

CONSUMER ACTION

Consumer debt-related legal problems

LOUIS SCHETZER reports on the Victorian inquiry

In 2006, the Victorian Attorney-General authorised the Department of Justice to undertake detailed research into the legal needs of people facing civil consumer debt problems in Victoria. The aims of the research were to:

- examine the nature of debt-related legal problems which proceed by way of default judgment in the Magistrates' Court;
- examine the extent to which people who experience such problems seek advice/assistance; assess whether there are any gaps in the provision of debt advice in Victoria, and how such gaps might be addressed; and assess whether access to debt advice prevents matters escalating or facilitates early resolution of debt-related problems.

The resulting report, *Courting Debt*, though completed in July 2008, was recently publicly released by the Victorian government. The report represents the first published research in Victoria into the advice-seeking behaviour of people who experience consumer debt-related legal problems and have legal proceedings initiated against them.

Debt-related legal problems resulting in default judgment

An analysis of data from the Magistrates' Court of Victoria indicated that civil consumer debt matters make up a significant majority of all civil matters finalised in Victorian Magistrates' Courts. Of the 50 869 civil complaints finalised in the Magistrates' Court in 2005–06, 61 per cent were for civil consumer debt matters. Of these, the overwhelming majority (84 per cent) was for claims of less than \$10 000, with almost a quarter for claims of less than \$1000. Ninety-eight per cent of matters under \$10 000 were finalised by way of default judgment.

The majority of default judgments for civil consumer debt matters of less than \$10 000 were for debts, monies due and local government rates/charges. For matters over \$10 000, there were significantly proportionally more matters involving breach of contract/agreement (42 per cent of matters over \$10 000, compared to only 13 per cent of matters under \$10 000).

For civil consumer debt matters under \$10 000 finalised by way of default judgment, local councils were one of the most common plaintiff creditors, accounting for 21 per cent of all default judgments for matters under \$10 000. Debt collection agents were the second most common type of creditor plaintiffs amongst default judgment creditor plaintiffs for matters under \$10 000. Banks and financial institutions also

accounted for significant numbers of default judgment civil consumer debt matters under \$10 000.

The increasing reliance on debt collection agents for debt recovery raises issues concerning the manner in which debt collection agents pursue outstanding debts. Several of the 90 financial counsellor clients interviewed as part of this project reported intrusive and invasive behaviour on the part of debt collection agents.

Do people with debt-related legal problems seek advice/assistance?

Over two-thirds of 450 participants in a telephone survey of Magistrates' Court consumer default debtors said that they did not seek any advice/assistance for their debt-related matter. The high proportion of participants who indicated that they did not seek any advice or assistance is consistent with general legal needs studies previously conducted in Australia, New Zealand and the UK.

The responses from participants suggested that the greater the value of the debt, the more likely a person will seek some form of advice or assistance to resolve their problem. In addition, where the participant believed that there might have been some reason that they should not have had to pay the debt, there was a stronger likelihood that that participant would seek advice/assistance.

The research found that the most common reasons for not seeking advice/assistance were:

- lack of trust or a belief that they had to deal with it themselves;
- did not think that the debt was owed;
- lack of awareness of how to access advice/assistance;
- feelings of shame, guilt, embarrassment or stress.

Gaps in the provision of debt advice in Victoria

Of the 146 participants in the telephone survey who sought assistance for their debt-related problem, 58 per cent accessed only one source of assistance. The organisations approached for assistance which were considered useful were private lawyers, financial counsellors, legal aid services, government bodies and friends/relatives. However, for a significant number of survey participants who sought assistance for their debt matters, the first source of assistance accessed was not the most useful. This suggests that more could be done in terms of increasing awareness of those services identified as useful.

A high proportion of survey participants indicated that they preferred to receive face-to-face advice/assistance, rather than telephone or internet-based assistance. The most commonly identified difficulties in accessing assistance included:

- difficulty getting an appointment;
- telephone engaged/left on hold for too long;
- difficulty affording assistance/costs involved;
- source couldn't help/refused to help/referred on.

The research indicated that demand for assistance services places considerable stress on their availability, causing delays or difficulties in arranging consultation appointments. For those participants who sought assistance from a private legal practitioner, the most commonly identified problem in accessing assistance was cost.

The research strongly suggests that the preferred method of seeking advice/assistance (ie face-to-face assistance) is often difficult to access for people who are socially and economically disadvantaged. The problems identified most commonly related to the capacity of those agencies which were unable to provide services at the level demanded. The difficulty in accessing legal sources of assistance (ie private barristers/solicitors, legal aid organisations) is significant because many people experiencing civil consumer debt problems may believe that there are reasons why they should not have to pay the debt. This indicates a need for legal advice or assistance to ascertain whether or not the debt could be contested. Improved access to free legal advice services for the resolution of debt-related legal problems would further facilitate access to appropriate resolution of debt-related problems.

Participants in the interviews with clients of financial counsellors indicated that they were most commonly referred to financial counsellors after accessing other assistance services, or received referrals through their own personal networks and general knowledge. This suggests that most participants were not proactive in attempting to find out about financial counselling services which could assist them, but benefited by referrals. Responses from telephone survey participants also emphasised the importance and reliance on individuals' personal contacts and networks.

Does access to debt advice assist the resolution of debt-related problems?

The research indicated several benefits of early access to debt advice/assistance for people facing debt-related legal problems. These included prevention of debt recovery action or the escalation into formal court proceedings. Information provided by banks and financial institutions indicated that overdue accounts referred to an institution's hardship program were much less likely to be subsequently referred to a debt collection agent for recovery action. Many responses from clients of financial counsellors exemplified the important role played by financial counsellors when negotiating with creditors and securing access to utility or financial institution hardship schemes.

Seeking timely assistance also facilitates a more satisfying manner of resolution of debt-related problems for debtors. The research indicated that assistance which facilitates negotiated instalment plans and payment arrangements provide more favourable outcomes for people with debt-related legal problems than are achieved without assistance. Moreover, where research participants stated that they had resolved matters themselves, they often indicated that they felt they had very limited options, including bankruptcy, selling possessions and property, accepting whatever arrangements were

put to them by creditors, applying for additional credit, or seeking help from friends or family.

Similarly, the research indicated that where there are delays in seeking assistance, the options for satisfactory resolution become much more limited, with debts often having been assigned to debt collection agents who were less willing to entertain hardship applications, or instalment arrangements. This suggests that the ability to access advice or assistance in a timely manner can have a significant effect in preventing formal recovery action or legal proceedings. This would reduce the demand on court-based methods of dispute resolution for debt matters, as well as reducing the costs, stress and anxiety on debtors. Several clients of financial counsellors, who indicated that their matters had been ongoing for sometime, expressed a belief that had they sought assistance earlier, things may have been resolved in a more satisfactory way.

Research participants considered financial counsellors extremely useful in several other ways, including:

- helping to be taken seriously by creditors;
- providing assistance in negotiating a complex system;
- alleviating stress and anxiety;
- providing emotional support, hope and empowerment.

Addressing the legal needs of people experiencing consumer debt

The report canvasses a number of strategies aimed at encouraging debtors to seek advice and assistance at an early stage, and to facilitate contact between debtors and creditors. The report details some specific policy options to encourage individual civil consumer debtors to directly engage with their creditors in order to facilitate negotiated settlements:

- mandatory pre-action procedures requiring the creditor to attempt to contact the debtor to negotiate an appropriate settlement or repayment arrangement;
- model litigant guidelines for local government, for civil litigation;
- mandatory hardship schemes for all local councils;
- making civil complaints more informative and understandable to defendant debtors, and including information to encourage defendants to engage with creditors or access advice/assistance services;
- increased promotion of debt advice/assistance services;
- greater provision of information by creditors regarding how to access debt assistance services and hardship schemes.

The report recognised the vital importance of improving access to debt assistance services, including legal and financial counselling services. Specifically, the report recognised that increased demand creates a pressing need for increased resources for these services.

The report, *Courting Debt — The legal needs of people facing civil consumer debt problems*, is available online on the Victorian Department of Justice website: <justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Consumer+Protection/Credit+and+Debt/JUSTICE+-+Courting+Debt>

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