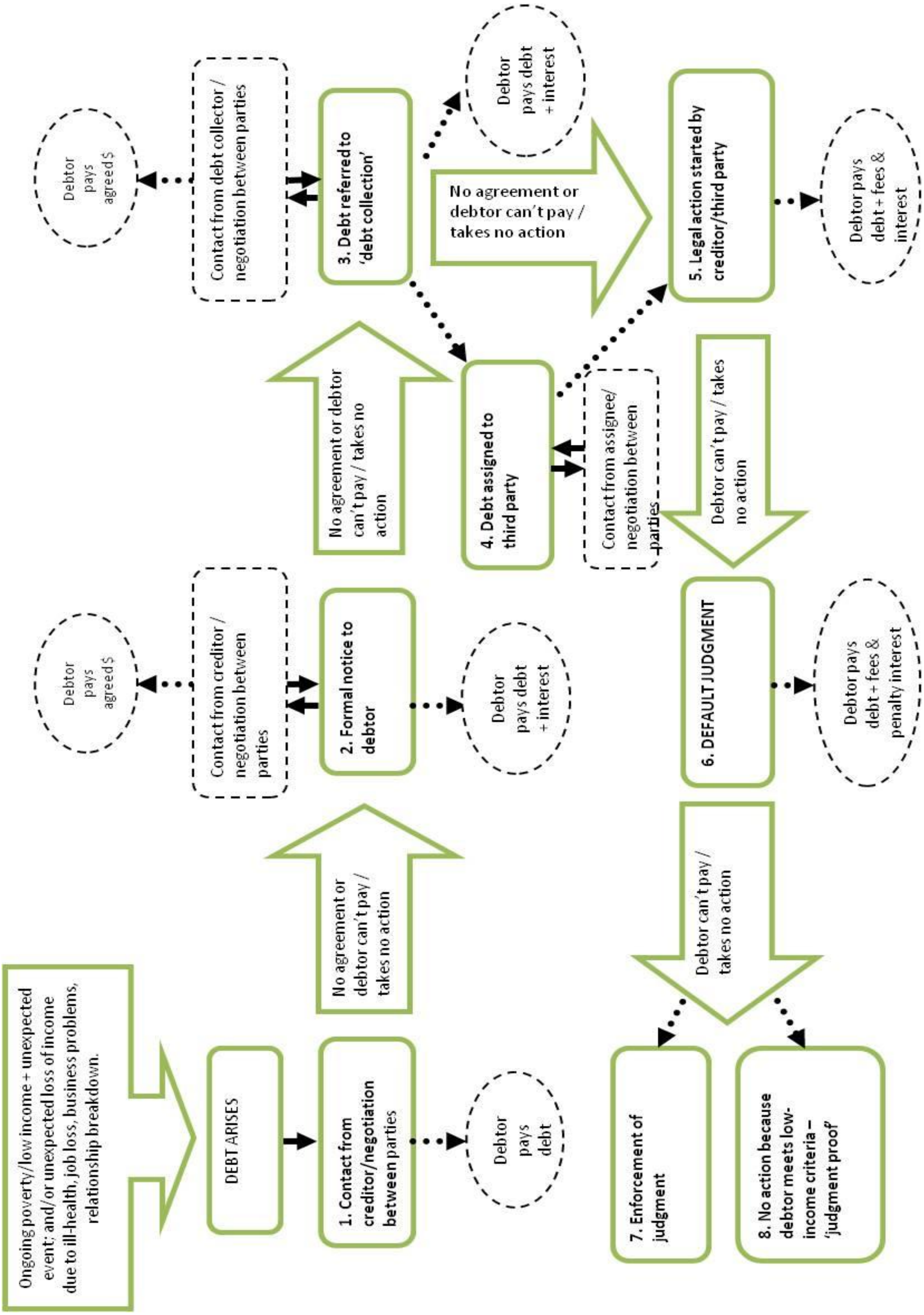
Some individuals are considered to be ‘judgment proof’. This means that although a judgment has been entered, the court will not allow the creditor to enforce the judgment against the debtor because they:

- have no assets other than normal household items;
- do not own their home;
- do not have a car worth more than $7,200[4];
- rely solely on Centrelink payments for income;
- and this is unlikely to change in the foreseeable future.

In practice, the entire debt recovery process can occur over a prolonged period or move quickly to legal action. Some debtors find themselves in negotiation with multiple parties while others may deal only with one creditor. The amount owing often increases over time as interest accrues and the creditor’s legal costs mount up; however debtors can also negotiate an agreed settlement amount.

[4] See ITSA website Indexed Amounts at February 2013.

The debt recovery process



3. Default judgments: claims, debtors and creditors

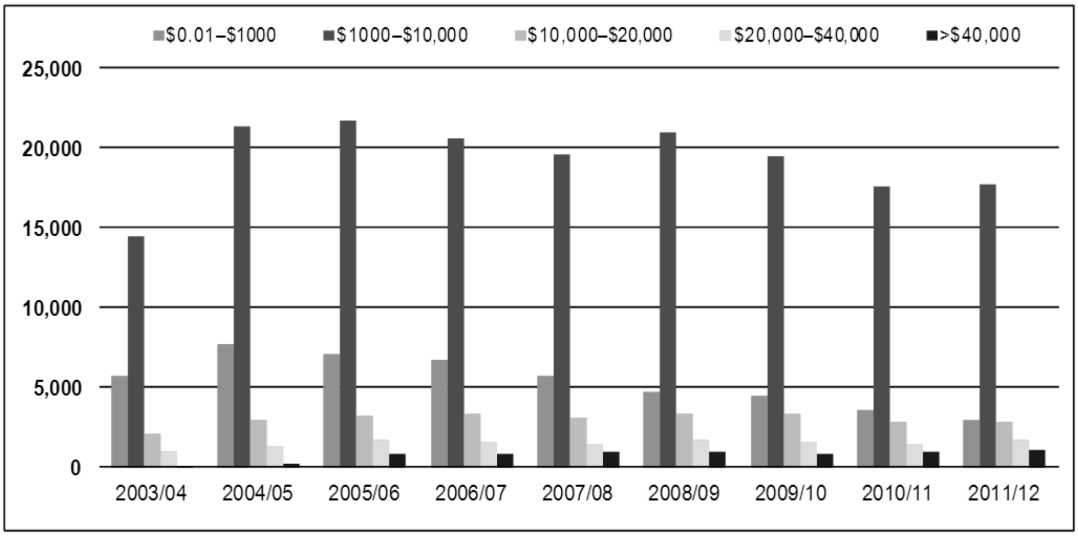
This section provides a snapshot of evidence regarding the incidence of default judgments the Victorian Magistrates' Court, including information about judgment debtors and creditors.

Default judgments – types and amounts of claims

Analysis of information from Victorian Magistrates' Court for the period 2003 to 2012 reveals that most claims for amounts under $10,000 end in default judgment. In the 2011–12 financial year 76.5% of all claims for under $1000 ended in default judgment and 81.9% of claims for between $1000 and $10,000 ended in the same way. As the graph below indicates, the vast majority of default judgments are made for amounts under $10,000.

While the overall trend has been a decrease in the numbers of default judgments, there was a spike in default judgments made for amounts of $1000–$10,000 in the 2008–09 financial year, which may have been a result of the global financial crisis. This suggests that the incidence of default judgments relates to the performance of the economy, although the reason for the increase from 2003–04 to 2004–05 is unclear.

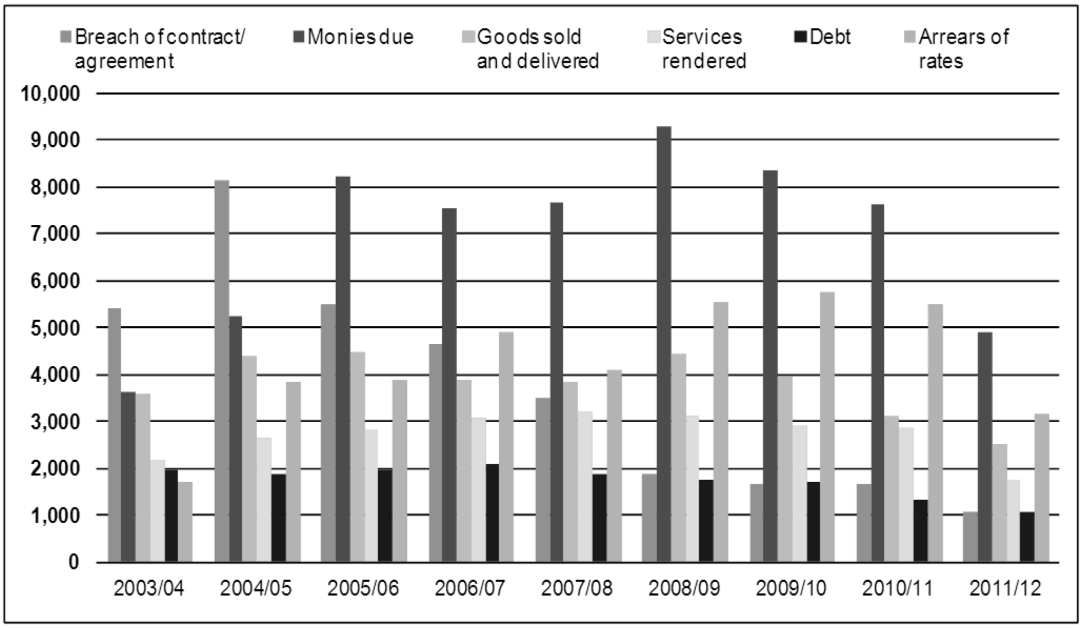
Number of default judgments by claim amount and year



The most common type of claim resulting in default judgment is ‘monies due’, followed by ‘arrears of rates’[5], both of which have increased significantly over the past decade, although the number of ‘monies due’ claims has been decreasing in recent years (see figure below). Claims for arrears of rates—brought exclusively by local councils— more than tripled between 2003/04 and 2010/11 although overall these claims appears to have reduced slightly in the most recent financial years, possibly due to the efforts of consumer groups and community legal centres advocating for a change of the practices of local councils in relation to issue (Footscray Community Legal Centre & Federation of Community Legal Centres 2012). The court data also indicates that around 99% of all arrears of rates matters are for amounts under $10,000.

There are some limitations using the Magistrates’ Court data: the court allocates codes for the types of matters litigated. It is possible that arrears of rates could also be coded as debts or moneys due. Similarly, local governments may also be litigating and seeking judgment for debts which are not rates.

Most common claim types over the past ten years resulting in default judgment



Who are judgment debtors?

Recent Magistrates’ Court data provided information about the postcodes of judgment debtors in 2011–12. The table below shows the ten suburbs with the highest concentrations of judgment debtors

[5] These are codes used by the Magistrates’ Court of Victoria to classify types of claims.

Top ten suburbs for debtors with default judgments made against them in 2011–12

Suburb	Postcode	Local government area (LGA)	LGA Index of Relative Socio-economic Disadvantage score *a	Decile in LGA Index of Relative Socio-economic Disadvantage *b
Tarneit	3029	City of Wyndham	1022	8
Point Cook	3030	City of Wyndham	1022	8
Melbourne	3000	City of Melbourne	1049	9
Deer Park	3023	City of Brimbank	930	1
Cranbourne	3977	City of Casey	1027	7
Craigieburn	3064	City of Hume	965	2
Bangholme	3175	City of Greater Dandenong	894	1
Frankston	3199	City of Frankston	997	6
Ardeer	3022	City of Brimbank	930	1
Sydenham	3037	City of Brimbank	930	1

[a] SEIFA Index of Relative Socio-economic Disadvantage is a general index that summarises a information about the economic and social resources of people and households within an area. Scores are standardised to a mean of 1000. Scores above 1000 indicate lower levels of disadvantage, and scores below 1000 higher levels than the mean
[b] Decile ranking within Victoria. Lowest deciles indicate highest levels of disadvantage.
Source: ABS 2006

It is not surprising that around half of the suburbs with the most judgment debtors fall in highly disadvantaged local government areas. Other suburbs such as Tarneit, Point Cook and Cranbourne do not exhibit such high levels of disadvantage, but are located in urban fringe areas with many new housing developments. Their appearance in this list may be indicative of financial stress, particularly housing stress in these areas. A recent parliamentary inquiry into liveability options in outer Melbourne found reports of considerable financial stress and housing stress in the outer suburbs and heavy use of financial counselling and support services (Outer Suburban/Interface Services and Development Committee 2012). Incidences of default judgment may be 'early warning' signs of future disadvantage and need.

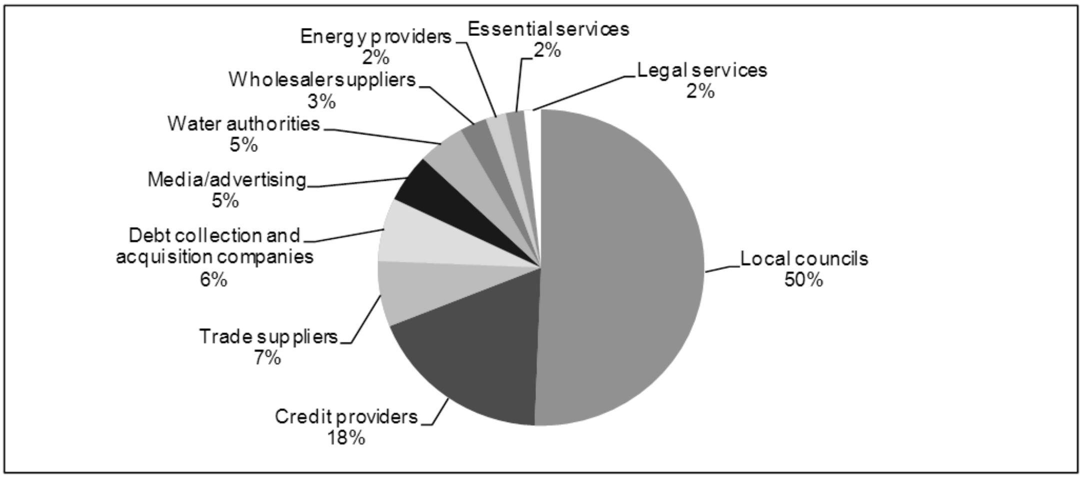
It is important to note that around 13 percent of default judgments in the Victorian Magistrates' Court were made against debtors residing (or with businesses) interstate. Responding to legal proceedings from another state is often difficult because local legal services may be unable to provide advice or assistance with legal matters in another jurisdiction. Responding to interstate court processes may also be costly. Furthermore, taking steps to transfer the proceedings would most likely require the assistance of a lawyer.

While the court data does not provide demographic information about judgment debtors, a study of 450 Victorians who had received a default judgment in 2005–06 found that men (60%) were more highly represented than women (40%) and most debtors were aged 35–49 years. Only 27.7% of the debtors were employed full-time at the time of the survey, 19% were self-employed, 14.8% were part-time or casual and 7.5% were unemployed. The majority of judgment debtors (67.6%) reached in the telephone survey had not sought information, advice or support in relation to their debt (Schetzer 2008). The most common reasons given for not seeking help were lacking trust in others or a feeling that they had to deal with the debt problem themselves; believing that the debt was not owed; or lacking awareness of how to access assistance or advice. The study found that men were less likely to access advice or support than women.

Who are judgment creditors?

Recent Victorian Magistrates' Court data suggests that the creditors most frequently seeking default judgments for debts up to $10,000 were local councils, consumer credit providers (alternative lenders not including banks or credit unions), suppliers related to trades (such as paint, hardware, automotive parts), debt collection agencies, media/advertising businesses and water authorities. After local councils, the next most frequent single judgment creditor for amounts under $10,000 was the GE group of companies which provides consumer credit. Energy and essential services providers were also among the ten leading creditor types.

Top ten creditor types obtaining default judgments for amounts under $10,000 during 2011–12



The interviews in this study also indicate that small business operators including independent contractors such as tradespeople were susceptible to problem debt and having default judgments made against them. Although the types of debtors associated with these creditors was not evident from the court data, there may be a need for further assistance for small business operators, tradespeople and independent contractors experiencing problem debt.

Local councils as judgment creditors

Recent research by the Footscray Community Legal Centre and the Federation of Community Legal Centres (2012) identified that claims for unpaid rates have risen significantly over the last eight years. They found that councils are resorting to legal action, including obtaining default judgment, even when they know that the debtor is experiencing serious financial hardship. This has become a cause for concern given the potential impact of default judgments for vulnerable debtors (Footscray Community Legal Centre & Federation of Community Legal Centres 2012).

The local councils most frequently using default judgment as a debt collection tool against ratepayers over the past decade are located in areas of high social disadvantage, high unemployment and new housing developments. The table below identifies the councils most likely to obtain default judgments against debtors ranked in order from the most frequent litigators. Also included is the ranking of the Local Government Areas in terms of relative disadvantage and population growth.

Top ten local council litigants–number of default judgments for rates arrears and local government charges, social disadvantage and population growth

	Council	**Rank (and decile) LGA IRSD**	**Rank by LGA growth (out of 79)**	**Total default judgments 2003/04 – 2011/12**
1.	Casey City Council	1012 (7)	8	4135
2.	Melton Shire Council	1010 (7)	2	2988
3.	Wyndham City Council	1022 (8)	1	2768
4.	Frankston City Council	997 (6)	25	2082
5.	Greater Geelong City Council	993 (5)	21	1857
6.	Yarra Ranges Shire Council	1037 (8)	49	1599
7.	Greater Bendigo City Council	984 (5)	20	1445
8.	Whittlesea City Council	978 (4)	4	1347
9.	Mornington Peninsula Shire	1026 (8)	30	1116
10	City of Ballarat	983 (4)	14	1082

[a] Source: ABS 2011

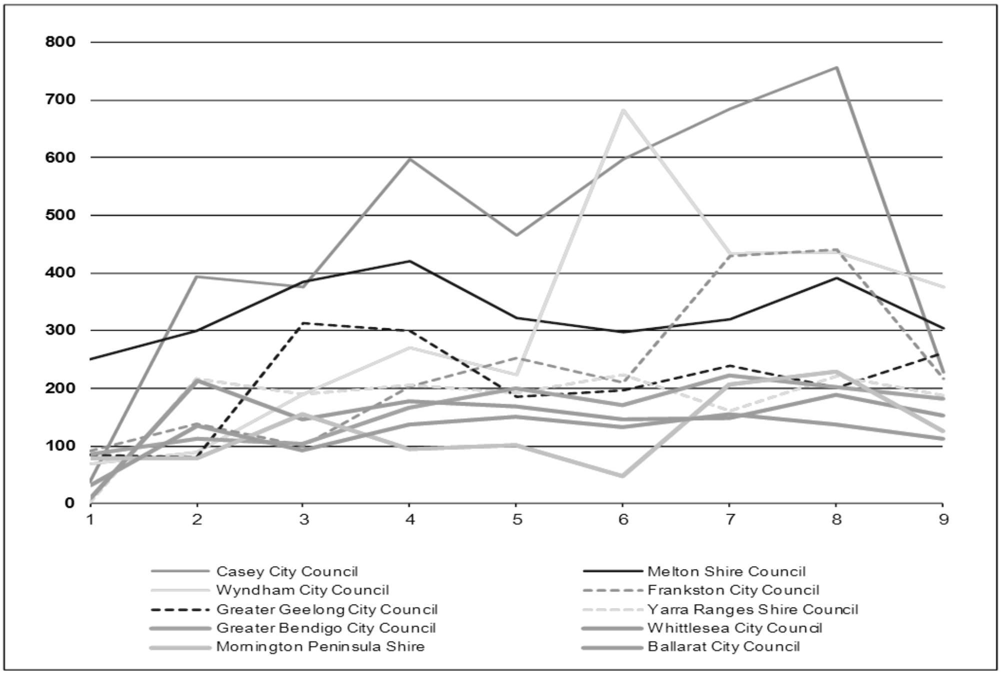
It is important to note that because the measure of disadvantage for LGAs encompasses suburbs with different demographics, the overall score for an LGA can conceal local pockets of disadvantage. For example, the Cities of Brimbank, Whittlesea, Casey, Melton and Yarra Ranges contain neighbourhoods in the top ten local areas of greatest socioeconomic disadvantage in Melbourne (ABS 2006).

This indicates that the incidence of default judgments is high where there are high levels of socio-economic disadvantage. This is likely to reflect the financial stress within households in these areas. However, it should be noted that there are other city councils in disadvantaged areas which do not appear to be using default judgments to such a great extent as part of their debt recovery processes.

The other factor which appears to correspond with councils' higher use of default judgments in the debt recover process is population growth. The cities of Wyndham, Melton, Whittlesea and to a lesser extent Brimbank, Bendigo and Geelong are all areas of rapid population growth. The high numbers of default judgments obtained by these councils are perhaps an indication of the increasing incidence of mortgage and financial stress in new housing developments in these areas; and they may also point to under-resourcing of councils that are shouldering around 50 percent of Melbourne's total population growth (DPCD 2012). The shortage of services including legal and financial assistance in these areas is also of concern to many communities and community organisations.

Many of the top litigating councils listed above have steadily increased their use of default judgments since 2003–04, although most obtained fewer default judgments in the last financial year (2011–12) than in 2010–11. Casey City Council, the most frequent applicant for default judgments over the past decade, obtained 757 default judgments in their favour in 2010–11, but only 228 in 2011–12.

Top 10 local councils' number of default judgments for rates arrears and local government charges during the last decade



4. Falling on hard times – pathways into debt

The following two chapters draw on the experiences of the individuals interviewed for this study. This chapter provides information about the interviewees who participated in the study and the context surrounding their financial hardship.

Profile of research interviewees

The interviewees were mostly aged between 35 and 49 years, and born in Australia. The majority were paying mortgage repayments on their own homes.

Selected characteristics of interviewees

Characteristics		
Sex	Male	8
	Female	8
Age	25–34	4
	35–49	10
	50–64	2
Country of birth	Australia	10
	Other country (English speaking)	4
	Other country (non–English speaking)	2
Relationship status	Married	5
	De facto (including engaged)	5
	Single	3
	Divorced or separated	3
Housing	Paying mortgage repayments on own home	10
	Private rental	4
	Public housing	1
	Living with parents	1

Seven of the 16 research participants were relying on income support payments, five earned an income from paid work (wages), three were reliant on their partner's income and one earned their main income from their own business.

Interviewees' main income sources

Income source	Number of interviewees
Wages	5
Disability Support Pension	3
Newstart Allowance	2
Unpaid (reliant on partner's income)	3
Revenue from own business	1
Parenting/ Carer Payment	2

The forms of work the participants were engaged in shows the complexity of paid and unpaid work circumstances.

Interviewees' work circumstances

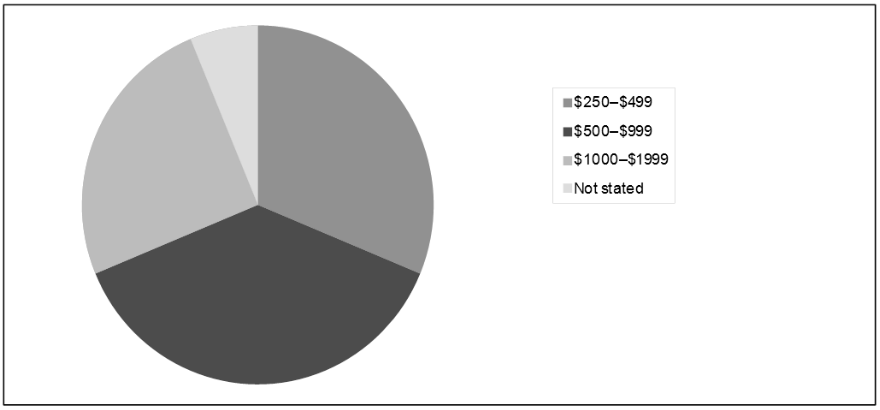
Work	Number of interviewees
Unpaid carer	5
Permanent (full-time) job	3
Unable to work due to disability	2
Unemployed	2
Self-employed	2
Permanent (part-time) job	1
Fixed term contract	1

Five participants were unpaid carers, two participants were unemployed and actively seeking employment, two were unable to engage in paid work due to disability. Of the unpaid carers, one was a full-time carer to his disabled partner, and the rest were mothers with the primary care of their children (two of these women were receiving the Disability Support Pension, two were reliant on their partners' incomes).

One of the full-time permanent workers was supporting her unemployed husband and another had been until her husband had recently found work. The interviewee in part-time permanent employment was married to someone self-employed, so her income was the household's main regular income. One of the self-employed participants worked part-time due to a disability and received the Disability Support Pension which was his main source of income.

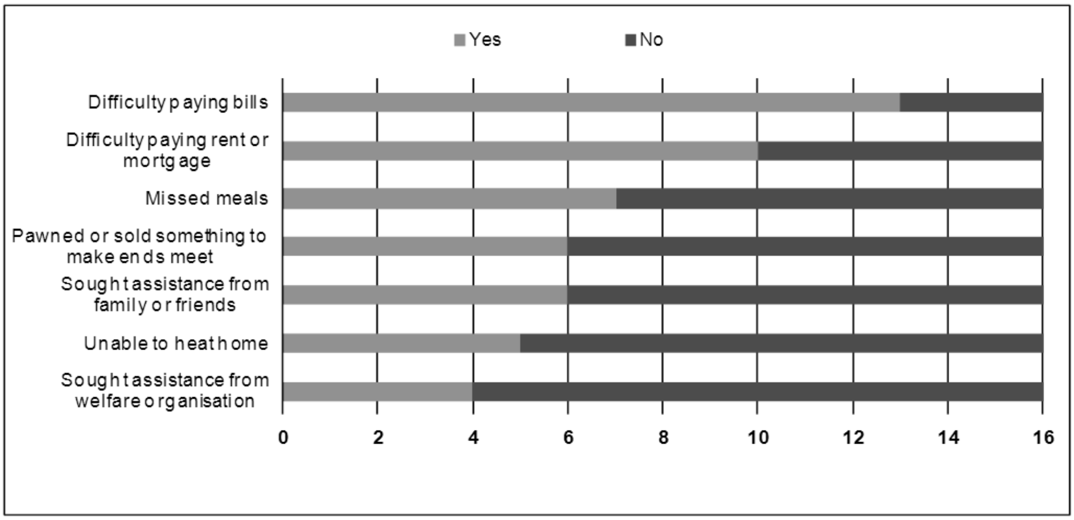
Asked about their current income levels, five interviewees reported weekly after tax household incomes between \$250 and \$499; six interviewees had after tax incomes between \$500 and \$999 and four reported incomes of over \$1000. Interviewees not earning an income reported their partners' incomes. One participant who was not working but whose husband was self-employed was unable to answer this question because their household income 'constantly changes'.

Interviewees' weekly household incomes



The research participants were asked about particular forms of financial hardship over the past 12 months. Most interviewees had experienced difficulty paying utility bills and rent or mortgage repayments. Two individuals answered yes all seven indicator questions and one participant answered yes to six questions but commented that she had avoided asking friends or family for assistance. A couple of interviewees described the shame of seeking assistance from welfare organisations in the past—suggesting that stigma and shame may impact the ways people seek to resolve financial hardship and may also influence their response to questions regarding financial hardship. Due to the long delays for some interviewees between their financial crisis and receiving default judgment, a number of interviewees commented that although they were now relatively stable financially, they had faced significant financial hardship several years earlier when they incurred their problem debt. They commented that had they been surveyed at that time, they would have responded 'yes' to all or most of the financial hardship indicators.

Interviewees' experiences of financial hardship in the past 12 months



Narratives of debt and disadvantage

While the brief survey aimed to capture participants' circumstances at a point in time, the interviews—in which participants were encouraged to talk about their experiences in their own words—conveyed a complex picture of relationships between debt and issues such as ill-health, disability and unemployment. Financial 'problems' were not experienced or perceived as 'single problem entities or even linear problems with a definable beginning and end' (Noone & Digney 2010, p. 4) but were interwoven with other life events. While individual pathways into and out of debt varied, the participants' narratives pointed to structural issues which heightened the vulnerability of particular groups.

Loss of income – sole business, independent contractors, insecure work

Sudden loss of income due to unemployment, injury or a shortage of work for the self-employed often served as a trigger for financial and personal crisis.

Ricky

Ricky had operated a games shop in the outer suburbs of Melbourne for around five years. He had sub-leased premises within an existing shop. When that shop closed down, Ricky had considered closing his business, unable to lease premises of his own due to a shortage of money. A customer then offered to go into business with him, offering $5000 to pay to fit out a shop. However, the business suffered from competition from on-line stores and Ricky and his business partner found themselves in debt to a supplier. The partner offered to take over the business, with Ricky managing the store; however, the supply contracts remained in Ricky's name. Ricky explained: 'It was an informal sort of thing, I'd known him for a while, he knew more than I did because he ran his own business'. One day Ricky was served with a court document initiating legal proceedings from his main supplier for unpaid invoices. However Ricky considered that the debt was no longer his problem, his partner having 'taken over' and taken possession of the stock on which the debt was owed. Around this time, Ricky's business partner had locked up the shop, telling Ricky that the 'ATO was coming'. Ricky's relationship with his girlfriend also ended around this time, although they continued to live under one roof. His personal financial circumstances also started to suffer, for he had relied on his former girlfriend to pay and keep track of bills. In hindsight, Ricky also realised he had fallen into a significant depression:

This is where the personal financial side and the business financial side combined into this great big financial mess.

At the time of the interview, Ricky was living with his parents and looking for work, relying on Newstart Allowance. He estimated that the allowance was about the same as the amount he had earned while running his business.

Ricky's story highlights the risks of a small business as well as the breakdown of a relationship leading to problem debt and depression.

Chris' experiences (see below) highlight the precariousness of working as an independent contractor courier including the risks related to his car. His lack of assets or a 'buffer' due to prior ill health and income support receipt meant that a car accident caused him to take on significant debt, exacerbated by his fluctuating income.

Chris

Chris was in his early 40s, living in public housing in the inner city. He had previously been on a Disability Support Pension due to a **serious illness**, from which he had now recovered. He had worked as a taxi driver and then as an **independently contracted** courier. In 2008, Chris missed a payment for his car insurance because his fluctuating income caused him to miss a direct debit payment. When he received a letter from the insurer, he assumed the money had been deducted; however he then missed a second payment. A few months later Chris had an accident which caused $9,500 damage to the other car and $3,500 damage to his own car, which he needed for work. In order to pay for his car repairs and continue to meet his living expenses, Chris 'maxed out' his credit cards. Over Christmas, his courier jobs decreased but his bills continued. In 2009 the global financial crisis meant that many of his clients stopped using couriers and so his income fell.

It just snowballed and the snowball just got bigger and bigger. And pretty much from that time on it's been a case of catch up, and I haven't been able to. In four years I haven't been able to.

The debt that resulted in default judgment against Chris related to a store credit card he had obtained from a major appliances retailer when he purchased a television. He had managed to pay off a large amount of the initial debt but had also used the card to pay for the car repairs. The high interest rate meant that Chris's repayments were actually less than the interest accruing.

Sanjun's experience (described below) also involves insecure work as an independent contractor. His vulnerability to problem debt was exacerbated by his status as an international student which restricted his access to financial support and created barriers to sustainable employment. He was also relatively isolated, unwilling to burden his family overseas with his financial problems, but living and socialising with a group of young people in similar precarious circumstances.

Sanjun

At the time of his interview, Sanjun was an IT worker in his early thirties, and was married with a young child and another on the way. His financial trouble related to his experiences after graduating from TAFE as an **international student** in the early 2000s. Born in South Asia, Sanjun travelled to Australia to study. While studying for his bachelor degree, he got part-time, casual retail work. He also acquired two credit cards to help meet his living expenses and a personal loan for $5000 to pay for his permanent residency application. However, around the time that he graduated, he lost his job. He found another job, subcontracting for a friend (also subcontracting) driving a truck delivering goods to country Victoria. He hoped that this would be an interim job. However, after three months, Sanjun was involved in an accident driving the truck and **suffered a serious injury**. As he was working for 'cash in hand' he did not receive WorkCover entitlements. He found himself **out of work** and **ineligible for unemployment benefits** due to his residency status.

It took Sanjun three months to recover and find further work. Meanwhile he relied solely on his credit cards to pay his living expenses including food and rent. He was accumulating extra debt while falling further and further behind on his repayments. He was also living in chaotic conditions with multiple housemates, all international students struggling to make ends meet. During this time his debts were on-sold to debt collectors; and despite eventually finding work in his field, Sanjun could not afford to clear the debts, which had increased from $11,000 to around $30,000 due to interest.

Sanjun had since met his wife, married and started a family. He had settled two of the three debts and had assumed the third had expired, but, many years after it was initially accrued, Sanjun had discovered that default judgment had been entered against him.

Around one-third of the individuals interviewed in this study were self-employed, married to someone self-employed or had previously been self-employed or an independent contractor at the time they had fallen into financial difficulty. It also appeared that a number of these people had been ill-informed about their rights and obligations and ill-equipped to manage the financial risks of self-employment. The self-employed interviewees also reported low and irregular incomes. These not only increased their vulnerability to problem debt but also restricted their access to fee for service financial and legal advice. Most were unaware of low-cost or free services available for self-employed people experiencing financial difficulty. These case studies also highlight the unfortunate lacuna in community legal services—the lack of free legal services for low-income earners (particularly sub-contractors and the self-employed) who have a business-related legal problem. Unfortunately, this means that those with business debt problems must see a private lawyer to resolve their issue, something which is simply unaffordable for most.

Living on a low income: income support, ill-health and care responsibilities

Life on a low income over time due to ill-health, care responsibilities or long-term unemployment had left many interviewees without a financial buffer to deal with unexpected expenses. These triggers and vulnerability factors were exacerbated by social exclusion and lack of assets or help (financial or otherwise) from social or family networks.

Around half of the interviewees were reliant on income support payments. Some had been receiving income support for some time due to disability, single parenthood or caring for someone with a disability. For these interviewees, an unexpected event or long-term reliance on credit cards to make ends meet created debts which were difficult to repay on their low income. Disability, injury and ill-health played a role in triggering financial problems for around half of the interviewees. For some such as Sanjun, ill-health or injury directly resulted in the loss of paid employment which led to financial difficulties, whereas for others this resulted in ongoing reliance on income support during which time they accrued debts or faced an unexpected expense. These issues are illustrated by the experiences of Nick and his family who lived in regional Victoria and were reliant on income support payments to meet their expenses.

Nick

Nick was a full-time **carer** for his disabled fiancée and relied on **income support payments** to support their three children under the age of nine**.** Nick's fiancée, who had in the past been the **victim of crime,** received a **Disability** Support Pension and he received a carer's allowance. Nick explained that their problem debt came about when Nick and his fiancée were obliged to travel interstate to give evidence in court in relation to a criminal assault against her. Having **no family support**, they placed their children in overnight care through the local council family day care service. Due to **unforeseen circumstances**, the trial was delayed and Nick and his fiancée had to extend their stay as they could not afford a second trip for the revised hearing date. As a result they accrued a $1400 fee for their children's family day care costs. Unable to pay this amount, Nick tried to arrange to pay by instalments. Despite his attempts to negotiate a payment plan with the council and the debt collection agency, legal proceedings were initiated and judgment entered without his knowledge. Nick's family's low income and lack of social support, combined with obligations to attend court due to being a victim of crime, led to an unexpectedly large expense which they could not pay in one instalment.

Family breakdown can also trigger problem debt and ongoing poverty. Megan, whose situation is described below, was left with significant debts after leaving her abusive husband. These debts then increased because her low income after separation made it difficult to repay existing debts *and* cover ongoing expenses. Family violence also contributed to Megan's mental health problems which left her unable to work and dependent on a disability pension. Megan's narrative highlights the impact of divorce and family violence in creating economic vulnerability for women in particular.

Megan

Megan's explanation of her present financial troubles began many years earlier when she separated from a substance-abusing husband, at whose hands she had experienced **family violence.** Her husband had left Megan with significant debts including outstanding bills, mortgage repayments and three years of unpaid rates. At the time, Megan's dominant concern had been saving her house and securing her physical safety and that of her children. She was the primary carer for her children and was relying on income support payments as a **single mother**. She found herself in financial difficulty and behind on her mortgage repayments. A friend helped her to claim family tax benefits which enabled her to pay off the unpaid rates. However by this stage judgment had been entered in relation to the mortgage arrears and Megan was receiving letters threatening to auction her house.

I didn't know what to do. I wanted to keep a roof of my kids' heads and I needed to keep life as normal as possible for them.

Megan was referred by a Centrelink worker to a special case worker who helped her to access her superannuation early. She was able to save her home but could not meet her basic household expenses such as food and bills. A friend suggested applying for a credit card:

We didn't have enough food to eat, we didn't—so I was just basically buying food and clothes and things with that credit card that they gave me.

Megan found herself unable to pay back the credit card and interest continued to accumulate. Overwhelmed by her situation she felt unable to respond to the bank and then debt collectors.

The interest just kept getting bigger and bigger *and then I just let it go and I was getting phone calls and I just ignored them.*

Since the breakdown of her marriage and the death of her mother, Megan had been struggling with mental illness which made it more difficult for her to deal with her debt problems. Her debt problems in turn exacerbated her feelings of depression and anxiety. By this time Megan was also pregnant with her third child. She went into labour eight weeks early and gave birth to a premature baby. Just after the birth, her older son came to visit, bringing a statement of claim which had been served in relation to her credit card debt.

I was initially paying back [the money] but then it got to the stage that I couldn't and I ended up saying that I don't want to have the card anymore, but see it's all so vague to me because there were so many years that I wasn't … very well. I sort of became a little bit unstable there for a while after my mum died. I think there was just so much going on.

The cyclical nature of debt and disadvantage

As demonstrated through the above case studies, social and structural factors and unexpected events intersected to compound individuals' and families' financial problems. Each account was different, yet common factors included underlying issues such as:

- experiences of ill-health and disability
- ongoing reliance on income support payments
- role as an unpaid carer
- being a single parent
- insecure employment and low, irregular income
- self-employment
- non-citizen status
- English as a second language

Common trigger events included:

- job loss
- family or relationship breakdown
- unexpected expenses
- injury

- business problems

More generally, the interview participants portrayed the cyclical nature of debt and experiences of disadvantage. For some, the cycle into debt happened relatively quickly but for all interviewees the process of resolving debt problems and reaching, financial stability was slower and more arduous. The current debt problems often stemmed from situations many years earlier and many participants used metaphors such as ‘spiralling out of control’ or ‘snowballing’ to describe the way events had unfolded leading them to financial problems. Once people were in debt they often fell behind with other payments or took on new debts to meet their expenses.

Mental illness and debt

A number of the stories outlined above touch upon interactions between mental illness and debt. One-third of interviewees mentioned a mental health issue and many more referred to the extreme emotional impact of their debt problems. As Megan and Ricky’s experiences illustrate, mental health problems can both lead to financial problems and result from them. People with mental illness often experience poverty due to reliance on income support payments and higher costs of medication, treatment and energy bills. They also often experience other forms of social and financial disadvantage (Ryan, Kliger & Healy 2010). People with mental health problems may find themselves in debt for a number of reasons. Firstly, the debt may relate to living on a low income, particularly for individuals with more severe mental health problems who may be unable to engage in paid work and have to rely on income support payments (Fitch et al. 2007). Secondly, a person’s financial situation may be directly affected by symptoms of their mental health condition, such as excessive spending, communication difficulties, or withdrawal resulting in inability to deal with or acknowledge a problem (Fitch et al. 2007). Mental health problems may also affect a person’s capacity to understand and assess finance contracts and risk (Ryan, Kliger & Healy 2010). In addition, the experience of financial strain has itself been found to create psychosocial stress associated with physical and mental illnesses (Lyons & Yilmazer 2005). This can create a ‘vicious cycle’, with poor health undermining the capacity to earn income and accumulate assets, which then creates financial strain affecting access to quality health care, which in turn can affect health outcomes (Lyons & Yilmazer 2005, p. 888).

Key points:

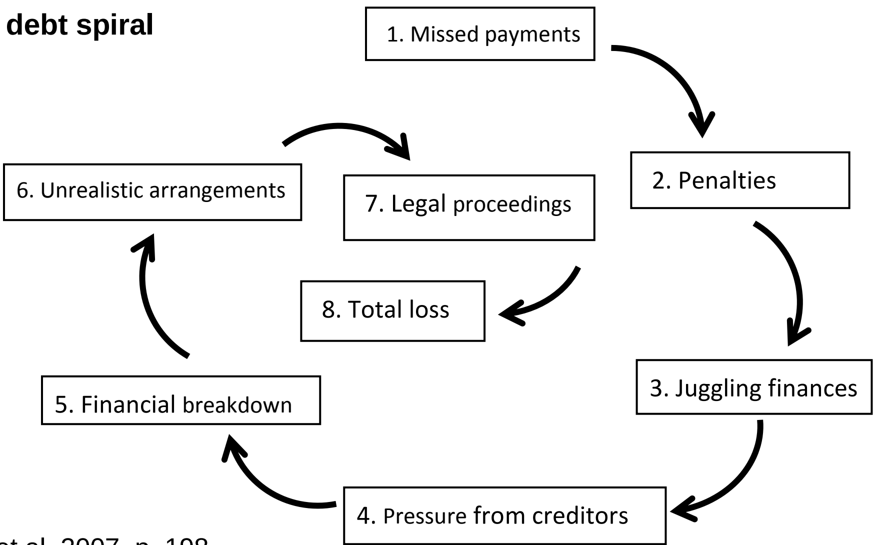
- Debt problems are often the result of the complex intersection of underlying poverty or vulnerability with an unexpected drop in income or rise in expenses.
- The nature of work particularly self-employment and insecure work. and experiences of unemployment are key factors in creating problem debt.
- Living on a low income such as income support payments increases vulnerability to financial crisis.
- Mental illness, disability, family breakdown and family violence and caring responsibilities may all contribute to financial vulnerability.

5. Experiences of the debt recovery process

While interviewees were able to describe the circumstances which had caused them to fall into debt, describing their experience of the debt recovery process and interactions with creditors, collection agencies, courts, financial counsellors and lawyers was not so easy. Many interviewees did not clearly understand the obligations of creditors and debt collectors or the nature of the court processes they had been involved in. They also often did not know the correct terminology to describe legal processes. Even the interviewees with a more detailed understanding of their rights and the legal system had struggled to access information about their debt or had received conflicting information from debt collection agencies and creditors. Further, many interviewees were unaware of the default judgment against them at the time it was entered, often only discovering the existence of a default judgment much later.

While this section is structured around the linear debt recovery set out on pages 13 to 16, the interviewees' narratives reflect the 'messy' reality of these processes as well as the spiralling nature of problem debt issues (see 'debt spiral' figure below). Further, the complex interactions between social disadvantage and debt continue to play out during the debt recovery process. The narratives about experiences of the debt recovery process also reveal the involvement of various parties, institutions and multiple regulatory frameworks governing how creditors and debt collection agencies interact with debtors. These include regulation of the use of credit records and personal information, legal processes for debt recovery, and the various institutions which provide advice and support.

The debt spiral



Source: Fitch et al. 2007, p. 198

Negotiating with creditors

Interviewees had responded in different ways in the early stages of their problem debt. Those who were experiencing other problems in addition to debt, or who were accumulating multiple debts and who had no prospect of increasing their income in the short- or medium-term, generally described feeling out of control and avoiding contact with their creditors during the early stages of the debt. Often new debts were incurred, which compounded the sense that there was no reason to negotiate since they could not repay the amount owing. Some interviewees did describe attempts to negotiate with the creditor, but often delays or miscommunication resulted in the debt being sent to debt collectors or lawyers anyway.

No negotiation

Amongst the research participants, it was common for the most vulnerable debtors to simply avoid contacting creditors about their problems. As Thamina (see case study on page 57), a mother of two from the Middle East whose husband had been unemployed for about five years, commented:

> Yes, I knew I was behind, but **I didn't know what to do, because there was no income.** How can you arrange the payments, you know? It was so difficult, you know?

Similarly, when asked about her experience of dealing with the bank in relation to credit card debt, Megan responded,

> Well I didn't deal with them. **I pretended I didn't live here** and all sorts of things. I sort of didn't want to deal with it.

Many of the interviewees did not attempt to contact the creditor at the time their debt fell into arrears, particularly if they could foresee no way to repay it in the future. Further, debt problems were often related to other negative life events and associated feelings of anxiety and depression which further hampered help seeking or proactive discussions with creditors.

Some interviewees negotiated about some types of debt but not others. For example, several interviewees described attempts to negotiate with financial institutions in relation to mortgage arrears, while ignoring other debts that ultimately resulted in default judgments. For these participants, dealing with debts in relation to the family home took priority over other debts such as unpaid rates. While they described 'saving the home' as their primary concern, they were unaware that receiving a default judgment in relation to unpaid rates or another debt could also result in the sale of their home or other assets. None of the interviewees who had received default judgment in relation to unpaid rates identified these debts as their key concern, instead prioritising other debts they considered to be more important. For these participants the perceived threat of losing their home due to defaulting on mortgage repayments was extremely stressful, related not only to their concern to keep a roof over their family's heads, but also to emotional loss related to the powerful symbolism of home ownership in Australia, as well as the loss of a sense of security and links to community. In addition, there was a lack of understanding that a default judgment relating to debts other than mortgages could also jeopardise the family home. Interviewees were therefore unable to make informed decisions about prioritising and managing their debts.

When asked how they prioritised dealing with different creditors, Tanya and Liam (see case study page 45-6) confirmed that their mortgage had taken priority. Liam explained, 'Well, you've got to keep the roof over your head', but his partner Tanya then indicated that since meeting with a financial counsellor, they had realised the implications of failing to pay their rates:

> Yeah but the thing is part of keeping the roof over your head ... I think through this process with [financial counsellor] ... we realise the rates are also—they are something that we can also lose the house on ... And people don't know this.... No one knows. **You can't make decisions without being fully informed.**

When asked about her default judgment, Thamina began describing her difficulties negotiating with her bank in relation to the mortgage on her family's home in the outer northern suburbs of Melbourne. Like some of the other interviewees she appeared to confuse being in 'default' on her mortgage repayments with receiving a 'default judgment'. Only later did Thamina disclose having been taken to court by the council because she was one and a half years behind in her rates. She said:

> "I didn't do anything about it because I'm waiting for my home, and you know, arrangements to finish with my home, and other things, and [I thought] then I'll deal with that ... I do it step by step, yes ... because at the moment the house is very important, more than anything else, you know?"

Unsuccessful negotiations

Other interviewees attempted to negotiate or appease their creditors without success. Several interviewees described dealing with mounting debts by paying small amounts to each creditor in order to 'put them off'. Chris commented,

> They were reasonable for the first year. I kept putting them off and trying to pay little bits— I mean I was trying my best to pay people, but with so many people wanting money, it was like, 'OK, you can have money this week,

> you guys are going to have to wait'. But you can't really tell them, 'Look, I'm paying him, so you're going to have to wait until next fortnight' ... **It's like juggling 27 chainsaws with two hands, it's hard to do'**.

Tanya had similarly attempted to please multiple creditors, which ultimately created more difficulties for her:

> So I was trying to negotiate with everybody about everything and they were wanting unnecessarily large sums of money and I just couldn't—I just didn't feel like I could say no ... but I couldn't afford it. So not only was **I felt obliged to say yes** but I was not going to meet these [repayments] and it was just going to continue to get worse and worse and worse.

Other interviewees described difficulties with timing, often finding that the creditors were unwilling to negotiate due to having moved to another 'stage' in the debt collection process. In some cases considerable time had passed before the interviewees had contacted the creditor; however in other cases it appeared that the creditor had very quickly transferred the debt to debt collectors or lawyers, making it difficult for the debtor to make arrangements to pay. Tanya described having missed payment of annual rates and ringing the council to negotiate a payment plan:

> And at that stage they said to me 'No we're **no longer doing payment plans** and stuff ... you need to wait to get a letter from a law firm'... they said 'We're not directly doing this anymore. What we are doing is we are waiting and we're advising people that they will get a letter from a law firm'. So once it's actually gone to a law firm, which is going to incur **extra costs**, then we can negotiate through the law firm to make a payment plan.

In Nick's situation, his family day care debt had been transferred to debt collectors and legal proceedings even more rapidly. Nick and his partner had returned from interstate and the debt was around a month overdue. Nick had contacted the council to discuss repayment options:

> Well we were sort of in the process of arranging with the council when it was going to be paid and what amounts and that. I mean we were a bit **surprised by how quickly the whole court thing came around** ... Well yeah it was a month overdue when we got back and then within a month later, it was in the debt collector's hands and they had sent a summons.

Like others in the study, Nick and his partner were not advised by the creditor—their local council—that the matter was being referred to a debt collection agency. They were not aware that this had taken place until they received documents initiating legal proceedings. At this point, Nick rang the council to discuss the summons and was told that he would have to talk to the debt collector. When he did so, he offered to pay $10 a fortnight which was all the family could afford.

> Things were pretty crazy and everything was all up in the air. Really we were a bit pissed off at the fact that we were in negotiations, trying to sort it out and then the council just went and done that (forwarded the debt to debt collectors and issued legal proceedings). So we told the debt collectors, 'Look $10.00 a fortnight is basically it'. And they said they'd contact the council about it and then two days later or something, they rang back and said, 'The council had agreed to that' and we started paying that straight away by direct debit ... when they rang back [and agreed to the instalment plan] I said, 'Well does that mean that court action is not going to happen?' And they said 'Yes.'

Nick continued to make fortnightly repayments, assuming that there would be no further action and that there was no need for him to file a defence to the claim. However, three and a half years later when their bank refused to approve a small loan for their wedding, they discovered that there was a default judgment against them. Nick rang the local council but 'they didn't want to talk to us'. He then rang the debt collectors and 'got the run-around'. When his fiancée was able to speak to the senior manager of the debt collection agency she was advised that the agency had sought judgment 'to secure the debt' and ensure they could enforce the debt if the repayments ceased. The default judgment order included $800 in legal fees. The manager confirmed that the agency had no legal obligation to notify them at the time that they sought judgment in default. Nick and his fiancée then contacted the council who advised that judgment should not have been entered and offered to instruct the debt collection agency to withdraw it. The debt collectors eventually agreed to do so and presented Nick and his fiancée with settlement contracts to sign. At this point Nick contacted the Consumer Action Law Centre for advice as he did not fully understand the contracts and was wary of the debt collection agency. At the time of the interview, Nick was unsure whether the default judgment had actually been withdrawn.

Dealing with debt collectors

Despite differences in individual circumstances and debt 'journeys,' almost all of the interviewees had similar stories about dealing with debt collectors. Many described the effect of receiving incessant phone calls and most described excessive contact from debt collectors (more than three times a week), threats and misleading information. Two interviewees described being contacted by debt collection agents so often at work that their employment was jeopardised.

> They continued to ring my workplace and then **they started ringing my neighbours** and giving reference numbers. They were giving reference numbers to my work colleagues and I got a warning letter ... I work in a [hospital] admissions department so our work is constantly busy, busy and then I was getting these constant phone calls. (Elise)

> Sometimes **I got embarrassed when they called my work** and left messages for me ... they would leave messages at the places I worked and when they ask, when the officer ask who's calling they say 'it's [name of debt collection agency]', and that's not good for me, you know what I mean? Sometimes the boss come and ask what's going on—one of them was getting really annoyed and he actually passed it back to me and said, 'Look these people are calling after you' and that sort of stuff. (Sanjun)

Others described the humiliation of being told by neighbours that debt collectors had rung them to leave messages or obtain information. Many interviewees ceased answering all unidentifiable phone calls to avoid speaking to debt collectors.

Dealing with third parties

Several interviewees expressed frustration about the difficulty of finding information about their debts, particularly old debts, and in particular written documentation confirming the existence of the debt. The original creditors often stated that the matter was 'no longer in their hands' and that the debt had been passed on to a third party—either for debt collection or because the debt itself had been assigned. Extracting accurate information from debt collection agencies was particularly frustrating. Nick commented:

> The person from the debt collectors ... plainly lied a couple of times. He tried telling us that he didn't put the default order on, that it was a third party ... well eventually we got the application that's got his name on the bottom ... you don't know what's going on. **You don't know who to believe—they're [the debt collectors] are contradicting the council and the council are contradicting them**'.

Despite the legislation and guidelines regulating information relating to debts[6], a number of the more financially and legally literate interviewees expressed frustration with the lack of information available; the failure of assignors to provide information regarding the assignment of debts and the failure of the debt collectors to then provide basic information about the debt being pursued including key dates or even evidence of whether default judgment had in fact been obtained.

In some instances there was a significant delay between the debt being incurred and contact from debt collectors (often not the original creditor), which created confusion and mistrust. Often these third party agents or debt purchasers were

[6] Such as:

- state-based property legislation that prescribes that when a debt is assigned the assignor must give express notice to the debtor in writing;
- debt collection guidelines, placing responsibility on creditors/collectors to provide copies of contracts and related documents to the debtor if requested and placing the onus of proving the debt on the creditor/collector.

unable or unwilling to provide information to the debtor. Several debtors were contacted by different entities for different debts. Several debtors had established their hardship circumstances and negotiated repayments with the original creditor, only to find themselves subsequently dealing with another party with which they did not have a relationship and which was unwilling to take into account their financial situation. Interviewees indicated that debt purchasers often did not have records regarding the origin of the debt—and several respondents were told by the original creditors that 'It's out of our hands' when contacting them for information.

Vincent described the process in relation to two old credit card debts:

> [The bank] is saying they assigned the debt; I'm assuming that means on-sold the debt. Now that went through [the first debt collection agency] and then onto [the second], although the actual chain of assignment is also unclear at this stage. Now [the second agency] contacted me in 2009, not saying that there was a judgment, implying that there wasn't a judgement, but trying to recover monies to the amount of both of the credit cards together..... Again, there's lots of conflicting—**you could follow one path and it conflicts at some point and you can follow another path and it conflicts at some point. You can follow several different paths and they all seem to conflict** ... I've asked the [the initial creditor bank] for their assignment details. I got some dates out of them but as far as I understand the assignor is meant to notify an assignment rather than the assignee.

Interviewees recommended improvements in the documentation of the chain of assignment of debts as well as ensuring that debtors are notified at the time (as is required by the Property Law Act). Further, a number of interviewees commented that it would be useful if there was a central repository to look up debt-related information, citing ASIC's 'lost superannuation' search as an example.

Court processes and default judgment

The interviewees' knowledge about the default judgment process was often limited. One or two interviewees had been told by debt collectors that judgment would be sought but at the time were not in a position to repay the debt and so did not respond, or told the debt collector, 'Go ahead'.

Nikki

Nikki was in her late twenties. She had left school in Year 10, first working in hospitality and then as a buyer in the fashion industry. Nikki had had a personal loan for a car which she had repaid. She left her fashion job in order to work behind the bar at an adult entertainment venue because of the higher salary and tips so she could save for an extended overseas holiday. During this time Nikki began to use drugs recreationally. Before she went overseas, her bank contacted her offering to increase her credit card limit. After seven months overseas, Nikki returned home with around $2200 owing on a GE credit card and $4000 on the bank credit card. She had also developed a more serious drug addiction, which was exacerbated when she moved into a house with other serious drug users. Due to her addiction, Nikki had difficulty finding and retaining employment. She had no way of repaying the credit card debts.

Nikki was aware that her credit card debt had been referred to debt collectors and that they had initiated legal action but she did not fully understand the implications. She acknowledged she was not keeping track of her debts because of her drug habit.

I was getting letters, but my mail is ... I get it and fling it up into the wardrobe. But then ... before I went into [drug treatment facility], I claimed my superannuation early. I told them I was paying off debts, but what I was really doing was spending it on drugs ... I only remember noticing a letter little while ago when I was talking to [my financial counsellor] on the phone. I said, 'I've got this weird letter. I think it says they've got a judgment against me'. He's like, 'Yep, you've been sued'. And then I started getting credit rating junk mail, a hoard of it.

Nikki had **stopped opening her mail and stopped answering her telephone due to contact from debt collectors**. She recalled being served with court documents, commenting that she didn't go downstairs to meet the process server because she was too scared but instead sent her brother to collect the document. However when she received the document, she did not understand what it meant and took no further action. In the few months prior to the study, legal proceedings had been commenced against her and judgment entered. Nikki had been referred to a financial counsellor during a stay in a detox facility and she was considering declaring bankruptcy.

Other interviewees received court documents and attempted to respond, but did not understand their obligations or the process.

Elise

Elise received a statement of claim from a debt collection agency regarding a credit card debt incurred many years earlier. Elise had been unable to work due to caring for her young children and her husband had struggled to find ongoing employment. She had been making minimum repayments on her credit card but the debt mounted. She received a letter from the bank stating that they were no longer pursuing the debt and assumed that it had been written off. Some time later she received a letter from a debt collection agency she had never heard of stating that she owed $3000 and asking for payment. She ignored the letter assuming it was some sort of scam. She later received a court document claiming $9000 (the original debt plus interest and legal fees). At this point Elise wrote a letter to the agency's lawyers and the agency itself explaining that her husband was again out of work and made an offer of a small monthly repayment until the family was back on its feet, unaware that she needed to file a defence to the claim in the Magistrates' Court. The response she received from the lawyers was quite bald:

*'My client's not accepting your payment'—that was all that was written on the letter. No 'please call us', nothing like that. 'My client has refused that payment'. And I thought, '**Well, where do we go from here?**'*

Elise next received a bankruptcy notice based on the default judgment that was entered. She searched the internet for advice and contacted a financial counsellor and through them the Consumer Action Law Centre. She conceded that she ought to have sought advice earlier, but had been uncertain where to go and also a 'bit naive'.

Tanya and Liam

Tanya and Liam were a couple living on the urban-rural fringe with their four children, three of them aged under four. Liam also had a daughter who no longer lived with the family. They were paying off a mortgage on their home. Their financial difficulties followed a chain of family crises. Liam had lost his job as a labourer when he took time off to attend court for issues relating to his troubled sixteen-year-old daughter. Around the same time, Tanya's mother had died as the result of a violent crime, triggering post-traumatic stress disorder for Tanya and a related alcohol problem.

The subsequent intervention of Human Services workers meant that Tanya had to leave the home for a period, placing financial pressure on the family. Liam also took on the care of the young children which made it difficult for him to find work and Tanya rented accommodation which increased the family's living expenses. Liam was also subsequently diagnosed with a physical injury making returning to labouring work difficult.

During this 18 month period, Tanya and Liam fell behind in their mortgage repayments and missed one annual rates payment. They explained that when they rang the council, they were advised that the matter had been referred to lawyers and to wait for a letter. They did not receive a letter

> due to a mix-up with the contact address held by the lawyers. They were then served with statement of claim but did not receive it during the 21-day period in which they needed to file a defence because the document was given to their neighbour, in contravention of the court rules for the service of documents.

Several interviewees also commented on the process of the ‘service’ of court documents, expressing concerns about confidentiality of information, particularly in the case of documents handed to neighbours or relatives without an envelope.

Interviewees who had received court documents were asked about their understanding of the documents and other court processes. Several interviewees recommended that they would benefit from a plain language summary accompanying the court documents, setting out the steps and consequences of actions or non-actions with an ‘index of terms’. Several interviewees commented that it would be helpful if the court documents contained information about where they could seek further assistance, particularly low-cost services.

Yet even if the interviewees had clearer understanding of their *legal* options at the commencement of legal proceedings, the process itself offers limited options. After receiving a complaint initiating legal proceedings, a debtor can:

- pay the debt (in full);
- defend the legal proceedings on the basis of the law (for example, they did not owe the debt, the debt was the result of illegal consumer practices etc);
- negotiate with the creditor for settlement of the dispute (including for a waiver, or through alternative dispute resolution) or declare bankruptcy – although often these options would require advice and support from a financial counsellor or lawyer; or
- take no action.

Most of the interviewees in this study acknowledged that they owed the initial debt but could not pay the amount in a lump sum and therefore could not take any action in relation to the court document, in the absence of an option to enter into a payment plan at this stage.

It should also be noted that taking ‘no action’ in response to a default judgment may be the advisable course of action for a ‘judgment proof’ debtor.

Many of the interviewees were unaware that court proceedings had been issued against them or judgment had been entered, as this usually occurred long after the falling into arrears and often well after any negotiations with the creditor or debt collector. By this stage the debt amount was usually considerably larger due to the addition of interest and legal fees. Further, the delay and the passing of the debt from the creditor to debt collectors presented difficulties for debtors not only in negotiating payment but simply finding out information about the debt. Complicating things further, the passing of time also triggered a range of time limits associated with court action and credit listings.

Time limits

There was confusion among interviewees between the time limits for legal proceedings regarding the debt and time limits for debts to remain on a person's credit record.

The time limits listed in the table below refer to the amount of time that the information can be listed on an individual's credit record, after which the record is cleared; however many interviewees believed that clearing the record meant that that the debt itself had 'expired' and the money was no longer owing. This is not correct: different time limits apply to creditors suing a debtor to recover monies owed.

Time limits for credit reporting

Credit records	Time limit
Unpaid debts (more than 60 days)	5 years
Court judgments including default judgment	5 years
Dishonoured cheque presented twice	5 years
Serious credit infringement	7 years
Bankruptcy	7 years

Source: Section 18E, *Privacy Act* 1988 (Cth)

Generally in Victoria, creditors have six years to commence legal proceedings against a debtor under a contract from when the cause of action accrued; beyond this the debt becomes 'statute barred' although the creditor is not prevented from requesting payment. Statute barred means that if the creditor takes a debtor to court, the debtor has a 'perfect defence'[7] but if a debtor fails to file a defence on these grounds, the creditor can still apply for a default judgment. The six-year time limit generally starts from the date that the debtor failed to make a payment owing, however it restarts if a debtor makes a later payment, or later acknowledges the debt in writing.

A number of interviewees described being asked by debt collection agencies to make a small payment towards their debts as a gesture of goodwill, which also served to re-set the time period in which proceedings could be issued. There is legal precedent suggesting that debt collectors who pursue debts after the statute

[7] That is, a creditor may commence proceedings but the debtor can argue that the claim should be thrown out due to the lapse of time.

of limitations period has expired are engaging in 'unconscionable conduct' if debtors are ignorant of the limitation period, impecunious and suffering from emotional difficulties[8].

However if judgment has been entered against a debtor, the creditor has at least 15 years to bring a new action based on the judgment (such as bankruptcy) or to enforce the judgment (indeed they may still enforce the judgment after 15 years with the court's permission). One participant described the actions of debt collectors around the time that the debt was close to being statute barred:

> They get hungrier and hungrier for that. They made a few misrepresentations in their correspondence as well, just trying to get payment ... They insisted I had acknowledged the debt through payment to the Commonwealth Bank within the statute of limitations time and I said, 'Well, show me what branch and how much I paid'. They said no, they wouldn't do that. They repeatedly told me it was due and payable and made comments about my morals—they said do you think you can go and get away without paying this?

Martin's story illustrates the lasting impact of past debts and the lack of transparency in the debt recovery process.

Martin

Martin was an IT worker in his early thirties, married and a new father. Martin had left home at 16 and had worked hard to finish high school under difficult circumstances. By the age of 18 he was doing casual part-time supermarket work and applied for a $5000 car loan. He then found himself struggling financially and his housing became unstable and he moved 10 to15 times between the ages of 18 and 20. He fell behind on his loan repayments as well as other bills. He was then offered an opportunity to move in Melbourne and started to rebuild his life, returning to study, marrying and working in IT. Martin was aware that he had a poor credit rating due to his loan default but assumed that the debt had 'expired' once his credit record cleared. However, Martin was unaware that he also had an unpaid telecommunications bill from his youth for which default judgment had been entered around six years after he moved to Melbourne. Around 12 years[7] after the original debt had been incurred Martin was phoned at work by a debt collection agency:

At first, they were just trying to drill me for information and wanted me to provide all this information and I said, 'No I'm not providing it, and what are you calling me for?'. They said, 'Oh we can't disclose that information'... [He then said], 'We're giving you the ability to pay a nominal fee to wipe this debt clean', and I'm like, 'I

[8] See *Collection House Limited v Taylor* [2004] VSC 49.

don't know what debt you're talking about'... I know I made mistakes in life, but I never knew to what extent until that day that day almost 12 years later when they called me ... He then reiterated to me that it was a judgment and that by law the judgement stands for 12 years and you have to pay money or we can come after you ... I'd just basically just got a mortgage and I needed to understand what my legal rights were ... ***He just wanted me to pay money toward a debt that he couldn't confirm the amount of and couldn't confirm where it was from.***

Upon receiving advice, Martin wrote to the debt collection agency asking them to provide evidence of the original debt and the default judgment. He was told that they did not have documentation regarding the debt, and due to changes in Sydney, where the judgment was entered, they would not be able to provide evidence of the judgment. Martin also contacted the original telecommunications provider which could not provide any information about the unpaid bill. It appeared that the debt collection agency was attempting to recover debts by contacting debtors offering them a 'deal' to clear the debt with a one-off payment, despite having no evidence to support their claims.

Sanjun was also affected by default judgment many years after he had experienced a period of financial crisis. Like Martin, Sanjun had rebuilt his life, finding a good job and starting a family. He also attempted to make good his earlier debts now that he was in a more secure financial position. He contacted one debt collection agency and made an offer of around 70 per cent of the amount now owing, which was accepted. In relation to the second debt, the debt collection agency advised Sanjun that they were going to issue proceedings if he did not pay the amount they claimed was owed. Sanjun told the debt collection agency that he was in a position to repay the debt but that he wanted to go to court in order to have the matter heard by a magistrate because Sanjun felt that he had been a victim of harassment at the hands of the debt collection agency. However, Sanjun stated that when the agency started court proceedings against him, they did not provide him with the court documents. He later discovered that the agency stated to the court that the documents had been provided to him personally at his home address but this was at a time that Sanjun knew he was at work. Because he did not file a defence to the claim, the agency obtained default judgment against him. He first received notification when this was recorded on his credit file where he had set up an automatic alert. He was then contacted by the debt collection agency a week later which advised him that they could now 'come to [his] house and take anything'. Sanjun then paid the amount the agency claimed, which by this time had grown from $4000 to $10,000 due to interest and legal fees.

[9] This time limit applied because the judgment was entered in New South Wales – which has a different statute of limitations.

Impact of the debt process

In addition to issues regarding the debt recovery process, the interviewees also revealed the emotional and financial impact of their experiences. This impact was intensified due to the combination of negative experiences of the debt collection process with the underlying issues that contributed to the initial financial problems. Interviewees spoke about feeling a loss of control over their lives and, at certain points, a sense that there was no way out of the problems they faced. For example, towards the end of his interview Sanjun revealed that he had considered committing suicide at one particularly dark point when he could see no hope of escaping his financial problems and finding work. Ricky described similar feelings at the height of his business and personal financial problems:

> I suppose **it was a case of just losing control**. That's what it was. I used to have a spreadsheet that went down to what coins I had in my wallet ... That didn't exist anymore, it was just money coming in and going out and I just existed ... The only thing that I was doing was breathing and if I was in charge of that, I probably would have stopped that as well. Looking back on it, thinking how did I do it? I didn't. I just flowed through it and whatever happened.

For those who could see no way to resolve their financial difficulties, the initial anxiety around unpaid debts often became a constant, low-level stress and depression, with growing sense of resignation about their situation. These findings confirm the findings of others regarding the impact of debt upon an individual's mental health and relationships: the direct impacts of problem debt include anxiety, stress and depression; difficulty paying debt is an independent predictor of suicidal ideation; and links have also been found between problem debt and self-harm (Fitch et al. 2007). Debt has been found to affect debtors' social relationships, putting strain on existing relationships as well as causing social isolation and exclusion (Fitch et al. 2007). Debt problems have also been associated with health deterioration in general, increased pressure on marriages and relationships and adverse affects on work attendance and performance (Ryan 2009).

A number of respondents who felt that there was no way they could repay their debts in the foreseeable future also expressed an attitude of 'who cares' in relation to their ongoing living expenses, since they considered that no amount of budgeting or saving on a low income would help. Those whose debts stemmed from much earlier periods in their lives spoke of a fear that their hard work to turn their lives around could be lost through the debt recovery process. Martin commented:

> But for me it was more that **fear of loss for my family** and what I had achieved and worked very hard for over the last 24 months to produce and then putting my whole family at risk ... that literally is probably what you

> would call stressful ... knowing that some person can pick up the phone and try taking your house off you, the moment you're about to have a newborn child. My wife was about two weeks away from having a baby and it's just not something you want to go through at such a stage.

For others, the stress of their financial situation took a toll on their personal relationships:

> My partner and I separated for about six months ... we couldn't stand each other, every waking moment we were talking about money and how we were going to deal with this.

Others revealed the direct impact of financial strain on their families but also their desire to hide their financial problems from their children:

> There's been so many times through this year that the kids will eat but we won't ... Mate, **we haven't even done the kids' Christmas shopping** because we just can't. Just can't do it.

> The last 18 months has been very **emotionally draining**. We have attempted to hide all of this from the children. They know that money has been tight but we didn't want them to know about the legal stuff. When it all started my son was doing year 12, I wanted him to focus on his studies.

Many interviewees commented on the ongoing financial impact on their lives of their bad credit rating due to the default judgment. Direct financial implications included being unable to access finance for a business. Steve, a tradesperson in his early 60s, had started a new business which he hoped would provide for his adult sons when he retired. The default judgment prevented him from gaining an overdraft facility which would enable him to smooth his income and expenses.

Debt and default judgment had a longer-term financial impact for most interviewees. Sanjun described the debts has having a big impact on his life, as over the past decade he had been unable to access credit to purchase a car or a house. He also found himself financially dependent on his new wife, which placed a strain on their relationship. He considered his relatively short period of poverty would have a lasting impact, putting him behind his peers in establishing financial security for his family. Many interviewees had drawn down their superannuation on the basis of financial hardship to repay debts, jeopardising their financial security in older age.

Key points

- The debt recovery process is complex and difficult for debtors to navigate, particularly as it involves different regulatory frameworks and often multiple parties.
- Vulnerable debtors avoid dealing with problem debts for a range of reasons:
  - they are unaware of their rights and options
  - they acknowledge that they owe the debt but cannot pay due to a very low income
  - other problems take priority.
- Debtors experiencing problems with mortgage repayment tended to prioritise dealing with this debt over all others, unaware that a default judgment from another debt could also jeopardise their home.
- Debtors had difficulty attempting to negotiate with creditors, – particularly if they had multiple debts.
- Some creditors were quick to outsource or assign debts to debt collection agencies and some debt collection agencies appeared quick to issue legal proceedings, making it difficult for debtors to negotiate an alternative outcome.
- Debtors' stories revealed instances of harassment and inappropriate behaviour from debt collection agencies.
- Debtors, particularly those with old debts, faced difficulty finding information about their debts and were often unaware when debts changed hands.
- Debtors did not respond to the initiation of court proceedings (i.e. file a defence) because:
  - they didn't receive notification at all or on time
  - they didn't understand what they were required to do
  - they acknowledged they owed the debt but couldn't pay.
- Debtors were often confused about the differences between the time limits applying to credit reporting and to creditors rights to issue legal proceedings .
- Debtors frequently experienced anxiety, depression and relationship problems due to their debt problems and their experiences of the debt recovery process.

6. Obstacles and aids to seeking debt management assistance and advice

Not looking for help

A range of factors affected whether interviewees sought advice and at what stage they did. Very few interviewees had sought advice at the point of finding themselves unable to service their debt. Some they felt they owed the money but were not in a position to pay and therefore there was nothing they could do. Others commented that they did not know where to seek advice or were prevented by depression and anxiety and a sense of chaos in their lives. Many commented that they had not been aware of free financial counselling services and assumed that they would have to pay for financial advice—which they could not afford.

Martin commented:

> **I already found myself to be in a position of pain, and I didn’t realise there were avenues I could search** ... if you’re a young person and you’re struggling it’s hard to know to contact a consumer action centre or do this or do that. So you know basically taking [the creditors] word for gospel.

Elise avoided dealing with her growing debt partly because she could not see a solution :

> **I probably just ignored the situation and put me head in the sand** but I thought to myself ‘Well how am I going to get out of this?’ because **I knew I couldn’t afford to pay it.**

Feelings of shame and pride also affected whether interviewees sought help. Chris was aware of financial advisors and mentioned debt consolidation companies which advertise on television. However, he didn’t seek advice when he found himself having difficulty managing his debts because of pride:

> **... it’s my bill, my debt, I’ll deal with it, I don’t want to call a third party in ... it’s called macho stupidity.**

Although Megan was already receiving assistance from a financial counsellor in relation to earlier financial problems, she found herself accumulating new debts.

> I was **too embarrassed** to tell anybody about the card ... It wasn’t that I wasn’t getting help, I guess I just pushed it aside thinking it would go away

> and it wasn't a matter of are we going to live or going to die because of this thing.

These findings are echoed in recent research about help-seeking behaviour among unemployed Victorian construction workers, mostly men, which found that the majority had not sought help for financial problems prior to becoming unemployed and becoming unemployed was not necessarily a trigger to seek help, with most respondents preferring to rely on their own resources to cope (du Plessis 2010). Shame and embarrassment were identified as key barriers to seeking help, particularly among the long-term unemployed and those with the lowest incomes. Many respondents also did not know where to find professional support and were unaware of free financial counselling services (du Plessis 2010).

Finding information

Interviewees either found assistance by making their own inquiries—typically through internet searching—or were referred to financial counsellors or legal services through other services. Often those making their own inquiries had spoken to several services before finding the appropriate assistance. Several interviewees commented that finding the MoneyHelp website[10] was reassuring because it was linked to a government department. Many interviewees commented on the difficulty of finding accurate information and also trusting different sources, particularly creditors or debt collection representatives. Many interviewees described being sent a large amount of information by for-profit debt consolidation companies when judgment was entered.

> As soon as you get judgment on you they just send you all these things saying they can refinance you and all this sort of stuff ... I looked at it all. I googled them to try and research their companies but there's something about it I just didn't feel comfortable with. So, as soon as I saw this MoneyHelp when I googled it I just thought 'Well **maybe because it was a government thing I could trust them** ... [I felt comfortable because they were] not a private set-up where someone might be taking advantage—**you're in a vulnerable situation** so they're going to take you more for a ride and that's what I didn't feel comfortable with.

Others observed that searching for information on the internet was frustrating because there was not one definitive source. The triggers for searching for assistance often came very late in the debt collection process—on receipt of legal

[10] MoneyHelp is a not-for-profit service supported by the Victorian and Australian governments and managed by the Consumer Action Law Centre. It provides free, confidential and independent financial counselling advice to Victorians who are experiencing financial difficulty. The suite of products and services includes a free phone financial counselling service (including an interpreter service); a website; a poster, flyer and wallet card; an information brochure; and fact sheets. .

documents or discovery of default judgment. Elise only started to search for assistance when she received a bankruptcy notice. Almost all of the interviewees commented that court documents should be accompanied by information about where to seek advice.

Referrals

Around a third of respondents had contacted the Law Institute of Victoria[11] for legal referrals and reported being advised to contact private lawyers. When they contact private lawyers they reported being told either that there was nothing that could be done or that further assistance would incur fees which they could not afford, often prompting them to seek advice from alternative avenues such as community legal services or financial counsellors, or assistance from the Financial Ombudsman Service.

The other main pathway through which interviewees received assistance was direct referrals from other agencies. Several interviewees were referred to financial counsellors by drug and alcohol workers or social workers. Two interviewees had received follow-up phone calls from financial counsellors they had seen earlier, which led them to reveal further financial crises and receive assistance. One respondent was provided some financial information by his case manager at his local Jobs Australia employment service. Prior to this he had seen his GP for depression and been referred to a psychologist; however, despite clear links between his personal and business financial problems, his relationship breakdown and his mental health issues, none of the health professionals provided any referral information regarding financial or legal assistance. Ironically, one participant, Chris, was referred to the Consumer Action Law Centre by a debt collector who contacted him after a default judgment and learned that Chris was considering bankruptcy.

Having consulted a financial counsellor or community lawyer, interviewees reported very favourably about the information and assistance received:

> Having a financial counsellor to advocate on your behalf has made us feel like we’ve got some of our own independence and control back.

Location barriers

Distance also created problems for interviewees. For several interviewees who lived in rural Victoria, it was difficult to access face-to-face advice. Others were dealing with default judgments issued interstate, which also made it difficult to obtain appropriate advice, since community legal centres operate within state

[11] A professional association for Victorian solicitors, which provides a legal referral service to the public.

jurisdictions. Telephone financial counselling may be one avenue to improve access to advice for people living in regional and rural areas (Wilson 2010).

Trigger points for intervention

Other interviewees' narratives indicated points at which financial counselling or advice might have prevented their financial problems. They also highlighted groups which may be vulnerable to debt problems but who are not accessing timely advice or assistance.

Health, financial and relationship problems are frequently interconnected. It is perhaps not surprising that research indicates that many individuals do not seek assistance with legal problems, if they do, other support services such as health services may be their first point of contact (Noone & Digney 2010). Conversely, community legal centre clients have been found to have problems with their health, relationships, employment and income in addition to legal and financial problems.

British research indicates although health professionals commonly encounter debt problems among patients (one in four people with mental health problems in the United Kingdom have been found to have problem debts or arrears), many report that they lack basic knowledge to intervene effectively and that patient debt often remains unaddressed until a crisis emerges (Fitch et al. 2007). Other research recommends increasing collaboration between mental health workers and financial counsellors, as well as increasing access to financial counsellors for individuals with mental health issues (Ryan, Kliger & Healy 2010).

Trigger points at which information about financial counselling services could be provided include:

- injury or disability resulting in loss of income
- ○ possible referral sources include doctors and hospitals including rehabilitation, WorkCover authorities such as Victoria's WorkSafe, Centrelink workers particularly those assessing work capacity.
- loss of employment
- ○ possible referral sources include employment services and Centrelink.
- separation and single parenthood
- ○ possible referral sources include family law services, domestic violence workers, Centrelink.
- setting up as an independent contractor or in self-employment

- possible referral sources include organisations regulating trade accreditation; apprenticeship training organisations; superannuation funds; trade events.

In addition to ‘trigger points’, groups which may benefit from targeted assistance may include international students, young people on income support and people with disabilities.

> ***Thamina***
>
> Thamina and her husband migrated to Australia from the Middle East nine years ago seeking religious freedom. At the time they migrated, their daughter was a toddler and Thamina was pregnant with her son. After several years, Thamina’s husband suffered a serious workplace injury which resulted in a significant compensation payment. They used that money as a deposit on a house, despite not having a reliable ongoing income. The compensation money also prevented Thamina’s husband from accessing income support payments. She found casual work to support the family but struggled to manage the household finances from the beginning.
>
> At the time of the interview, she and her husband were a year behind in their mortgage repayments; they owed $12,000 for a car which had been repossessed and several thousand dollars in unpaid fines and had been take to court by the local council for unpaid rates. Thamina’s primary concern was to keep the family house and to shelter her children from knowledge of the family’s financial problems. It was a relief that her husband had been in paid work for one month after five years unable to work, but Thamina was unsure about how they would ‘catch up’ with debts totalling around $50,000. She was receiving assistance from the Financial Ombudsman Service. Their financial situation had been precarious from the beginning and worsened over time. Referral to a financial counsellor at the point of the compensation payment might have prevented their current financial problems.

Awareness of legal rights

Disadvantaged groups are in general less likely to know about their rights and take action or seek advice when faced with a civil justice problem. They are also more likely to repeat the same actions (or lack of) when later facing similar problems (Buck, Pleasence & Balmer 2007). Research about why individuals seek legal advice indicates that being able to recognise the issue (‘naming’) and attribute it to another party (‘blaming’), and having a request for compensation refused (‘claiming’) will influence whether a person takes legal action to resolve the problem (Pleasence, Balmer & Reimers 2011). Pleasence and colleagues also found that people only sought legal advice or took action if they recognised that the harm they experienced could be attributed to another party in a way that was understood as ‘legal’ rather than simply arguing that the other side had a moral obligation to compensate them or rectify the situation (Pleasence, Balmer & Reimers 2011). For the interviewees in this study, the likelihood of them seeking legal advice is complicated because they were the ones who owed money—and were therefore unlikely to recognise their rights. This suggests that public education about legal rights and responsibilities when it comes to debt and financial problems is very important.

Key points:

- Individuals did not seek help because they acknowledged that they owed the debt but could not pay and therefore felt there was nothing they could do.
- Feelings of shame and pride also affected whether interviewees sought help.
- Interviewees wanted information from a source they could trust.
- Debtors in regional areas or with interstate debts face barriers to receiving appropriate assistance.
- Referrals from health and employment services enabled many to gain assistance with their financial and legal problems.
- Legal information and referrals provided at key trigger points might prevent debt problems from worsening.

7. Conclusions and recommendations for change

The factors which influence financial insecurity, hardship and crisis including involvement in debt collection and legal processes are complex. Often structural forms of disadvantage intersect with particular events to create financial disadvantage which then compounds other forms of disadvantage, creating a 'spiral' which is difficult to avoid. The interviewees' accounts raise questions not only about the processes of debt resolution and access to assistance and information, but also more broadly about civil justice. Research regarding civil justice is often undertaken from the narrow viewpoint of the court system, yet 'taking the wide angle view of civil justice problems emphasizes that justiciable problems are very frequently aspects of, and one in the same with, the problems of everyday life' (Currie 2007).

The Australian Strategic Framework for Access to Justice in the Federal Civil Justice System identified five objectives of a civil justice system: accessibility, appropriateness, equity, efficiency and effectiveness. Translated into 'actions', these objectives include access to information; early intervention to prevent the escalation of legal problems; triage, enabling matters to be directed to the most appropriate destination; pathways to fair and equitable outcomes; proportionate cost for dispute resolution; building resilience in individuals, the community and justice system; and inclusion, directing attention to the real issues of people who experience legal events (Managing Justice 2011). Overlaying these principles onto the experiences of the consumer debtors described in this report exposes flaws in the current system. Given the high numbers of individuals who receive default judgments, it is difficult to see that the current way in which consumer debt issues are resolved provides fair and equitable outcomes, builds resilience or delivers 'inclusion' for debtors. Moreover, in many of the circumstances described in the interviews, it appeared that the current process would provide little benefit for creditors—particularly in relation to pursuing 'judgment proof' debtors and the high legal costs incurred by creditors for small debts.

From this study of the experience of judgement debtors and the debt recovery process, the following recommendations can be made.

Recommendations

Information and referral pathways for people experiencing disadvantage

1. Resources should be provided to increase awareness of debt and financial issues and appropriate referral pathways among professionals and support workers including:

    - health professionals
    - Centrelink and employment services workers
    - family violence workers and family lawyers
    - organisations providing support and information to tradespeople and self-employed individuals such as those issuing trade licences, apprenticeship training organisations, superannuation funds and trade events.

2. Resources should be allocated to community legal education, targeting groups at risk of financial vulnerability (such as home owners in urban growth corridors) and addressing rights, obligations and processes relating to consumer debt.

3. Continued support should be provided to financial counselling services, both face-to-face and telephone financial counselling. Telephone financial counselling should be more widely promoted, particularly in regional and rural areas where distance may be a factor in disadvantaged debtors seeking advice and assistance.

Financial hardship and dispute resolution

4. There should be standardisation of the ways in which common creditors (such as councils; banks and consumer credit agencies; water authorities and utilities providers; health services and education providers; and debt collection agencies) deal with consumers experiencing financial hardship, including:

    - Mandatory requirement to have a hardship policy
    - Mandatory requirement for flexible payment options that suit the debtor's actual capacity to pay
    - Processes to ensure early and proactive responses by creditors when consumers have payment difficulties

- Clear and readily available guidelines about financial hardship arrangements– provided in writing to all consumers when they enter contracts;
- Agreed changes to repayment schedules to be confirmed in writing;
- Mandatory requirements to enter into dispute resolution processes prior to assignment of debt and issuing of legal proceedings
- Minimum time limits before debts are assigned or legal proceedings are issued[12].

5. Debt waiver processes should be promoted for debtors who:

    - Receive a Centrelink income support payment as their only income
    - Do not own a housing asset (and so have to pay rent or board)
    - Are unlikely to improve their financial prospects in the long term
    - Cannot afford to repay the debt[13].

Improving information flow to debtors

6. There should be tighter enforcement of the requirement that creditors inform debtors of the assignment of debts to third parties and any further assignment of the debt.

7. Changes to civil procedure should be considered to require parties who issue legal proceedings in the Magistrates' Court to provide greater evidence of the chain of assignment and the original debt in the statement of claim and before default judgment is entered[14]. This could include provision of the initial contract relied upon together with evidence that the consumer has defaulted on their payments (such as copies of statements of accounts, correspondence or default notices).

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[12] Note that some industries have made considerable progress in this regard, such as the Utilities Industry. See also the draft Local Government Hardship Code of Practice (Footscray Community Legal Centre 2012).
[13] See, for example, The Bulk Debt Project, <https://www.bulkdebt.org/Public/HomePage.aspx>.
[14] It should be noted that the Magistrates' Court has take some steps to improve this situation. The Court's Annual Report 2011–12 notes that 'changes to the pleading of claims and defences, especially the latter, have drawn more useful information than before. The changes were a conscious attempt to make pleadings a source of real information ... [due to] the ... complaint ... that pleadings do not work to identify the real issues in dispute. To an extent, the Court's changes have achieved that result. Even so, the experience in early neutral evaluation shows that the parties, especially defendants, often do not know enough about their positions' (p. 41).

8. Enforcement of the adequate provision of information by creditors could be achieved through the creation of a checklist for Registrars and Magistrates to complete prior to granting default judgment in favour of a creditor. The checklist, which would form part of the judgment (and therefore be available to the public) could include ensuring that the following have been provided by the creditor before judgment is entered:

    - Proof of debt (see recommendation 6 above)
    - Proof of ownership of the debt (in the case of assignment)
    - Details of efforts to recover the debt, including any agreements entered with the debtor, agreements to waive part of the debt, repayment plans etc.

Improving the court process for consumer debtors

9. The statement of claim (initiating court documents) should be required to include a cover sheet written in plain language including:

    - definitions of key terms;
    - a flow chart depicting the outcomes of various courses of action; and
    - the contact details for central referral points where debtors can gain access to financial counselling and low-cost legal advice (such as government websites or the national financial counselling hotline).

10. Consideration should be given to amending Magistrates' Court civil procedure to create an additional active option for debtors, either:

    - Allowing the debtor to attend court to provide an undertaking to make payments by instalments (similar to Intervention Order process). Should the debtor then fail to meet the repayments set out in their undertaking, the creditor could apply for default judgment. This would provide security for the creditor while allowing the debtor to avoid having default judgment made against them.
    - Alternatively, provide the debtor with the option to 'admit the debt' but at the same time apply to pay in instalments—for example in the Small Claims Division of the Local Court of New South Wales a debtor can file an 'Acknowledgment of Liquidated Claim' as well as an application to pay by instalments[15].

[15] The drawback of this process is that it results in a judgment being made against the debtor and it makes it difficult for the debtor negotiate interest and legal fees that may claimed by the creditor.

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