

PERSPECTIVES OF FINANCIAL COUNSELLORS AND CONSUMER SOLICITORS ON PERSONAL INSOLVENCY

SEPTEMBER 2015

PAUL ALI,* LUCINDA O'BRIEN** AND IAN RAMSAY***

In 2014, a group of researchers at the Melbourne Law School commenced a major empirical research project, focussing on Australia's personal insolvency laws and their practical impact on people in financial distress. The project draws on the expertise of three major community organisations, the Consumer Action Law Centre, Good Shepherd Youth & Family Service and Financial Counselling Australia. In early 2015, the research team conducted a national online survey of financial counsellors, consumer solicitors and other advocates who specialise in helping financially distressed individuals. The survey found that many of these advocates were highly sceptical about the value of debt agreements, or 'Part IX' agreements. By contrast, they generally saw bankruptcy as a useful and effective 'last resort' for people in financial crisis. At the same time, several advocates expressed concern regarding the long term impact of bankruptcy upon severely disadvantaged debtors. Several expressed the view that bankruptcy does not offer a genuine 'fresh start' for those who rely on inadequate social security income, or suffer from other disadvantages, such as mental illness. Instead, for people in this situation, bankruptcy offers little more than a temporary reprieve from ongoing, acute financial hardship.

I INTRODUCTION

Recent scholarship has identified a shift in the demographic profile of Australian personal insolvents, towards a more affluent and 'middle class' cohort.¹ This change has coincided with a shift away from bankruptcy² towards debt agreements,³ which have surged

* Associate Professor, Melbourne Law School, University of Melbourne.

** Research Fellow, Melbourne Law School, University of Melbourne.

*** Harold Ford Professor of Commercial Law and Director of the Centre for Corporate Law & Securities Regulation, Melbourne Law School, University of Melbourne. This research has been supported by the Australian Research Council [Linkage Grant LP130101022].

¹ Ian Ramsay and Cameron Sim, 'Personal Insolvency in Australia: An Increasingly Middle Class Phenomenon' (2010) 38 *Federal Law Review* 283. See also Teresa A. Sullivan, Elizabeth Warren and Jay Lawrence Westbrook, *The Fragile Middle Class: Americans in Debt* (Yale University Press, 2000).

² Bankruptcy is the legal process by which 'the assets of a person who cannot pay his or her debts are removed from the person's control (sequestered), placed in the hands of a trustee and distributed to creditors in the way the state has determined will best satisfy the competing interests involved': Trischa Mann (ed), *Australian Law Dictionary* (Oxford University Press, 2nd ed, 2013) 77. The law of bankruptcy seeks to strike a fair balance between the interests of competing creditors, enabling the debtor's assets to be distributed among them in an orderly manner, while also enabling the debtor to 'restart his or her financial life': see Christopher Symes and John Duns (eds), *Australian Insolvency Law* (LexisNexis Butterworths, 2012) 7. The law of bankruptcy originates in English common law, but has been governed by statute since the sixteenth century: Symes and Duns, 18-26. The primary source of Australian bankruptcy law is the *Bankruptcy Act 1966* (Cth): see also Symes and Duns, 26.

in popularity⁴ despite a recent, marked decline in overall rates of personal insolvency.⁵ In this context, a group of researchers at the Melbourne Law School has initiated an empirical research project seeking to explore the practical operation of Australia's personal insolvency laws. By means of surveys, interviews and other empirical research techniques, the project is investigating whether or not these laws require reform, in order to achieve their policy objectives. The project draws on the expertise of three major community organisations, the Consumer Action Law Centre,⁶ Good Shepherd Youth & Family Service⁷ and Financial Counselling Australia.⁸ In partnership with these organisations, the research team recently conducted a major online survey of financial counsellors, consumer solicitors and other community workers who specialise in assisting people in financial hardship (described here, collectively, as 'advocates'). While the advocates surveyed did not claim to have extensive direct experience regarding debt agreements, they expressed consistent scepticism regarding these agreements and suggested that they serve to entrench, rather than solve, financial

³ A debt agreement is 'a binding agreement between an insolvent debtor and his or her creditors under which the creditors agree to accept a sum of money the debtor can afford to pay': Mann, above n 2, 78. Debt agreements were introduced into Australian law in 1996 and were intended to offer a more flexible, less onerous and socially stigmatising alternative to bankruptcy: Commonwealth, House of Representatives, *Parliamentary Debates* (26 June 1996) 2827-28 (Daryl Williams, Attorney-General and Minister for Justice); cited in Ian Ramsay and Cameron Sim, 'The Role and Use of Debt Agreements in Australian Personal Insolvency Law' (2011) 19 *Insolvency Law Journal* 168; see also Symes and Duns, above n 2, 204. Debt agreements are governed by Part IX of the *Bankruptcy Act 1966* (Cth). See also John Duns and Rosalind Mason, 'Debt Agreements Down Under' in Johanna Niemi, Iain Ramsay and William C. Whitford (eds), *Consumer Credit, Debt and Bankruptcy: Comparative and International Perspectives* (Hart, 2009) 355.

⁴ While the overall number of personal insolvencies in Australia has declined since reaching its highest point in 2010 (see n 5, below), the popularity of debt agreements continues to rise. There were 8,951 in 2011-2012, 9,651 in 2012-2013, 10,705 in 2013-2014 and 10,911 in 2014-2015. Australian Financial Security Authority (AFSA), *Commentary: Annual 2014-15* (2015) <<https://www.afsa.gov.au/resources/statistics/provisional-bankruptcy-and-personal-insolvency-statistics/annual-statistics/commentary-annual-2014-15>>; AFSA, *Annual Report 2013-2014* (2014) 64.

⁵ Ian Ramsay and Cameron Sim, 'Personal Insolvency Trends in Australia 1990-2008' (2009) 17 *Insolvency Law Journal* 69; Ramsay and Sim, 'Debt Agreements', above n 3. In 2011, Ramsay and Sim reported that rates of personal insolvency had increased by 300.68% between 1990 and 2010, while the Australian population increased by 29% during the same period. Drawing on data from the Australian Bureau of Statistics and the Insolvency and Trustee Service Australia (ITSA, now AFSA), Ramsay and Sim calculated that '[i]n 1990, 0.05% of the Australian population entered into personal insolvency, compared to 0.16% in 2010': Ramsay and Sim, 'Debt Agreements', above n 3, 171-72. 2010 represented a high water mark in overall rates of personal insolvency in Australia. In that year, the number of personal insolvencies in Australia peaked at 36,513: AFSA, *Annual Report 2013-2014* (2014) 64. Since then, overall rates of personal insolvency have been steadily declining. In the financial year ending 30 June 2015, there were 28,288 personal insolvencies, the 'lowest number... since 2005-2006': AFSA, *Annual Statistics 2014-2015* (2015)

<<https://www.afsa.gov.au/resources/statistics/provisional-bankruptcy-and-personal-insolvency-statistics/annual-statistics/annual-statistics-2014-15>> and AFSA, *Commentary: Annual 2014-15* (2015)

<<https://www.afsa.gov.au/resources/statistics/provisional-bankruptcy-and-personal-insolvency-statistics/annual-statistics/commentary-annual-2014-15>>. Based on a population of 23,625,600 (on 31 December 2014), the 2014-2015 figure represents approximately 0.12% of the population, a significant decrease from that calculated by Ramsay and Sim in 2010: Australian Bureau of Statistics, *Australian Demographic Statistics, Dec 2014* (26 June 2015) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>>. As noted above, however, the number of debt agreements continues to rise. For factors influencing the growing popularity of debt agreements in Australia, see Ramsay and Sim, 'Debt Agreements', above n 3; Duns and Mason, above n 3.

⁶ Consumer Action Law Centre (Consumer Action) is a community legal centre specialising in consumer law.

⁷ Good Shepherd Youth & Family Service (Good Shepherd) provides financial counselling, family violence support, housing assistance and other services to women, young people and families. It also carries out extensive research and policy work.

⁸ Financial Counselling Australia (FCA) is the national peak body for financial counsellors.

problems. When compared with debt agreements, many advocates viewed bankruptcy as a useful and effective ‘last resort’ for people in financial crisis.

At the same time, the advocates expressed significant misgivings regarding the impact of bankruptcy upon many of their most vulnerable clients. Many stressed that, for their clients, bankruptcy does not follow a sudden, unexpected financial shock or a temporary decline in household finances. It does not offer a genuine ‘fresh start’, in the form of a second chance at middle class prosperity.⁹ Instead, for those reliant on inadequate social security income, bankruptcy offers little more than a temporary reprieve from ongoing, acute financial hardship. These findings offer an interesting counterpoint to the recent study that identifies rising rates of bankruptcy among ‘middle class’ Australians.¹⁰ They also represent an important qualification to older, more stereotypical notions of bankruptcy as the province of wealthy debtors wishing to evade their obligations.¹¹ They raise important questions regarding the use of bankruptcy by people experiencing persistent poverty and social exclusion. They suggest that, in some cases, low-income debtors may be resorting to bankruptcy when the adverse consequences equal or even outweigh the benefits. In light of bankruptcy’s long-term impact on credit history – and the increasing importance of credit history in gaining access to a range of essential services¹² – these findings raise the possibility that Australia’s personal insolvency laws are ill-adapted to the needs of Australia’s most vulnerable, socially excluded debtors.

II SURVEY METHODOLOGY

The advocate survey was administered online, using the SurveyMonkey platform, in May and June 2015. Devised in consultation with Consumer Action, Good Shepherd and FCA, the final survey contained 15 questions and took 10 to 15 minutes to complete. The survey asked advocates to state their occupation¹³ and proceeded to ask basic demographic questions about their clients.¹⁴ It asked the advocates to nominate the factors that most commonly led their clients to consider bankruptcy or a debt agreement.¹⁵ It asked about clients’ knowledge of the financial options available to them to resolve their financial problems,¹⁶ and their attitudes regarding their financial problems.¹⁷ The survey also asked advocates to estimate how many of their clients declared bankruptcy, entered into a debt agreement or benefitted from a creditor’s financial hardship program.¹⁸ It asked them about

⁹ Nicola Howells, ‘The Fresh Start Goal of the *Bankruptcy Act*: Giving a Temporary Reprieve of Facilitating Debtor Rehabilitation?’ (2014) 14 *QUT Law Review* 29. See also Sullivan, Warren and Westbrook, above n 1, 5.

¹⁰ Ramsay and Sim, ‘Middle Class’, above n 1; see also Sullivan, Warren and Westbrook, above n 1.

¹¹ *Ibid* 309.

¹² Nigel Waters, ‘Privacy regulation of credit reporting in Australia: major change after 25 years’ tension?’ (2012) 108 *Precedent* 18, 19.

¹³ See Part III(A).

¹⁴ See Part III(B).

¹⁵ See Part III(C).

¹⁶ See Part III(D).

¹⁷ See Part III(E).

¹⁸ See Part III(F).

the long term impacts of bankruptcy¹⁹ and debt agreements,²⁰ and the circumstances in which they might recommend either of these options to their clients.²¹ The survey concluded by providing a space for advocates to record their final comments and reflections.²²

After obtaining ethics approval,²³ the research team created an online version of the survey using the SurveyMonkey platform. On 13 May 2015, the team provided Consumer Action, Good Shepherd and FCA with a Plain Language Statement and a link to the survey, with a request that they forward both to their members and employees. Between 13 and 15 May, the partners circulated the survey to approximately 745 financial counsellors around Australia, with another 200 receiving the survey in the first week of June.²⁴ The partners also provided the survey to 28 solicitors specialising in consumer law, at community legal centres in Melbourne, Sydney and Perth.²⁵ The research team initially planned to conclude the survey 5 June, but decided to extend the deadline to accommodate FCA's national conference, which took place in late May. Between 26 May and 2 June, the research team sent follow-up emails to the partner organisations and their constituent bodies, advising them that the survey would remain open for a further two weeks. Most partners and affiliates sent reminder emails to their members, notifying them of the new deadline, by the end of the first week of June. The survey closed on 19 June 2015. The survey attracted 155 partial or complete responses, representing a response rate of approximately 16%.²⁶

¹⁹ See Part III(G)(1).

²⁰ See Part III(G)(2).

²¹ See Part III(H).

²² See Part III(I).

²³ Ethics approval was granted by the Human Ethics Advisory Group at the Melbourne Law School and the ethics committee of Good Shepherd. In accordance with the University of Melbourne's ethics guidelines, this document set out the purpose of the research, explained what participants would be asked to do, set out the ways in which their information would be used and their confidentiality protected, and provided contact details for the research team and the University's Office for Research Ethics and Integrity. In the Plain Language Statement, advocates were warned that they might be identified from their comments, if these comments were quoted in publications arising from the research. Advocates were asked to give explicit consent to their comments being quoted anonymously in this way. 93% gave their consent, with 7% preferring not to be quoted directly.

²⁴ FCA forwarded the survey to its affiliates, the financial counselling peak bodies of each state and territory, with a request that they forward it to their members. Between 13 and 15 June, the survey was circulated to financial counsellors in Queensland, the Northern Territory, the Australian Capital Territory, Western Australia, South Australia, New South Wales and Tasmania. It was circulated to financial counsellors in Victoria in the first week of June. Consumer Action and the Financial Rights Legal Centre circulated the survey to financial counsellors working in their offices. Good Shepherd also circulated the survey to approximately 20 financial counsellors working directly with Good Shepherd or its partner agencies (ISIS Primary Health, Connections UnitingCare, Djerriwarrah Community Health and Port Phillip Community Group). Due to the potential overlap between these groups, it is likely that some counsellors received more than one invitation to complete the survey. As the survey was anonymous, it was not possible to prevent respondents from completing it more than once; however, the survey explicitly asked respondents not to complete the survey more than once.

²⁵ These included 13 solicitors at Consumer Action in Melbourne, 12 at the Financial Rights Legal Centre in Sydney and three at the Consumer Credit Legal Service WA in Perth. The survey was also distributed to the Consumer Credit Legal Service SA, Legal Aid NSW and Legal Aid Queensland, but the research team was unable to confirm whether or not it was circulated within these organisations.

²⁶ This figure is based on an estimate that 973 advocates received invitations to complete the survey, of whom 28 were solicitors and the remainder financial counsellors.

III RESULTS

A Profile of Respondents

When asked to state their occupation,²⁷ 24 respondents (15%) identified themselves as solicitors. 116 (75%) said they were financial counsellors and 13 (8%)²⁸ gave another title such as ‘financial literacy worker’, ‘financial capability worker’ or ‘money management worker’.²⁹ Other occupations included ‘community advocate’, ‘intake worker’ and ‘manager – financial counsellors’.

B Client Disadvantage

The advocates reported that their clients suffered from a range of disadvantages, including physical and mental illness, disability and, in particular, reliance on Centrelink³⁰ income.³¹ 54% said that ‘most’ of their clients relied on Centrelink for ‘most or all of their income’, while a further 44% said that ‘some’ or ‘more than half’ were in this category.³² They reported significant rates of physical and mental ill health and disability among their clients: 61% of advocates said that ‘some’, ‘more than half’ or ‘most’ of their clients had a physical health problem;³³ 82% said that ‘some’, ‘more than half’ or ‘most’ of their clients had a mental health problem;³⁴ and 61% said that ‘some’, ‘more than half’ or ‘most’ of their clients suffered from a disability.³⁵

²⁷ Question 2 asked the advocates to choose one of the following options: ‘Financial counsellor’, ‘solicitor’, ‘social worker’ and ‘other (please specify)’.

²⁸ All percentages are rounded to the nearest whole number. This means that, in some cases, the values cited do not add up to exactly 100%.

²⁹ The Money Workers Association NT explains that while financial counsellors ‘provide information, support and advocacy to assist people in financial hardship’, financial literacy educators ‘provide education, mentoring and support to people who have low financial literacy or are struggling to manage their money’ and seek to develop their clients’ ‘financial literacy skills and knowledge’. Financial literacy educators include ‘Money Management Workers, Financial Capability Workers, Micro-Finance Workers and Money Mentors’: Money Workers Association NT, *About* (2015) <<http://mwant.com.au/about/>>.

³⁰ Centrelink is an agency of the Australian Commonwealth Government. It manages the social security system and administers a wide variety of payments to individuals, including unemployment benefits (the ‘Newstart’ payment), the Disability Support Pension, the Age Pension and stipends for full time students.

³¹ Question 3 asked advocates: ‘How many of your clients: have limited English language skills? Have a physical health problem? have a mental health problem? have a disability? rely on Centrelink for most or all of their income?’ Advocates were asked to choose from the following options: ‘Very few (10% or less)’, ‘Few (11-25%)’, ‘Some (26-50%)’, ‘More than half (51-75%)’, ‘Most (76-100%)’ or ‘Unsure/don’t know’.

³² When asked how many of their clients ‘rel[ie]d on Centrelink for most or all of their income’, only 1% said ‘very few’ and 1% said ‘few’. 11% said ‘some’, 32% said ‘more than half’ and 54% said ‘most’. These figures, and all subsequent figures cited in this report, represent percentages of those who responded to the particular question (not a percentage of those who completed the survey overall).

³³ When asked how many of their clients ‘ha[d] a physical health problem’, 6% said ‘very few’, 31% said ‘few’, 37% said ‘some’, 19% said ‘more than half’ and 4% said ‘most’. 1% said that they were unsure or did not know. Throughout this report, ‘unsure/don’t know’ responses are only reported when they exceed 1% of total responses.

³⁴ When asked how many of their clients ‘ha[d] a mental health problem’, 6% said ‘very few’, 11% said ‘few’, 38% said ‘some’, 34% said ‘more than half’ and 10% said ‘most’. 1% said that they were unsure or did not know.

³⁵ When asked how many of their clients ‘ha[d] a disability, 7% said ‘very few’, 31% said ‘few’, 44% said ‘some’, 13% said ‘more than half’ and 4% said ‘most’. The advocates reported that relatively few of their clients had English language difficulties. When asked how many of their clients had ‘limited English language skills’, 45% said ‘very few’, 25% said ‘few’, 13% said ‘some’, 11% said ‘more than half’ and 6% said ‘most’.

C Causes of Personal Insolvency

Advocates said that ‘excessive use of credit’ was a significant driver of personal insolvency among their clients.³⁶ They also cited job loss, low income (including reliance on Centrelink) and ‘poor financial management or excessive spending’ as factors ‘commonly lead[ing]’ clients to consider personal insolvency.³⁷ When asked to nominate the single factor most likely to lead clients to consider bankruptcy, roughly equal numbers of advocates nominated ‘poor financial management’, ‘low income’ and ‘use of credit’, with slightly fewer nominating ‘loss of a job’.³⁸ When asked what caused their clients to consider a debt agreement, advocates often nominated ‘poor financial management or excessive spending’ and ‘excessive use of credit’, though the most popular response was ‘unsure/don’t know’.³⁹

Some advocates gave longer explanations for their clients’ decisions to investigate bankruptcy or a debt agreement. One advocate observed:

...almost 100% of my clients choose bankruptcy to get rid of the stress and pressure that comes with not be able to live ‘normally’. They just want it all to go away especially when they are chased by creditors or their agents. It also helps them to move on from what caused the insolvency.... If the debt is attached to a past relationship then bankruptcy also helps them to move on from the relationship breakup. To go bankrupt is like a grieving process that people in debt go through.

Another expressed concern at the

‘misleading’ advertising that makes it sound like a Debt Agreement is a great solution where in fact it may not be a good choice. People who may not want to go bankrupt may opt for the debt agreement not knowing that the agreement comes under the bankruptcy regime and is listed on the [National Personal Insolvency Index].

³⁶ Question 4 asked advocates, ‘What circumstances most commonly lead your clients to consider bankruptcy or a debt agreement?’ Respondents were asked to nominate up to five from a list of 15 options: ‘Excessive use of credit’, ‘Loss of a job’, ‘Being on a low income (including a Centrelink income)’, ‘Physical illness’, ‘Mental illness’, ‘Poor financial management or excessive spending’, ‘Relationship breakdown’, ‘Gambling’, ‘Substance abuse’, ‘Cost of raising or supporting children’, ‘High housing costs’, ‘High utilities costs’, ‘Giving a personal guarantee on a loan’, ‘Business losses or failure’ and ‘Unsure/don’t know’. Advocates were also invited to select ‘other’ and cite additional causes.

³⁷ 64% of advocates nominated ‘excessive use of credit’. Other commonly cited factors were ‘loss of a job’ (chosen by 63% of advocates); ‘being on a low income (including a Centrelink income)’ (57%); ‘poor financial management or excessive spending’ (55%); ‘mental illness’ (48%) and ‘relationship breakdown’ (43%). The least common responses included ‘giving a personal guarantee on a loan’ (4%) and ‘cost of raising or supporting children’ (6%). Other factors nominated by advocates included ‘tax debt’ and ‘[I]ack of good education or role modelling about financial management’.

³⁸ Question 5 asked, ‘Which of the following is most likely to cause your clients to consider bankruptcy?’ Advocates were asked to choose one from the same list of options provided in response to Question 4. 24% nominated ‘poor financial management or excessive spending’, 23% chose ‘being on a low income (including a Centrelink income)’, 22% chose ‘excessive use of credit’ and 16% chose ‘loss of a job’.

³⁹ Question 6 asked, ‘Which of the following is most likely to cause your clients to consider a debt agreement?’ The most common response was ‘unsure/don’t know’ (28%). The next two most common responses were ‘poor financial management or excessive spending’ (21%) and ‘excessive use of credit’ (21%). Other less common responses included ‘being on a low income (including a Centrelink income)’ (10%), ‘business losses or failure’ (9%) and ‘loss of a job’ (6%).

D Clients' Understanding of Their Options

Advocates reported that in general, clients had relatively little insight into the causes of their financial problems and scant knowledge of their options for resolving them.⁴⁰ When asked how many clients had a 'good understanding of the causes of their financial problems', 39% said that 'more than half' or 'most' clients had a good understanding. 61% said that 'few' or only 'some' of their clients had a good understanding.⁴¹ When asked how many of their clients were 'aware of bankruptcy as an option', advocates reported a reasonably high level of awareness. 52% said that 'more than half' or 'most' of their clients were 'aware of bankruptcy as an option'.⁴² In stark contrast, only 9% said that 'more than half' or 'most' of their clients were 'aware of debt agreements as an option'.⁴³ Advocates also reported low levels of awareness about creditors' hardship programs, with only 14% saying 'more than half' or 'most' of their clients were aware of such programs.⁴⁴

E Client Attitudes

Advocates were relatively consistent in describing their clients' attitudes towards their financial problems.⁴⁵ 78% said that 'more than half' or 'most' clients attributed their financial problems to 'factors beyond their control (such as unemployment or poor health)'.⁴⁶ By contrast, only 14% said that 'more than half' or 'most' clients attributed their financial problems to 'their own mismanagement'.⁴⁷ Only 22% said that 'more than half' or 'most' clients worried about how bankruptcy might affect their career prospects.⁴⁸ Still, 65% said that 'more than half' or 'most' clients were 'concerned about how bankruptcy could affect

⁴⁰ Question 7 asked advocates to rate their clients 'knowledge of the options available to them to resolve their financial problems'. It asked, 'When they first come to you for advice, how many of your clients: have a good understanding of the causes of their financial problems (in your opinion)? are aware of bankruptcy as an option? are aware of debt agreements as an option? are aware of creditors' financial hardship programs?' In responding to Questions 7 and 8, advocates were asked to choose from the following options: 'Few (25% or less)', 'Some (26-50%)', 'More than half (51-75%)', 'Most (76-100%)' or 'Unsure/don't know'.

⁴¹ 25% said that 'few' of their clients had 'a good understanding of the causes of their financial problems'. 36% said that 'some' of their clients had 'a good understanding'. 24% said that 'more than half' had a good understanding of the causes, while 15% said that 'most' had a good understanding.

⁴² 11% said that 'few' of their clients were 'aware of bankruptcy as an option'. 36% said that 'some' of their clients were aware of it, 32% said 'more than half' were aware of it, and 20% said that 'most' were aware of it.

⁴³ 60% said that 'few' of their clients were 'aware of debt agreements as an option'. 29% said that 'some' were aware of debt agreements. 6% said that 'more than half' were aware of them and 3% said that 'most' were aware of them. 2% said they were unsure or did not know whether or not their clients were aware of debt agreements.

⁴⁴ 49% said that 'few' of their clients were 'aware of creditors' hardship programs'. 36% said that 'some' were aware, 12% said that 'more than half' were aware and 2% said that 'most' were aware.

⁴⁵ Question 8 asked advocates to describe their 'clients' beliefs in relation to their financial problems (as demonstrated by their comments and general demeanor). It asked, 'When they first come to you for advice, how many of your clients: attribute their financial problems to factors beyond their control (such as unemployment or poor health)? attribute their financial problems to their own mismanagement? view bankruptcy as a positive step? are concerned about how bankruptcy could affect their capacity to borrow? are concerned about how bankruptcy could affect their career prospects? view a debt agreement as a positive step?'

⁴⁶ 2% said that 'few' of their clients 'attribute their financial problems to factors beyond their control (such as unemployment or poor health)'. 20% said that 'some' did, 41% said that 'more than half' did and 36% said that 'most' did.

⁴⁷ 43% said that 'few' clients 'attribute their financial problems to their own mismanagement. Another 43% said that 'some' did, 11% said that 'more than half' did and 3% said that 'most' did.

⁴⁸ 47% said 'few' clients were 'concerned about how bankruptcy could affect their career prospects'. 29% said that 'some' were, 11% said that 'more than half' were and 12% said that 'most' were. 1% of advocates said they were unsure or did not know.

their capacity to borrow'.⁴⁹ Only 20% said that 'more than half' or 'most' clients viewed bankruptcy as 'a positive step'.⁵⁰ Similarly, only 17% said that 'more than half' or 'most' clients viewed a debt agreement as 'a positive step'. 21% said they did not know what their clients thought about debt agreements.⁵¹

F Client Choices

Advocates reported that bankruptcy was unusual among their clients.⁵² 43% said that 'very few'⁵³ of their clients declared bankruptcy. Only 4% said that 'more than half' or 'most' declared bankruptcy.⁵⁴ Debt agreements were even rarer among advocates' clients. 74% said that 'very few' of their clients entered into a debt agreement. Only 3% said that 'more than half' or 'most' of their clients entered into debt agreements.⁵⁵ By contrast, most advocates reported that the vast majority of their clients obtained benefit from a creditor's financial hardship program. 78% said that 'more than half' or 'most' of their clients benefitted from these programs.⁵⁶

G Clients' Long Term Outcomes

1 Bankruptcy

Advocates were generally positive about the long term impact of bankruptcy on their clients' health and general wellbeing, but less positive about its impact on their financial situation.⁵⁷ There was a strong consensus regarding the impact of bankruptcy on creditor harassment. 54% strongly agreed that clients who go bankrupt 'get relief from creditor harassment', while another 38% agreed.⁵⁸ Most advocates agreed (48%) or strongly agreed (13%) that clients who went bankrupt 'enjoy[ed] better health and wellbeing' as a result,

⁴⁹ 14% said 'few' clients were 'concerned about how bankruptcy could affect their capacity to borrow'. 22% said that 'some' were, 26% said that 'more than half' were and 38% said that 'most' were.

⁵⁰ 43% said 'few' of the clients regarded bankruptcy as 'a positive step'. 35% said 'some' did, 15% said 'more than half' did and 5% said 'most' did. 1% of advocates said they were unsure or did not know.

⁵¹ 41% said 'few' of the clients regarded a debt agreement as 'a positive step'. 22% said 'some' did, 12% said 'more than half' did and 4% said 'most' did. 21% of advocates said they were unsure or did not know.

⁵² Question 9 asked advocates: 'How many of your clients: declare bankruptcy? enter into a debt agreement? benefit from a creditor's financial hardship program?'

⁵³ In responding to Question 9, advocates were given the following options: 'Very few (10% or less)', 'Few (11-25%)', 'Some (26-50%)', 'More than half (51-75%)', 'Most (76-100%)' or 'Unsure/don't know'.

⁵⁴ 43% of advocates said that 'very few' clients declared bankruptcy; 35% said that 'few' did; 15% said that 'some' did; 2% said 'more than half' did; 1% said that 'most' did; while 4% said that they were unsure or did not know.

⁵⁵ 74% of advocates said that 'very few' clients entered into a debt agreement; 8% said that 'few' did; 5% said that 'some' did; 2% said 'more than half' did; 1% said that 'most' did; while 9% said that they were unsure or did not know.

⁵⁶ 4% of advocates said that 'very few' clients benefitted from a creditor's financial hardship program; another 4% said that 'few' did; 12% said that 'some' did; 36% said 'more than half' did; and 42% said that 'most' did.

⁵⁷ Question 10 asked advocates to express their views on 'the long term impact of bankruptcy'. It asked them to express their views in relation to the following statements: 'Clients who go bankrupt develop better financial management skills'; 'Clients who go bankrupt get relief from creditor harassment'; 'Clients who go bankrupt enjoy better health and wellbeing'; 'Clients who go bankrupt experience embarrassment, discrimination and social stigma'; and 'Clients who go bankrupt continue to experience financial hardship'.

⁵⁸ In response to the statement, 'Clients who go bankrupt get relief from creditor harassment', 54% strongly agreed, 38% agreed, 1% disagreed and 2% strongly disagreed. 5% selected 'unsure/don't know'.

though 33% said that they were unsure or did not know.⁵⁹ Most disagreed (41%) or strongly disagreed (4%) with the proposition that clients who go bankrupt ‘experience embarrassment, discrimination or social stigma’, though once again, a significant number (29%) said that they were unsure or did not know.⁶⁰ Advocates were more ambivalent about the effects of bankruptcy on their clients’ financial skills and long term situation. 24% agreed that clients who go bankrupt ‘develop better financial management skills’, but 30% disagreed and 36% said they did not know.⁶¹ Similarly, advocates expressed a range of views when asked if clients who go bankrupt ‘continue to experience financial hardship’. 42% agreed that clients who go bankrupt continue to experience financial hardship, while 21% disagreed and 31% said they were unsure or did not know.⁶²

In their extended responses, several advocates confirmed that bankruptcy has significant benefits for many of their clients. One said that ‘[g]enerally clients have better health and well-being due to the immediate financial crisis disappearing after bankruptcy.’ Another said:

I have had some feedback from clients who feel better following bankruptcy as it enables them to make a fresh start with their lives. They can be suffering physical or mental health issues due to their financial issues and these are resolved with bankruptcy.

Several advocates expressed the view that bankruptcy carries less social stigma than it used to, at least for younger clients. ‘Age and cultural beliefs appear to have an impact on mentality surrounding bankruptcy for some,’ one wrote. Another observed that while ‘older clients feel as though there is a stigma connected with going bankrupt... the younger clients tend to feel as if it allows them to have a fresh start and experience little embarrassment or stigma...’

At the same time, the advocates stressed that bankruptcy generally did not address the underlying causes of financial hardship, meaning that for many clients, it was not an adequate or permanent solution. Several explained that while bankruptcy relieved the immediate pressure of creditor harassment, it did not solve the problems of persistent low income and high living costs. They pointed out that clients on low incomes, particularly those reliant on Centrelink, could not escape from financial hardship by declaring bankruptcy. For these clients, one wrote, ‘financial hardship is a fact of life’. Another explained that while bankruptcy ‘improved’ matters for clients living on Centrelink, ‘their situation... is still grim’. One stated that ‘[t]he main problem for our clients is inadequate income, rather than

⁵⁹ In response to the statement, ‘Clients who go bankrupt enjoy better health and wellbeing’, 13% strongly agreed, 48% agreed, 4% disagreed and 1% strongly disagreed. 33% selected ‘unsure/don’t know’.

⁶⁰ In response to the statement, ‘Clients who go bankrupt experience embarrassment, discrimination or social stigma’, 3% strongly agreed, 23% agreed, 41% disagreed and 4% strongly disagreed. 29% selected ‘unsure/don’t know’.

⁶¹ In response to the statement, ‘Clients who go bankrupt develop better financial management skills’, 3% strongly agreed, 24% agreed, 30% disagreed and 8% strongly disagreed. 36% selected ‘unsure/don’t know’.

⁶² In response to the statement, ‘Clients who go bankrupt continue to experience financial hardship’, 2% strongly agreed, 42% agreed, 21% disagreed and 4% strongly disagreed. 31% selected ‘unsure/don’t know’.

poor financial management skills.’ Another stated bluntly that ‘[p]eople on Newstart⁶³ are still below the poverty line even if they go bankrupt.’

Advocates also pointed to family violence, mental and physical health issues and poor financial literacy as factors that perpetuated financial hardship after bankruptcy. One wrote:

[t]here are further, often unexplored, long term impacts [for] female debtors who [go] bankrupt because of family violence [or] economic abuse. It [bankruptcy] is a form of relieving the trauma and, in a way, let[s] the abusive ex-partner obtain an economic advantage.

Another wrote that bankruptcy ‘stops creditor harassment, however other factors such as inadequate income, poor mental health or lack of access to supports may persist.’ Several advocates attributed their clients’ ongoing financial problems to a lack of financial literacy. One noted that if clients don’t ‘identify the key reasons behind going bankrupt, they are very likely to follow the same or similar patterns of spending and borrowing which necessitated going bankrupt’ in the first place. In a similar vein, another observed that people who ‘elect to apply for bankruptcy without financial counselling are more likely to experience financial hardship in the future.’ Another said that ‘[s]ome clients view bankruptcy as a way of financial management to be considered more than once.’ The same advocate commented that ‘[s]ome clients do continue to experience financial hardship as they do not change behaviours.’ One advocate linked this to creditors’ lending practices, saying, ‘[s]ome clients go bankrupt more than once... due to the fact that companies allo[w] people to apply for credit cards very quickly after... be[ing] discharged from bankruptcy.’

These extended comments also provided some explanation for the relatively high number of ‘unsure’ or ‘don’t know responses’ recorded. Several advocates explained that they could not comment knowledgeably on their clients’ long term outcomes, because they rarely maintained long term contact with them. ‘We will see them for the duration of a case’, one wrote, ‘and will not necessarily query their experiences beyond those relevant to the case’.

2 Debt Agreements

While many advocates claimed little direct knowledge of debt agreements, they were generally far less positive about their impact on people in financial hardship.⁶⁴ They conceded that the debt agreements had some benefits, with the majority (52%) agreeing or strongly agreeing that clients who sign debt agreements ‘get relief from creditor harassment’.⁶⁵ Many (34%) rejected the proposition that signing a debt agreement causes clients to experience ‘embarrassment, discrimination or social stigma’, though a much greater

⁶³ See above n 30.

⁶⁴ Question 11 asked advocates to express their views on the ‘long term impact of debt agreements’. It asked them to express their views in relation to the following statements: ‘Clients who sign debt agreements develop better financial management skills’; ‘Clients who sign debt agreements get relief from creditor harassment’; ‘Clients who sign debt agreements enjoy better health and wellbeing’; ‘Clients who sign debt agreements experience embarrassment, discrimination and social stigma’; and ‘Clients who sign debt agreements continue to experience financial hardship’.

⁶⁵ In response to the statement, ‘Clients who sign debt agreements get relief from creditor harassment’, 3% strongly agreed, 49% agreed, 9% disagreed and 1% strongly disagreed. 37% selected ‘unsure/don’t know’.

number (58%) said they were unsure or did not know.⁶⁶ On the whole, however, advocates were unenthusiastic about debt agreements. Only 13% of advocates agreed or strongly agreed that debt agreements lead to improvements in a client's health and wellbeing, while 62% said that they were unsure or did not know.⁶⁷ Even fewer (12%) agreed with the statement that '[c]lients who sign debt agreements develop better financial management skills', with none strongly agreeing, and 45% saying that they did not know or were unsure.⁶⁸ The majority (51%) expressed the view that clients who sign debt agreements 'continue to experience financial hardship', though 41% said that they were unsure or did not know.⁶⁹

In their extended comments, several advocates elaborated on their view that debt agreements cause continuing financial hardship. They said that most debt agreements require clients to make regular repayments that they cannot afford. Several advocates said that they had seen clients who, after signing a debt agreement, found that they could not keep up with the repayments. One described having had 'several clients who went into debt agreements before seeking financial counselling and they still experience financial hardship due to the amount and period of time over which they need to pay.' Several advocates viewed this as an inherent feature of debt agreements, rather than a mere miscalculation on the part of individual clients. One stated that debt agreements resulted in 'continual hardship' for many clients, because 'the debt agreement administrator[s]... do not take in to account many factors of a person's financial world... such as growing children and... casual employment risks...' Several criticised the high administrative costs built in to most debt agreements. One said that '[t]he cost of some debt agreements can be and usually is... greater than the original debt'. They also pointed out the inflexibility of most repayment plans, which create intractable problems for clients who experience an unforeseen reduction in income. One advocate observed that 'some debt agreements... do not take into account interest rises or loss of wages due to health.' Another stated that 'if there is any change in circumstances within the family unit and it changes [for] the worse, people are not coping with the D[e]bt A[greement] and have to go bankrupt after all.'

Advocates also said that some debt agreement administrators adopt inappropriate sales techniques and fail to disclose all relevant information to potential clients. Several said they thought that debtors often entered into debt agreements without a proper understanding of the fees, terms and conditions and long term legal and financial consequences. One described seeing clients who signed debt agreements while being '[un]aware it's an act of bankruptcy'. Another said that 'client[s] who are contacted on the phone by Debt Administrators to "consolidate" their debts have no idea they are entering into a Debt

⁶⁶ In response to the statement, 'Clients who sign debt agreements experience embarrassment, discrimination or social stigma', 0% strongly agreed, 9% agreed, 31% disagreed and 2% strongly disagreed. 58% selected 'unsure/don't know'.

⁶⁷ In response to the statement, 'Clients who sign debt agreements enjoy better health and wellbeing', 1% strongly agreed, 12% agreed, 22% disagreed and 3% strongly disagreed. 62% selected 'unsure/don't know'.

⁶⁸ In response to the statement, 'Clients who sign debt agreements develop better financial management skills', 0% strongly agreed, 12% agreed, 30% disagreed and 12% strongly disagreed. 45% selected 'unsure/don't know'.

⁶⁹ In response to the statement, 'Clients who sign debt agreements continue to experience financial hardship', 14% strongly agreed, 37% agreed, 6% disagreed and 2% strongly disagreed. 41% selected 'unsure/don't know'.

Agreement until they sign the documents.’ Another said that debt agreements ‘are sold in a very misleading way’ and that ‘disclosure is poor’.

While generally critical of debt agreements, many advocates stressed that they had had little direct exposure to them and did not feel qualified to comment. Some said that debt agreements were not relevant to their clients, because they had no assets to protect and little or no capacity to make the necessary repayments. Another said, ‘I have not been encouraged in the workplace to organise debt agreements’.

H Advocates’ Advice

When asked about the circumstances in which they would advise clients to consider bankruptcy, a debt agreement, or a creditor’s financial hardship program,⁷⁰ a significant number of advocates said that they did not offer their clients ‘advice’. These advocates felt that financial counsellors’ assistance was best described as ‘providing options’ rather than giving advice or making recommendations. As one advocate stated, ‘I never recommend bankruptcy, I offer clients all available options... It is up to the client to weigh up the pros and cons and do what’s best for them.’ Another stated that financial counsellors ‘do not recommend any course of action to a client: we present them with a range of options and the foreseeable consequences and then support their choice(s)’. For the purposes of this report, the term ‘advice’ refers to this process of weighing up ‘pros and cons’, rather than a more prescriptive recommendation to adopt one course of action over others.

1 Bankruptcy

Advocates frequently referred to bankruptcy as a ‘last resort’, to be considered when ‘every other option is exhausted’. Advocates said that they would raise bankruptcy as an option when ‘all negotiation with creditors have fail[ed]’; when their client was ‘unemployed with no prospect of employment in the near future, no assets and no hope of making any payment plans that won’t fail’; or when clients were suffering extreme deprivation, to the point that going bankrupt meant the ‘difference between buying food [and] paying a credit card’ debt. Advocates frequently referred to clients’ health and wellbeing as important factors to consider when weighing up the ‘pros and cons’ of bankruptcy. One stated that ‘relieving... stress is a major factor when considering bankruptcy or not.’ Another said that ‘the option would be discussed at an early stage’ in the case of clients who were ‘suffering mental health issues because of... worry’. . One described clients who ‘are buying food on credit cards’ and whose ‘total pay goes to servicing loans and credit cards’, implying that such clients might consider bankruptcy as a viable option. Other advocates referred to the ‘adverse impact of creditor harassment’ as a factor that would make bankruptcy more appropriate.

⁷⁰ Question 12 was an open-ended question, asking advocates, ‘In what circumstances would you recommend bankruptcy as a solution to a client’s financial problems?’ Question 13 was also open-ended, and asked advocates, ‘In what circumstances would you recommend a debt agreement as a solution to a client’s financial problems?’ Question 14 followed the same format as the previous two questions, asking advocates about the circumstances in which they would recommend ‘a creditor’s financial hardship program as a solution to a client’s financial problems’.

Advocates also said that the financial situation of the individual client would determine whether or not bankruptcy was appropriate. The extent of a client's debts, relative to his or her income, was particularly important. One explained that bankruptcy might be relevant '[i]f a client has a debt total close to or more than the client would earn in a year, [f]or example \$20,000 and the client earns \$35,000 per year, because that amount of debt really starts to negatively affect a client[s] quality of life.' Another said that if the client 'does not have any assets and does not have [a] good income... and his total debts are more than \$106,000'⁷¹ then bankruptcy might be 'a good option'. Most advocates did not provide precise figures, but referred more generally to 'insurmountable debt and an inability to repay' it. Some advocates also said that they might raise bankruptcy with a client if there was a '[v]ery low possibility of long term changes to [the client's] financial position'. Several referred to a permanent change in the client's circumstances, such as the loss of a job or the breakdown of a relationship, as relevant in this context. Some described clients facing long term financial hardship, with little prospect of an increase in income, as potential candidates for bankruptcy: one described these clients as having 'nothing to lose from going bankrupt.' Some advocates said that reliance upon Centrelink benefits might make a client a more suitable candidate for bankruptcy.⁷² The consistent theme was that bankruptcy can be a valuable option when clients' debts are so large, or their incomes so small, that the only alternative is to enter into 'a payment plan for the rest of their life'.

2 Debt Agreements

While generally sceptical about the value of debt agreements, some advocates said that a debt agreement might be an option to consider if a client had significant assets or some other compelling reason to avoid bankruptcy. One advocate said that a debt agreement might 'possibly' be worthy of consideration, 'where there is an asset to protect, and income may increase in the medium term', though 'the option of selling an asset to reduce long term liability is [generally] preferable'. Some said that a debt agreement might be appropriate if bankruptcy 'would put [a client's] current or prospective employment at risk.' One said that a debt agreement might be relevant '[o]nly if bankruptcy affected a licence' such as a 'building' or 'trade' licence. Advocates mentioned some other factors that might make a debt agreement worthy of consideration, including a client's wish to avoid the 'stigma of bankruptcy', the client's insight into the causes of previous financial problems, and his or her plans for the future. One said that a debt agreement might be suitable 'when the client has few assets but may want to borrow money in the future, and seems to have understood what caused their current situation and be able to manage so that it does not happen again.'

Many advocates explained that debt agreements were not suitable to their clients as 'most... don't have [the] financial capacity to enter into these types of arrangements.' 'From

⁷¹ Debtors are ineligible to propose a debt agreement if their unsecured debts exceed a certain limit, currently indexed at \$107,307.20. *Bankruptcy Act 1966* (Cth) s 185C(4)(b) and (c), (5). See also Australian Financial Security Authority (AFSA), *Indexed Amounts* (22 July 2015) <<https://www.afsa.gov.au/resources/indexed-amounts/indexed-amounts#Part%20IX%20debt%20agreement%20eligibility>>.

⁷² Of the 130 advocates who responded to this question, 13 specifically referred to receipt of Centrelink benefits, particularly the aged pension or 'the D[isability]S[upport]P[ension]', as a factor that may make bankruptcy a suitable option. Others referred to clients with 'no prospect of paid employment in the near future' or 'persons who are long term unemployed' as people for whom bankruptcy might be appropriate.

experience,’ one said, ‘I have never recommended [debt agreements] as the clients I have seen will not be able to sustain the payments and... the fees... going into the agreement.’ Several advocates said that they would not recommend a debt agreement to any client, in any circumstances, because they viewed debt agreements as inherently undesirable. They gave various reasons, many focussing on the fees associated with debt agreements. One said:

I have been a consumer casework[er] for 15 years and I have never recommended a debt agreement. The administrators are likely to mislead clients who are referred. The cost often causes problems for the client. The client is usually better off accessing financial hardship or if things are dire considering bankruptcy.

Another said that

[d]ebt agreements are among the options offered but I am not a fan of incurring another debt in an effort to pay debts. My largest contact with debt agreements is with clients who have failed agreements.

Another said:

I have a lot of concerns that consumers entering part 9 debt agreements do not understand all the consequences of the agreement, and what other free and readily accessible options such as hardship and financial counselling may be available. In some cases, consumers may also have a valid dispute about whether they owe a debt or how much they owe, such [as] where there has been breaches of the creditors responsible lending obligations.

In making these observations, several advocates stressed that they had little direct experience regarding the practical effects of debt agreements.

3 Creditors’ Hardship Programs

Several advocates described creditor hardship programs as their ‘preferred’ option or ‘first port of call’ for all clients. One advocate wrote that this option should be considered ‘in almost all circumstances – the hardship programs are set up to help clients who are struggling.’ Advocates often went on to describe this option as a useful ‘stop gap to allow [the client] to consider the next step’. One said that requesting this assistance is ‘a good starting point’ as the client ‘can always change and go bankrupt later’. One solicitor explained that ‘[e]ven if hardship may be long term, short term hardship [programs] can give a person time to think through their options, see a financial counsellor and make a considered choice’. Similarly, another stated that hardship programs ‘can be tried before more permanent solutions may be required.’ Many advocates stated that financial hardship programs are most beneficial to clients whose financial problems are temporary and whose situations may improve ‘in the near future’. They cited ill health and unemployment as factors that might cause temporary financial hardship of this kind.⁷³

⁷³ Other advocates said that the usefulness of hardship programs depended on the nature of the client’s creditors. One expressed the view that these programs were most useful in relation to utilities bills, as these do not incur interest. Another said that these programs were useful ‘[w]here the creditor: has a dedicated hardship team; does not coerce clients into unsustainable ‘credit’ repayments; works with the client to gain an understanding of the history of the creditor’s prior provision of extended credit and credit management; works with the client to

I General Comments

In their general comments at the conclusion of the survey,⁷⁴ several advocates described bankruptcy as having an important and positive role to play in the lives of people experiencing severe financial hardship:

Bankruptcy certainly provided a way forward for those who have debts they can't overcome. The people I deal with find having debt they can't pay distressing. They want to pay their way but at time life issues overtake them and they can no longer manage the debt.

In my view bankruptcy is prime social welfare legislation. It resolves the debt and the cost is born by those who caused the problem by providing excessive credit.

They also reiterated their concerns regarding the impact of debt agreements on vulnerable clients:

My clients come with Debt Agreements that are clearly unaffordable [and] [o]ften based on unstable short term jobs. I have complained to AFSA. No action taken. These DAs cause my clients significant extra, unnecessary hardship before they finally go bankrupt.

[T]oo many people are caught by debt fix companies putting them into... arrangements which do not suit their situation[.]

Part IX debt agreements continue to be a cause of significant consumer detriment. I am repeatedly told by clients that they were misled about the [Debt Agreement]. Consumers really need to see a financial counsellor before a DA is considered as it is often not the best option to do a DA.

Some indicated that, in light of these concerns, they regarded bankruptcy as preferable to debt agreements, for people with significant liabilities. As one advocate explained:

Sometimes clients enter into a debt agreement with a commercial debt company that is not in their best interests financially and they are worse off because they did not get independent financial counselling beforehand. Some experience significant detriment to [their] overall financial situation and would have been better off going bankrupt[.]

At the same time, several advocates stressed that bankruptcy was not a perfect solution to financial hardship. Some suggested that clients might turn to bankruptcy as a solution when there were deeper, more intractable problems underlying their financial hardship. Several cited creditors' hardship programs and debt waiver as 'far better option[s]' than either debt agreements or bankruptcy.

IV ANALYSIS AND SCOPE FOR FURTHER RESEARCH

The survey reveals that financial counsellors and community solicitors regard bankruptcy as a valuable option for people in financial crisis, while viewing debt agreements with a great deal of scepticism. The advocates were consistently critical of debt agreements,

establish a supportive plan to address the needs and debt of the client; [and] establish[es] sustainable repayments that are within the capacity of the client's financial situation.'

⁷⁴ Question 15 asked, 'Do you have any other comments?'

pointing out that they impose unrealistic payment plans, involve high fees and are insufficiently flexible. Advocates expressed the view that people who sign debt agreements often do so in response to aggressive marketing by debt agreement administrators, without understanding the legal and financial implications of their actions.⁷⁵ In stark contrast, advocates were moderately positive about bankruptcy as a ‘last resort’ option. By putting an immediate stop to creditor harassment, they observed, bankruptcy often brings about an improvement in clients’ health and wellbeing. It also offers clients the chance to make a ‘fresh start’ financially, by permanently releasing them from unmanageable debts.⁷⁶

At the same time, the survey suggests that this ‘fresh start’ often proves to be illusory for many debtors suffering persistent, entrenched disadvantage. Many advocates surveyed did not view bankruptcy as a permanent, constructive solution to their clients’ problems. They pointed out that bankruptcy fails to address the underlying causes of financial hardship, particularly for clients who rely on Centrelink as their main source of income. For many of these clients, acute financial hardship is a permanent, inevitable ‘fact of life’.⁷⁷ The advocates also cited mental illness, family violence and poor financial literacy as factors that can lead to serious, ongoing financial problems. They suggested that for people experiencing these problems, bankruptcy does not alleviate financial hardship and may even increase clients’ ‘trauma’ and social exclusion.

These findings raise serious questions as to whether or not bankruptcy offers material benefits for people on very low incomes and people suffering from other serious forms of social disadvantage. Bankruptcy has profound legal consequences, including long term implications for an individual’s credit record. Given the increasing importance of a clear credit record, not only to borrow but to access many essential services,⁷⁸ it is possible that, at least for some of these debtors, the long term negative consequences of bankruptcy may outweigh the short term benefits. Further research in this area could explore ways in which advocates, in collaboration with the regulator, AFSA,⁷⁹ might seek to divert low-income and otherwise vulnerable debtors from the bankruptcy system.

⁷⁵ Since respondents claimed little direct knowledge of debt agreements, and expressed a high degree of uncertainty regarding their impact on debtors, it is not appropriate to draw conclusions or make detailed recommendations regarding debt agreements, based solely on the results of this survey. Still, these findings corroborate concerns expressed elsewhere by other advocates and academic scholars, regarding the problematic aspects of debt agreements and the conduct of some debt agreement administrators. See Consumer Credit Legal Service Inc and Eastern Access Community Health, *Debt Agreements: Remedy or Racket?* (Research Report, November 2005); Consumer Action Law Centre, *Fresh Start or False Hope? A Look at the Website Advertising Claims of Debt Agreement Administrators* (Research Report, April 2013). Viewed in this wider context, the advocates’ concerns (as well as their acknowledged lack of expertise in this area) underscore the need for further empirical research on the role and impact of debt agreements in Australia’s personal insolvency system: see Ramsay and Sim, ‘Debt Agreements’, above n 3, 200-1.

⁷⁶ Howells, above n 9.

⁷⁷ For a discussion of the widening gap between living costs and social security payments, see Richard Denniss and David Baker, ‘Are Unemployment Benefits Adequate in Australia?’ (Policy Brief No 39, Australia Institute, April 2012) 1-3.

⁷⁸ Waters, above n 12, 19.

⁷⁹ Australia’s personal insolvency laws are administered by the Australian Financial Security Authority (AFSA).

V CONCLUSION

This survey asked a large group of professional consumer advocates to express their views on Australia's personal insolvency system and its practical impact on the lives of people in financial distress. It demonstrated that, for many such people, bankruptcy offers tangible benefits, including relief from debtor harassment and immediate improvements in health and wellbeing. In this sense, it drew a sharp distinction between bankruptcy and debt agreements, which advocates regarded as likely to entrench rather than alleviate their clients' financial problems. At the same time, the survey revealed that many advocates view bankruptcy as an inadequate response to the underlying causes of financial hardship. These causes, which can include mental illness, domestic violence, poor financial literacy and most frequently, inadequate income, often persist after bankruptcy, meaning that for many bankrupts, the promise of a 'fresh start' turns out to be illusory. This survey points to the potential for further research on ways in which personal insolvency laws might be better adapted to the needs and long term interests of people in financial distress. It also suggests that there is a nexus between personal insolvency, the social security system and entrenched poverty in Australia. This also invites further research, public discussion and a broader public policy response.