

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.

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.

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.

*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**'.*

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.

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.

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; 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 issued¹.
5. Debt waiver processes should be promoted for debtors who:
 - Receive a Centrelink income support payment as their only income

¹ 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).

- 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 debt².

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 entered³. 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).
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 instalments⁴.

² See, for example, The Bulk Debt Project, <<https://www.bulkdebt.org/Public/HomePage.aspx>>.

³ It should be noted that the Magistrates' Court has taken 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).

⁴ 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 to negotiate interest and legal fees that may be claimed by the creditor.