

RESEARCH REPORT

**TRENDS IN PERSONAL INSOLVENCY
IN AUSTRALIA**

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CONTENTS

1. Executive Summary	9
1.1. Key findings	9
1.2. Further findings	13
2. Introduction	27
2.1. Aims	27
2.2. Methodology	27
3. Personal insolvency law	29
3.1. Bankruptcy (Part IV and Part XI)	29
3.2. Debt agreements (Part IX)	33
3.3. Part X arrangements	35
4. Rising personal insolvency numbers	39
4.1. Personal insolvencies	39
4.2. Bankruptcies	41
4.3. Debt agreements	41
4.4. Part X arrangements	42
4.5. Relative proportions of form of personal insolvency	43
4.6. Repeat bankruptcies	44
5. Personal insolvency by state/territory	46
5.1. Bankruptcies	46
5.2. Debt agreements	49
5.3. Part X arrangements	51
6. Business and non-business related personal insolvencies	54
6.1. Bankruptcies	54
6.2. Debt agreements	56
6.3. Part X arrangements	57

7. Causes of personal insolvency	59
7.1. Business related	59
7.2. Non-business related	64
8. Changes in the characteristics of Australian personal insolvents between 1997 and 2008	71
8.1. Gender	71
8.2. Age	76
8.2.1. Age of personal insolvents	76
8.2.2. Age linked to cause of personal insolvency	82
8.3. Family situation	92
8.4. Occupation	96
8.5. Employment status	104
8.6. Personal income	107
8.7. Household income	112
8.8. Debt levels	116
8.9. Assets	120
8.10. Property ownership	122
8.11. Creditors of personal insolvents	124
9. General observations	130
9.1. Increase in number of personal insolvencies	130
9.2. Stigma as a factor in personal insolvency	136
9.3. Personal insolvency as a growing middle class phenomenon	138
10. Appendix	143
10.1. List of figures	143
10.2. List of tables	149

1. EXECUTIVE SUMMARY

In this study we identify recent changes in the characteristics of personal insolvents in Australia. By personal insolvency, we mean bankruptcy, debt agreements and personal insolvency agreements under the *Bankruptcy Act 1966* (Cth). Further details of these types of personal insolvency are contained in section 3 of the report. We examine data on the number of personal insolvencies for the period 1990 to 2008 and on the characteristics of personal insolvents for the period 1997 to 2008. We find evidence of significant changes in the characteristics of personal insolvents, which take place during a time of significantly rising personal insolvency numbers.

In this section we set out an executive summary of our report. Firstly, we highlight our key findings. Secondly, we detail our most significant further findings. In the Executive Summary we exclude most information about Part X arrangements because of their small numbers. The report contains information about these arrangements.

1.1 KEY FINDINGS

1.1.1 Increase in number of personal insolvencies

- We observed a 261% increase in the number of personal insolvencies in Australia between 1990 and 2008, compared to a 24% increase in the Australian population during that period.
 - In 1990, there were 9113 personal insolvencies, which consisted of 8552 bankruptcies and 561 Part X arrangements.
 - In 2008, there were 32865 personal insolvencies, which consisted of 25970 bankruptcies, 6618 debt agreements, and 277 Part X arrangements.
- In 2008, 0.15% of the Australian population was in personal insolvency, compared to 0.13% in 2000 and 0.05% in 1990.
- The rise took place over periods including economic expansion and low interest rates (as well as the converse), which indicates that the rise in personal insolvencies is not attributable solely to prevailing economic conditions in the relevant period.

1.1.2 Reasons for the increase in the number of personal insolvencies

We suggest the most significant factors behind the increase in the number of personal insolvencies were the following:

- Increase in the number of non-business related bankruptcies and debt agreements.
 - In 1991, 4203 bankruptcies were business related (32.11%), and 8888 bankruptcies were non-business related (67.89%). In 2008, 4590 bankruptcies were business related (17.67%), and 21380 bankruptcies were non-business related (82.34%).
 - In 2008, only 3.29% of debt agreements were business related, compared to 10.53% in 2003.
- Increase in the number of bankruptcies in NSW between 1997 and 2008.
 - There was a 49% increase in the proportion of bankruptcies in NSW between 1997 and 2008. In 1997, NSW contained 33.90% of the population and 25.71% of bankruptcies. In 2008, NSW contained 32.60% of the population and 38.25% of bankruptcies.
- Increase in the number of non-business related bankruptcies and debt agreements caused by excessive use of credit, ill health, or gambling or speculation.
 - In 1997, excessive use of credit caused 13.36% of non-business related bankruptcies, compared to 27.55% in 2008. In 2002, excessive use of credit caused 32.84% of non-business related debt agreements, compared to 39.41% in 2008.
 - In 1997, ill health caused 7.43% of non-business related bankruptcies, compared to 11.78% in 2008. In 2002, ill health caused 4.27% of non-business related debt agreements, compared to 7.51% in 2008.
 - In 1997, gambling or speculation caused 1.30% of non-business related bankruptcies, compared to 4.28% in 2008. In 2002, gambling or speculation caused 0.83% of non-business related debt agreements, compared to 1.42% in 2008.

1.1.3 Changing characteristics of personal insolvents

We observed the following important changes in the characteristics of personal insolvents.

- Increase in the number of bankrupts with dependants.
 - In 2005, 35% of bankrupts had dependants, compared to 49% in 2007.
- Increase in the number of bankrupts aged 45 or older.
 - The average age of bankrupts increased between 1997 and 2008. In 1997, there were 22691 bankrupts, of which 5957 were aged 45 or older (26.25%). In 2008, there were 26137 bankrupts, of which 11759 were aged 45 or older (44.99%).
 - There are three main causes for the increase in the number of bankrupts aged 45 or older.
 - In 1997, excessive use of credit caused 21.83% of non-business related bankruptcies for those aged 45 or older, compared to 55.91% in 2008.
 - In 1997, ill health caused 23.40% of non-business related bankruptcies for those aged 45 or older, compared to 31.76% in 2008.
 - In 1997, gambling or speculation caused 2.81% of non-business related bankruptcies for those aged 45 or older, compared to 8.69% in 2008.
- Increase in the number of insolvents who are managers and administrators, professionals, and associate professionals.
 - In 1999, there were 26045 bankrupts, of which 2937 came from these occupational groups (11.28%). In 2008, there were 26137 bankrupts, of which 10747 came from these occupational groups (27.34%). There were only 92 more bankrupts in 2008 than in 1999, however there were 7810 more bankrupts from these occupational groups in 2008 than in 1999.
 - In 2002, there were 4056 debt agreement debtors, of which 606 came from these occupational groups (14.94%). In 2008, there were 6620 debt agreement debtors, of which 1459 came from these occupational groups (27.19%). There were 2564 more debt agreement debtors in 2008 than in 2002, however there were 853 more debt agreement debtors from these occupational groups in 2008 than in 2002.

- Increase in the number of employed insolvents.
 - Between 1997 and 2007, there was a 70% increase in the employment rate of bankrupts and a 46% increase in the employment rate of debt agreement debtors.
 - In 1997, 33% of bankrupts were employed, compared to 56% in 2007. In 1997, 63% of debt agreement debtors were employed, compared to 92% in 2007.
 - In 1997, 77% of Part X debtors were employed, compared to 80% in 2007.

- Increase in the number of insolvents with higher levels of personal income and household income.
 - In 1997, 37% of bankrupts had personal income less than \$10,000, and 13% had personal income of \$30,000 or more. In 2007, 15% of bankrupts had personal income less than \$10,000, and 38% had personal income of \$30,000 or more.
 - In 2002, 28% of bankrupts had household income of \$30,000 or more, compared to 49% in 2007.
 - In 1997, 85% of debt agreement debtors had personal income less than \$30,000, and 15% had personal income of \$30,000 or more. In 2007, 31% of debt agreement debtors expected personal income less than \$30,000, and 69% expected personal income of \$30,000 or more.
 - In 2002, 55% of debt agreement debtors had household income of \$30,000 or more, compared to 73% in 2007.

- Increase in the level of insolvents' unsecured debt
 - In 1997, 62% of bankrupts had unsecured debt less than \$20,000, compared to 33% in 2007. In 1997, 16% of bankrupts had unsecured debt of \$50,000 or more, compared to 35% in 2007.
 - In 1997, 55% of debt agreement debtors had unsecured debt less than \$20,000, compared to 35% in 2007. In 1997, 45% of debt agreement debtors had unsecured debt of \$20,000 or more, compared to 65% in 2007.

1.1.4 Personal insolvency as a growing middle class phenomenon

- There is strong evidence that personal insolvency in Australia is becoming more of a middle class phenomenon. Personal insolvents are increasingly coming from higher status occupations; have increasing levels of personal income and household income; and have increasing asset and property ownership levels. Our findings on the characteristics of personal insolvents should have an impact on common perceptions surrounding personal insolvency and unpack many assumptions informing stereotypical images of personal insolvents (for example, that bankrupts tend to be students or unemployed).
- Personal insolvents are spread across many areas of society.

1.2 FURTHER FINDINGS

1.2.1 Rising personal insolvency numbers

- Between 1990 and 2008 there was a 261% increase in the total number of personal insolvencies in Australia.
 - In 1990, there were 9113 personal insolvencies, which consisted of 8552 bankruptcies and 561 Part X arrangements.
 - In 2008, there were 32865 personal insolvencies, which consisted of 25970 bankruptcies, 6618 debt agreements, and 277 Part X arrangements.
- Between 1997 and 2008, the proportion of bankruptcies as a proportion of total personal insolvencies decreased.
 - In 1997 there were 21830 bankruptcies, representing 97.52% of personal insolvencies.
 - In 2008 there were 25970 bankruptcies, representing 79.02% of personal insolvencies.
- The decrease in the proportion of bankruptcies as a proportion of total personal insolvencies coincided with an increase in the number of debt agreements following their introduction on 16 December 1996.
 - In 1997, there were 48 debt agreements, representing 0.21% of personal insolvencies.
 - In 2008, there were 6618 debt agreements, representing 20.14% of personal insolvencies.

- Between 1997 and 2008 there was a decrease in the number of Part X arrangements.
 - In 1997, there were 507 Part X arrangements, representing 6.16% of personal insolvencies.
 - In 2008, there were 277 Part X arrangements, representing 0.84% of personal insolvencies.
- Since 2005 the proportions of the three forms of personal insolvency have remained stable.
 - In 2005, 20501 (80.57%) of personal insolvencies were bankruptcies, 4738 (18.62%) were debt agreements, and 207 (0.81%) were Part X arrangements. In 2008, 25970 (79.02%) of personal insolvencies were bankruptcies, 6618 (20.14%) were debt agreements, and 277 (0.84%) were Part X arrangements.
- The significant rise in the number of bankruptcies is not explicable on the basis that it is the same people who are becoming bankrupt.
 - In 1997, 8% of bankrupts had been previously bankrupt. In 2007, 12% of bankrupts had been previously bankrupt.
 - The proportion of bankrupts who have had three or more bankruptcies is low. In 2007, 87% of bankrupts entered into their first bankruptcy, 12% entered into their second bankruptcy, and only 1% entered into their third or greater number of bankruptcies.

1.2.2 Personal insolvency by state/territory

- There were disproportionate proportions of personal insolvencies across the states and territories in comparison to their proportions of the population.

Bankruptcies

- In 2008, NSW contained the highest proportion of bankruptcies (38.25%), followed by Victoria (22.04%), Queensland (21.98%), SA (8.01%), WA (5.51%), Tasmania (2.90%), the ACT (0.82%), and the NT (0.48%).
- In 2008, NSW, Queensland, SA and Tasmania had an overrepresentation in bankruptcies in comparison with their proportion of the Australian population.

- In 2008, the ACT, the NT, Victoria and WA had an underrepresentation in bankruptcies in comparison with their proportion of the Australian population.

Debt Agreements

- In 2008, NSW contained the highest proportion of debt agreements (33.39%), followed by Victoria (28.36%), Queensland (24.89%), WA (5.73%), SA (3.35%), Tasmania (2.10%), the ACT (1.25%), and the NT (0.92%).
- In 2008, NSW, Queensland and Victoria all had a disproportionate number of debt agreements in comparison with their proportions of the population.

1.2.3 Business and non-business related personal insolvencies

Bankruptcies

- The rise in bankruptcy numbers between 1991 and 2008 is attributable in part to an increase in the proportion of non-business related bankruptcies.
 - In 1991, 32.11% of bankruptcies were business related and 67.89% were non-business related.
 - In 2008, 17.67% of bankruptcies were business related, and 82.34% were non-business related.
- In 2008, as a proportion of bankruptcies in each state and territory, Victoria had the highest proportion of business related bankruptcies (24.49%), followed by Queensland (24.33%), the NT (17.6%), NSW (12.70%), WA (11.88%), Tasmania (11.70%), the ACT (11.68%), and SA (10.62%).
- In 2008, as a proportion of bankruptcies in each state and territory, SA had the highest proportion of non-business related bankruptcies (89.38%), followed by the ACT (88.32%), Tasmania (88.30%), WA (88.12%), NSW (87.30%), the NT (82.40%), Queensland (75.67%), and Victoria (75.51%).

Debt agreements

- Between 2003 and 2008, the proportion of non-business related debt agreements increased.
 - In 2003, 10.53% of debt agreements were business related and 89.47% were non-business related.

- In 2008, 3.29% of debt agreements were business related and 96.71% were non-business related.

1.2.4 Causes of personal insolvency

Business related

Bankruptcies

- Economic conditions caused the most business related bankruptcies between 2001 (33.78%) and 2008 (29.59%).
- There was an increase in business related bankruptcies caused by excessive drawings between 2000 (5.67%) and 2008 (10.27%).
- There was a decrease in business related bankruptcies caused by lack of capital between 2000 (15.61%) and 2008 (7.75%).
- Queensland, a state which tended to have a higher proportion of business related bankruptcies between 2000 and 2008, tended to have a larger proportion of business related bankruptcies caused by personal reasons including ill health compared to most other states and territories.
- NSW, a state which tended to have a lower proportion of business related bankruptcies between 2000 and 2008, tended to have a lower proportion of business related bankruptcies caused by personal reasons including ill health compared to most other states and territories.

Debt agreements

- There were significant increases in several causes of business related debt agreements between 2002 and 2008.
 - In 2002, 4.22% of business related debt agreements were caused by lack of business ability, compared to 8.72% in 2008.
 - In 2002, 0.75% of business related debt agreements were caused by excessive drawings, compared to 17.43% in 2008.
 - In 2002, 5.87% of business related debt agreements were caused by lack of capital, compared to 12.39% in 2008.
 - In 2002, 1.05% of business related debt agreements were caused by excessive interest, compared to 9.17% in 2008.

- There were significant decreases in two causes of business related debt agreements between 2002 and 2008.
 - In 2002, 35.09% of business related debt agreements were caused by personal reasons including ill health, compared to 18.35% in 2008.
 - In 2002, 3.46% of business related debt agreements were caused by gambling or speculation, compared to 0.46% in 2008.

Non-business related

Bankruptcies

- The proportion of non-business related bankruptcies caused by unemployment decreased, but remained the largest cause between 1997 (38.88%) and 2008 (31.17%).
 - This decrease occurred in all states and territories.
- There were significant increases in the proportions of three causes of non-business related bankruptcies between 1997 and 2008.
 - In 1997, excessive use of credit caused 2223 (13.36%) non-business related bankruptcies, compared to 5922 (27.55%) in 2008. An increase occurred in all states and territories (excluding the ACT).
 - In 1997, ill health caused 1237 (7.43%) non-business related bankruptcies, compared to 2531 (11.78%) in 2008.
 - In 1997, gambling or speculation caused 217 (1.30%) non-business related bankruptcies, compared to 921 (4.28%) in 2008. This represents a 229% increase.

Debt agreements

- There was no single largest cause of non-business related debt agreements in each year between 2002 and 2008.
- Unemployment and excessive use of credit caused the greatest proportion of non-business related debt agreements between 2002 and 2008.
 - The proportion caused by unemployment decreased between 2002 (39.50%) and 2008 (35.58%).
 - The proportion caused by excessive use of credit increased between 2002 (32.84%) and 2008 (39.41%).

1.2.5 Changes in the characteristics of Australian personal insolvents between 1997 and 2008

1.2.5.1 Gender

Bankrupts

- The proportions of male and female bankrupts remained stable between 2001 and 2008 and were similar to the proportions in 1997.
- During this period, the highest proportion of males (57.72%) and the lowest proportion of females (42.28%) were in 2007. The lowest proportion of males (54.62%) and the highest proportion of females (45.38%) were in 2003.

Debt Agreement Debtors

- Between 1997 and 2008, the proportion of female debt agreement debtors increased.
 - In 1997, 39% were female, compared to 48.69% in 2008.

1.2.5.2 Age

Bankrupts

- The average age of bankrupts increased between 1997 and 2008.
 - The proportion of bankrupts aged less than 25 decreased between 1997 (12.06%) and 2008 (7.41%).
 - The proportion of bankrupts aged between 25 and 34 decreased between 1997 (34.41%) and 2008 (20.11%).
 - The proportion of bankrupts aged 45 to 54 increased between 1997 (16.45%) and 2008 (23.05%).
 - The proportion of bankrupts aged 54 or older increased between 1997 (9.80%) and 2008 (21.94%).
 - In 1997, 46.48% of bankrupts were aged 34 or less and 26.25% were aged 45 years or more. In 2008, the situation was almost inverted: 27.52% of bankrupts were aged 34 or less and 44.99% were aged 45 or more.
- Bankrupts from business related bankruptcies tended to be older than bankrupts from non-business related bankruptcies.
- It was unlikely that a bankrupt from a business related bankruptcy was aged less than 25 (2.22% in 2008).

Debt Agreement Debtors

- Between 2002 and 2008 there were no significant changes in the proportion of debt agreement debtors in different age brackets.
- Debt agreement debtors tended to be younger than bankrupts. Between 2002 and 2008, the highest proportion of debt agreement debtors were aged between 25 and 34 (39.01% in 2002 and 35.80% in 2008) and the lowest proportion were aged 54 or older (5.42% in 2002 and 5.27% in 2008).
- Debtors from business related debt agreements tended to be older than debtors from non-business related debt agreements.
- It was unlikely that a debt agreement debtor from a business related debt agreement was aged less than 25 (5.05% in 2008).

1.2.5.3 Family situation

Bankrupts

- The largest proportion of bankrupts were single without dependants in 2002 (44%), 2003 (44%), 2005 (47%) and 2007 (37%).
- There was a significant increase in the proportion of bankrupts who were couples with dependants between 2005 and 2007. In 2005, 20% of bankrupts were couples with dependants, compared to 32% in 2007.
- The majority of bankrupts were without dependants in 2002 (61%), 2003 (61%) and 2005 (65%).

Debt agreement debtors

- The largest proportion of debt agreement debtors were single without dependants in 2002 (37%), 2003 (40%), 2005 (46%) and 2007 (45%).
- The majority of debtors were without dependants in 2002 (56%), 2003 (56%), 2005 (60%) and 2007 (58%).

1.2.5.4 Occupation

Bankrupts

- Bankrupts were spread across a wide spectrum of occupational groups.

- The proportion of bankrupts who were managers and administrators, professionals, and associate professionals increased between 1999 (11.28%) and 2008 (27.34%).
 - In 1999, 3.23% of bankrupts were managers and administrators, compared to 12.55% in 2008.
 - In 1999, 4.09% of bankrupts were professionals, compared to 6.18% in 2008.
 - In 1999, 3.96% of bankrupts were associate professionals, compared to 8.62% in 2008.
- The proportion of bankrupts in several other occupational groups also increased between 1999 and 2008.
 - The proportion of bankrupts who were tradespersons and related workers increased between 1999 (8.52%) and 2008 (10.54%).
 - The proportion of bankrupts who were intermediate clerical, sales and service workers increased between 1999 (5.70%) and 2008 (14.84%).
 - The proportion of bankrupts who were intermediate production and transport workers increased between 1999 (6.10%) and 2008 (11.66%).
 - The proportion of bankrupts who were labourers and related workers increased between 1999 (6.59%) and 2008 (11.37%).
- The proportion of bankrupts in several other occupational groups decreased between 1999 and 2008.
 - The proportion of bankrupts who were unemployed decreased between 1999 (26.78%) and 2008 (4.57%).
 - The proportion of bankrupts who were other pensioners decreased between 1999 (7.17%) and 2008 (3.18%).
 - The proportion of bankrupts who were housewives/househusbands decreased between 1999 (9.25%) and 2008 (2.24%).
- The proportion of bankrupts who were students remained low between 1999 (0.84%) and 2008 (0.51%).

Debt agreement debtors

- Debt agreement debtors were spread across a wide spectrum of occupational groups.
- The proportion of debtors in several occupational groups increased between 2002 and 2008.
 - In 2002, 2.56% of debtors were managers and administrators, compared to 5.15% in 2008.
 - In 2002, 4.39% of debtors were professionals, compared to 11.45% in 2008.
 - In 2002, 7.99% of debtors were associate professionals, compared to 10.59% in 2008.
 - In 2002, 14.99% of debtors were intermediate clerical, sales and service workers, compared to 24.02% in 2008.
- The proportion of debt agreement debtors in some occupational groups decreased between 2002 and 2008.
 - In 2002, 6.19% of debtors were housewives/househusbands, compared to 0.88% in 2008.
 - In 2002, 15.34% of debtors were unemployed, compared to 7.37% in 2008.
- There were significant differences between the proportions of debt agreement debtors from business and non-business related debt agreements in two occupational groups.
 - In 2008, 24.31% of business related debt agreement debtors were tradespersons and related workers, compared to 9.98% of non-business related debt agreement debtors.
 - In 2008, 24.52% of non-business related debt agreement debtors were intermediate clerical, sales and service workers, compared to 9.17% of business related debt agreement debtors.

1.2.5.5 Employment

Bankrupts

- There was a 70% increase in the employment rate of bankrupts between 1997 and 2007.

- In 1997, 33% of bankrupts were employed.
- In 2007, 56% of bankrupts were employed.
- A greater proportion of male bankrupts were employed compared to female bankrupts.
 - In 2007, 61% of male bankrupts were employed, compared to 48% of female bankrupts.

Debt agreement debtors

- There was a 46% increase in the proportion of employed debt agreement debtors between 1997 and 2007.
 - In 1997, 63% of debt agreement debtors were employed.
 - In 2007, 92% of debt agreement debtors were employed.

1.2.5.6 Personal income

Bankrupts

- Between 1997 and 2007 the level of bankrupts' personal income increased.
 - In 1997, 37% of bankrupts had personal income less than \$10,000, and 13% had personal income of \$30,000 or more.
 - In 2007, 15% of bankrupts had personal income less than \$10,000, and 38% had personal income of \$30,000 or more.
- In 2005 and 2007, 4% of bankrupts had zero personal income.

Debt agreement debtors

- Between 1997 and 2007 the level of debt agreement debtors' personal income increased.
 - In 1997, 85% of debt agreement debtors had personal income less than \$30,000, and 15% of debt agreement debtors had personal income of \$30,000 or more.
 - In 2007, 31% of debt agreement debtors expected personal income less than \$30,000, and 69% of debt agreement debtors expected personal income of \$30,000 or more (data for 2007 is based on expected rather than actual personal income).

1.2.5.7 Household income

Bankrupts

- Between 2002 and 2007 the level of bankrupts' household income increased.
 - In 2002, 28% of bankrupts had household income of \$30,000 or more, compared to 49% in 2007.
 - In 2002, 51% of bankrupts had household income less than \$20,000, compared to 33% in 2007.
 - In 2002, 28% of bankrupts had household income of \$30,000 or more, compared to 49% in 2007.
- In 2005 and 2007, 3% of bankrupts had zero household income.

Debt agreement debtors

- There was an increase in the level of debt agreement debtors' household income between 2002 and 2007 (note: data for 2007 is based on expected rather than actual income).
 - In 2002, 22% of debt agreement debtors had household income less than \$20,000, compared to 8% in 2007.
 - In 2002, 55% of debt agreement debtors had household income of \$30,000 or more, compared to 73% in 2007.
- In both 2005 and 2007, 0% of debt agreement debtors had zero household income.

1.2.5.8 Debt levels

Bankrupts

- Modest levels of unsecured debt can result in bankruptcy.
 - In 2002 and 2007, 5% of bankrupts had unsecured debt less than \$2,000, compared to 4% in both 2003 and 2005.
- Bankrupts' unsecured debt levels increased between 2002 and 2007.
 - In 2002, 49% of bankrupts had more than \$2,000 but less than \$20,000 in unsecured debt, compared to 28% of bankrupts in 2007.

- In 2002, 44% of bankrupts had unsecured debt between \$20,000 and \$500,000, compared to 65% in 2007.
- Only 1% of bankrupts had unsecured debt of \$500,000 or more in 1997, compared to 2% in 2002, 2003, 2005 and 2007.

Debt agreement debtors

- Debt agreement debtors' unsecured debt levels increased between 1997 and 2007.
 - 55% of debt agreement debtors had unsecured debt less than \$20,000 in 1997, compared to 35% in 2007.
 - 39% of debtors had unsecured debt between \$20,000 and \$49,999 in 2002, compared to 51% in 2007.
 - 6% of debtors had unsecured debt between \$50,000 and the limitation amount for entrance into a debt agreement in 2002, compared to 14% in 2007.
- A smaller proportion of debt agreement debtors had modest levels of unsecured debts in comparison to bankrupts.
 - In 2007, 1% of debt agreement debtors had less than \$5,000 in unsecured debt, compared to 8% of bankrupts.

1.2.5.9 Assets

Bankrupts

- The majority of bankrupts declare to have either no or very modest levels of realisable assets.
- However, the level of bankrupts' realisable assets increased between 2003 and 2007.
 - 87% of bankrupts declared zero realisable assets in 2003, compared to 86% in 2005 and 78% in 2007.
 - In 2003 and 2005, only 5% of bankrupts declared realisable assets of \$20,000 or more, compared to 10% in 2007.
 - In 2007, 7% of bankrupts declared realisable assets of \$50,000 or more, compared to 3% in both 2003 and 2005.

Debt agreement debtors

- The majority of debt agreement debtors declare to have either no or very modest levels of realisable assets.
 - In 2007, 85% of debtors declared zero realisable assets, compared to 83% in both 2003 and 2005.
- The proportion of debt agreement debtors with higher levels of realisable assets increased between 2003 and 2007.
 - In 2003, 5% of debt agreement debtors had \$20,000 or more in realisable assets, compared to 9% in 2005.

1.2.5.10 Property ownership

Bankrupts

- Between 2003 and 2007 there was a 120% increase in the proportion of bankrupts who declared property ownership.
 - In 2003, 5% of bankrupts declared property ownership, compared to 11% in 2007.

Debt agreement debtors

- Between 2003 and 2007 there was a 200% increase in the proportion of debt agreement debtors who declared property ownership.
 - In 2003, 5% of debtors declared property ownership, compared to 15% in 2007.

1.2.5.11 Creditors of personal insolvents

Bankrupts

- In 2007, 52% or more of bankrupts' creditors were finance organisations, compared to 64% in 2005 and 49% in 2002.
- Of bankrupts' creditors which are finance organisations (banks, building societies, credit unions, and finance companies) the creditor subtype of cards (i.e. store cards and credit cards) was high in both 2005 (50%) and 2007 (36%).
- Of bankrupts' creditors which are finance organisations, the creditor subtype of house mortgages increased from 2% in 2005 to 16% in 2007.

- A large proportion of bankrupts' liability amounts were owed to finance organisations in 2002 (48% or more), 2003 (45% or more), 2005 (32% or more), and 2007 (45% or more).

Debt agreement debtors

- In 2007, 61% or more of debt agreement debtors' creditors were finance organisations, compared to 69% in 2005 and 63% in 2002.
- Of debt agreement debtors' creditors which are finance organisations (banks, building societies, credit unions, and finance companies) the creditor subtype of cards (i.e. store cards and credit cards) was high in both 2005 (51%) and 2007 (50%).
- A high proportion of debt agreement debtors' liability amounts were owed to financial institutions in 2002 (82% or more), 2003 (83% or more), 2005 (83% or more), and 2007 (79% or more).

2 INTRODUCTION

2.1 AIMS

In this study we identify recent changes in the characteristics of personal insolvents in Australia. Personal insolvency is not limited to bankrupts, and we include debt agreement debtors and Part X debtors in our study. We examine data on the number of personal insolvencies for the period 1990 to 2008 and on the characteristics of personal insolvents for the period 1997 to 2008. We find evidence of significant changes in the characteristics of personal insolvents, which take place during a time of significantly rising personal insolvency numbers.

The structure of our report is as follows. We first provide a summary of Australian personal insolvency law. Next, we detail the increasing levels of personal insolvency in Australia. This is followed by our findings on changes in the proportions of personal insolvencies in each of the states and territories; changes in the proportions of business and non-business related personal insolvencies; and changes in the causes of personal insolvency. We then present our findings on changes in the characteristics of personal insolvents between 1997 and 2008. Finally, we make three general observations on our findings.

2.2 METHODOLOGY

We obtained data from two sets of publications of the Insolvency and Trustee Service Australia (“ITSA”), as well as data from the Australian Bureau of Statistics (“ABS”).

The first of the ITSA publications is released annually and entitled ‘Annual Report of the Inspector-General in Bankruptcy on the operation of the Bankruptcy Act’ (“the Annual Reports”).¹ The Annual Reports contain information on the operation of the Act, including some statistical data based on the financial year in which the Annual Report is released. We examined each Annual Report published between 1990 and 2008. Any reference made in this report to data from the Annual Reports is based on financial year figures unless otherwise stated. For example, if the data is from the 2008 Annual Report, the relevant period is 1 July 2007 to 30 June 2008.

The second of the ITSA publications is entitled ‘Profiles of Debtors’ (“the Profiles”). The Profiles contain statistical data essentially in relation to the socio-economic circumstances of personal insolvents. We examined all of the Profiles published by ITSA.² The Profiles in 1997, 2003, 2005 and 2007 were based on calendar year figures, and the Profiles in 2002 were based on figures from the financial year 2001-2002. Any reference made in this report to data from the Profiles in 1997, 2003, 2005 and 2007 is based on calendar year figures unless otherwise stated. Any reference made in this report to

¹ The Annual Reports are published pursuant to the *Bankruptcy Act 1966* (Cth) s 12. Copies of the Annual Reports from 1999 onwards are available at www.itsa.gov.au.

² The Profiles from 2002, 2003, 2005, 2007 are available at www.itsa.gov.au.

data from the Profiles in 2002 is based on financial year figures unless otherwise stated. For example, if the data is from the 2007 Profiles, the relevant period is 1 January 2007 to 31 December 2007. If the data is from the 2002 Profiles, the relevant period is 1 July 2001 to 30 June 2002. We note also that data in the Profiles is based on whole numbers, and so occasionally percentages relating to data from the Profiles may not always add to 100%.

The socio-economic data in both the Annual Reports and the Profiles to which we refer is based on information contained in the Statements of Affairs of personal insolvents. The Statements of Affairs include data relating to the socio-economic circumstances of personal insolvents, which is collated by ITSA and stored on a database. All insolvents must complete a Statement of Affairs, however the time of completion depends upon the nature of the personal insolvency. Statements of Affairs are lodged at different times in the process of the personal insolvency, depending on the nature of both the application for and form of insolvency.³ In completing the Statement of Affairs, little guidance is provided to personal insolvents in respect of various socio-economic definitions. We comment on this lack of guidance where we feel it might affect our findings. However, we note that it is an offence to sign a false declaration made in the Statement of Affairs.⁴

We base our analysis on the characteristics of personal insolvents using data between 1997 and 2008 for two reasons. Firstly, debt agreements came into existence on 16 December 1996, and so data from both the calendar and financial year 1997 represents the first data available for debt agreement debtors. Secondly, 1997 is the first year for which data contained in the Profiles is available.

We refer only to *new* personal insolvency administrations commencing in the relevant year. We do not refer to cumulative data. Data in the Annual Reports and the Profiles sourced from the Statements of Affairs is only included for the year in question. For example, whilst bankruptcies, debt agreements, and Part X arrangements from the Reports in 2007 might still be in force in 2008, data relating to these existing administrations is not included in the 2008 data.

We found that the reporting methodologies of ITSA were not consistent and varied throughout the publications examined. On some occasions, these variations were to the extent that some data was irreconcilable with that contained in previous publications, or some data was even omitted from publications in certain years. Further, it is only in more recent years that the majority of data on Part IX debt agreement debtors and Part X debtors has been made available in both the Annual Reports and the Profiles.

We endeavoured to reconcile this data to the fullest extent possible between 1997 and 2008. On some matters we sought and obtained clarification of data from ITSA. This analysis provides our reconciliation of the data. Where necessary, we explain the omission or reconciliation of certain data.

³ See *Bankruptcy Act 1966* (Cth) ss 54(1)(a), 54(2)(a), 55(2)(b), 556B(1), 56F(1)(a), 56F(1)(b), 57(1), 185C(2B), 185D, 185M(1B), 185P(1B), 188(2C), 188(2D).

⁴ *Bankruptcy Act 1966* (Cth) s 267.

3 PERSONAL INSOLVENCY LAW

In this section we set out a summary of Australian personal insolvency law.⁵ The *Bankruptcy Act 1966* (Cth) (“the Act”) sets out Australian law relating to the insolvency of individuals, deceased debtors and partnerships.⁶ ITSA is an executive agency and is responsible for the administration and regulation of Australia’s personal insolvency system. Under the Act, there are three regulated forms of personal insolvency: bankruptcies under Part IV and Part XI; debt agreements under Part IX; and Part X arrangements.

3.1 BANKRUPTCY (PARTS IV AND XI)

Part IV of the Act governs bankrupts. Part XI of the Act governs the administration of insolvent estates.

3.1.1 Part IV

A debtor may become bankrupt on either a voluntary or involuntary basis.

A creditor may petition the court to make a sequestration order against the estate of a debtor.⁷ The effect of a sequestration order is that the debtor becomes a bankrupt.⁸ In order for a sequestration order to be made, the debtor must have committed an act of bankruptcy within six months before presentation of the petition.⁹ The Act defines acts of bankruptcy,¹⁰ which are acts generally indicative of a debtor’s insolvency. One common act of bankruptcy is the failure of a debtor to respond to a bankruptcy notice. Further, the debt owed to the petitioning creditor(s) must be for a minimum of \$2,000.¹¹ At both the time of the act of bankruptcy and the time of presentation of the petition, this debt owed must have been for a liquidated sum,¹² payable immediately or at a certain future time.¹³ If satisfied of these and other requirements,¹⁴ it is at the discretion of the court to make a sequestration order against the debtor’s estate, declaring the debtor to be bankrupt.¹⁵

Alternatively, an individual debtor, partnership,¹⁶ or joint debtors,¹⁷ may voluntarily present a bankruptcy petition to the Official Receiver.¹⁸ The debtor becomes bankrupt on the day of acceptance of the petition by the Official

⁵ See further Michael Murray, *Keay’s Insolvency: Personal and Corporate Law and Practice* (6th ed, 2008).

⁶ Corporate insolvency is governed by the *Corporations Act 2001* (Cth).

⁷ *Bankruptcy Act 1966* (Cth) s 43(1).

⁸ *Bankruptcy Act 1966* (Cth) s 43(2).

⁹ *Bankruptcy Act 1966* (Cth) s 44(1)(c).

¹⁰ *Bankruptcy Act 1966* (Cth) s 40.

¹¹ *Bankruptcy Act 1966* (Cth) s 44(1)(a).

¹² *Bankruptcy Act 1966* (Cth) s 44(1)(b)(i).

¹³ *Bankruptcy Act 1966* (Cth) s 44(1)(b)(ii).

¹⁴ *Bankruptcy Act 1966* (Cth) s 52(1).

¹⁵ *Bankruptcy Act 1966* (Cth) s 52.

¹⁶ *Bankruptcy Act 1966* (Cth) s 56A(1).

¹⁷ *Bankruptcy Act 1966* (Cth) s 57(1).

¹⁸ *Bankruptcy Act 1966* (Cth) s 55.

Receiver.¹⁹ Unless leave of the court is obtained, a petition cannot be presented by a debtor who is a debtor in a Part IX debt agreement,²⁰ or in a Part X arrangement.²¹

We consider data from the Annual Reports and observe that the majority of bankruptcies are entered into voluntarily by way of petitions from the debtors themselves. In 2008, 91.19% of bankruptcies (23682) were on debtors' petitions, and 8.81% were on creditors' petitions (2288). Bankruptcies are then administered either by the Official Trustee of ITSA, or by registered trustees. In 2008, the Official Trustee administered 88.06% of bankruptcies, and registered trustees administered the remaining 11.94%.

The consequences of bankruptcy are serious. Upon bankruptcy, the property of the debtor vests in a trustee in bankruptcy,²² subject to certain exemptions.²³ These exemptions include most ordinary household or personal items,²⁴ assets held in trust for another person;²⁵ most funds held in registered superannuation funds;²⁶ transport vehicles up to a set limit;²⁷ and limited tools of trade.²⁸ Aside from exemptions, all other property of the debtor vests in the trustee in bankruptcy. The trustee will also investigate assets owned prior to bankruptcy.²⁹ Certain conduct committed prior to and after bankruptcy may constitute an offence under the Act. For example, rash and hazardous gambling or speculation which materially contributed to insolvency within two years before presentation of the petition might be sufficient to constitute an offence punishable by imprisonment for up to one year.³⁰

In addition, limitations are placed on the personal lives of bankrupts. A bankrupt is required to give their passport to the trustee,³¹ and leaving Australia without the written consent of the trustee is an offence punishable by imprisonment of up to three years.³² Generally, bankrupts are unable to continue or commence legal proceedings.³³ Bankruptcy is also a bar to certain occupations, such as holding a parliamentary seat, or the management of a corporation,³⁴ and it may result in termination of the holding of a statutory office, or membership of a statutory authority. Details of the bankruptcy are permanently entered onto the National Personal Insolvency Index ("NPII"),

¹⁹ *Bankruptcy Act 1966* (Cth) ss 55(4A), 55(8).

²⁰ *Bankruptcy Act 1966* (Cth) s 55(5A).

²¹ *Bankruptcy Act 1966* (Cth) s 55(6).

²² *Bankruptcy Act 1966* (Cth) s 54(1).

²³ *Bankruptcy Act 1966* (Cth) ss 5(1), 58, 116. See also *Bankruptcy Regulations 1996* (Cth) Division 4A.

²⁴ *Bankruptcy Act 1966* (Cth) s 116(2)(b).

²⁵ *Bankruptcy Act 1966* (Cth) s 116(2)(a).

²⁶ *Bankruptcy Act 1966* (Cth) s 116(2)(d).

²⁷ *Bankruptcy Act 1966* (Cth) s 116(2)(ca).

²⁸ *Bankruptcy Act 1966* (Cth) s 116(2)(c).

²⁹ *Bankruptcy Act 1966* (Cth) ss 120, 121, 121A, 122.

³⁰ *Bankruptcy Act 1966* (Cth) s 271.

³¹ *Bankruptcy Act 1966* (Cth) s 77(1)(a)(ii).

³² *Bankruptcy Act 1966* (Cth) s 272(c).

³³ *Bankruptcy Act 1966* (Cth) s 60.

³⁴ *Corporations Act 2001* (Cth) s 206B(3).

available for public inspection.³⁵ When entering into certain transactions of \$3,000 or more, for example when obtaining credit,³⁶ bankrupts must inform other parties that they are an undischarged bankrupt.³⁷

Bankruptcy does not affect the rights of secured creditors to realise or otherwise deal with their security.³⁸ The main consequences for unsecured creditors are, subject to certain exceptions,³⁹ that they are unable to enforce a remedy in respect of provable debts against the bankrupt or their property,⁴⁰ and, except with the leave of the court, they are unable to commence or take any fresh steps in legal proceedings against the bankrupt in respect of provable debts.⁴¹

If the after-tax income of a bankrupt exceeds a certain amount, they must pay contributions from this income to the trustee.⁴² This amount is regularly indexed. On 22 October 2008, the actual income threshold amount for a bankrupt with no dependants was \$41,250.30; for a bankrupt with over four dependants, this amount was \$56,100.41.

Once in existence, a bankruptcy may subsequently be annulled or discharged.

There are several grounds on which a bankruptcy may be annulled. These are where the debts have been paid in full;⁴³ where creditors accept a composition or scheme of arrangement;⁴⁴ or where a court is satisfied either that a sequestration order ought not to have been made in the first place, or that a debtor's petition ought not to have been accepted by the Official Receiver.⁴⁵ In essence, the effect of annulment is that the bankrupt is treated as if they had not been bankrupt.

Otherwise, a bankrupt may be discharged from bankruptcy. In the absence of an objection to the discharge, a bankrupt is automatically discharged from bankruptcy three years after filing their Statement of Affairs.⁴⁶ An objection by the trustee to an automatic discharge may extend the bankruptcy to five years in some cases.⁴⁷ One example of such a case is where the bankrupt continued to manage a corporation without leave of the court.⁴⁸ Another example is where the bankrupt failed to attend a meeting of their creditors and had neither the trustee's written approval to be absent nor gave the trustee a

³⁵ *Bankruptcy Regulations 1996* (Cth) Part 13.

³⁶ *Bankruptcy Act 1966* (Cth) s 269(1)(a).

³⁷ *Bankruptcy Act 1966* (Cth) s 269.

³⁸ *Bankruptcy Act 1966* (Cth) s 58(5).

³⁹ *Bankruptcy Act 1966* (Cth) ss 58(4), 58(5A)(a), 58(5A)(b).

⁴⁰ *Bankruptcy Act 1966* (Cth) s 58A(3)(a).

⁴¹ *Bankruptcy Act 1966* (Cth) s 58A(3)(b).

⁴² *Bankruptcy Act 1966* (Cth) s 139P.

⁴³ *Bankruptcy Act 1966* (Cth) s 153A(1).

⁴⁴ *Bankruptcy Act 1966* (Cth) s 74(5).

⁴⁵ *Bankruptcy Act 1966* (Cth) s 153B.

⁴⁶ *Bankruptcy Act 1966* (Cth) s 149.

⁴⁷ *Bankruptcy Act 1966* (Cth) s 149A(2)(a)(i).

⁴⁸ *Bankruptcy Act 1966* (Cth) s 149D(1)(b).

reasonable explanation for their failure to attend.⁴⁹ In more severe cases, the objection may extend the bankruptcy to eight years.⁵⁰ This might occur where, for example, the bankrupt intentionally provided false and misleading information to the trustee,⁵¹ or where the bankrupt refused or failed to sign a document after being lawfully required by the trustee to sign that document.⁵²

Following discharge, the NPII is updated to reflect that the person is now a discharged bankrupt. Records of bankruptcies are also kept by credit reporting organisations. Discharged bankrupts might experience difficulty in borrowing money or making purchases on credit, and often a bond will be required before a discharged bankrupt is able to rent, or obtain connection to electricity, water, or telephone services.

The discharge from bankruptcy releases the bankrupt from all provable debts in relation to the bankruptcy, subject to exceptions, such as penalties and fines imposed by a court, child support debts, and debts incurred by fraud.⁵³ Unsold assets in the bankruptcy are not automatically returned to the bankrupt and may still be sold by the trustee.

Bankruptcy offers debtors protection from creditors, however this protection comes with serious consequences for the debtor involved.

3.1.2 Part XI

Administration of an insolvent estate may be governed under Part XI of the Act (alternatively it may be governed by State or Territory legislation).⁵⁴ A person might have died while insolvent, or a deceased estate may have become insolvent. Under the Act, creditors,⁵⁵ or the deceased's personal representative,⁵⁶ may apply to the court for the estate to be administered under the Act. The requirements to make such an application are much the same as under Part IV, however no act of bankruptcy need be shown. If an administration order is made, the divisible property of the deceased estate vests in a trustee in bankruptcy,⁵⁷ which has much the same effect on the rights of unsecured creditors as under Part IV. Similarly, annulment of a Part XI administration has much the same effect as an annulment of a bankruptcy.

⁴⁹ *Bankruptcy Act 1966* (Cth) s 149D(1)(l).

⁵⁰ *Bankruptcy Act 1966* (Cth) s 149A(2)(a)(ii).

⁵¹ *Bankruptcy Act 1966* (Cth) s 149D(1)(da).

⁵² *Bankruptcy Act 1966* (Cth) s 149D(1)(k).

⁵³ *Bankruptcy Act 1966* (Cth) s 153.

⁵⁴ See, eg, *Administration and Probate Act 1958* (Vic).

⁵⁵ *Bankruptcy Act 1966* (Cth) s 244(1).

⁵⁶ *Bankruptcy Act 1966* (Cth) s 247(1).

⁵⁷ *Bankruptcy Act 1966* (Cth) s 249(1).

3.2 DEBT AGREEMENTS (PART IX)

One alternative to bankruptcy available for some debtors is to enter into a debt agreement under Part IX of the Act. This alternative to bankruptcy has been in existence since 16 December 1996. Debt agreements were introduced to allow those with low levels of debt, few assets, low incomes, and an inability to afford to enter into arrangements under Part X of the Act, to avoid the consequences of bankruptcy.⁵⁸ It was hoped that they would allow debtors to obtain 'breathing space', during which time they would be able to deal with their debts without resorting to bankruptcy.⁵⁹ At the same time, it was hoped that debt agreement debtors would be able to avoid the stigma that bankruptcy entails.⁶⁰ Finally, it was felt that the introduction of debt agreements would encourage practical arrangements for debtors, which likely would result in better returns for creditors.⁶¹

An insolvent debtor may propose a debt agreement to the Official Receiver,⁶² providing for any matter relating to the debtor's financial affairs.⁶³ In the past ten years the debtor must not have been a bankrupt,⁶⁴ had a debt agreement,⁶⁵ or had a Part X arrangement.⁶⁶ The debtor must also have a future expected after tax income,⁶⁷ unsecured debts,⁶⁸ and divisible property,⁶⁹ falling under prescribed limits.⁷⁰ These limits are updated twice a year. On 20 September 2008, they were a future expected after tax income of less than \$61,875.45;⁷¹ unsecured debts of less than \$82,500.60;⁷² and divisible property valued at less than \$82,500.60.⁷³ It should be noted that the proposal of a debt agreement is an act of bankruptcy which may be used by a creditor to apply to court for a sequestration order, even before creditors vote on the debt agreement.⁷⁴

In a debt agreement proposal, an insolvent debtor makes a 'best offer' to their creditors who in turn vote on that offer. The proposal may provide for any matter relating to the debtor's financial affairs.⁷⁵ The proposal must meet several requirements.⁷⁶ Importantly, the proposal must specify how property is

⁵⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 June 1996, 2827-8 (Daryl Williams, Attorney-General and Minister for Justice).

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Bankruptcy Act 1966* (Cth) s 185C(1).

⁶³ *Bankruptcy Act 1966* (Cth) s 185C(3).

⁶⁴ *Bankruptcy Act 1966* (Cth) s 185C(4)(a)(i).

⁶⁵ *Bankruptcy Act 1966* (Cth) s 185C(4)(a)(ii).

⁶⁶ *Bankruptcy Act 1966* (Cth) s 185C(4)(a)(iii).

⁶⁷ *Bankruptcy Act 1966* (Cth) s 185C(4)(d).

⁶⁸ *Bankruptcy Act 1966* (Cth) s 185C(4)(b).

⁶⁹ *Bankruptcy Act 1966* (Cth) s 185C(4)(c).

⁷⁰ *Bankruptcy Act 1966* (Cth) s 185C(4).

⁷¹ *Bankruptcy Act 1966* (Cth) s 185C(4)(d).

⁷² *Bankruptcy Act 1966* (Cth) s 185C(4)(b).

⁷³ *Bankruptcy Act 1966* (Cth) s 185C(4)(c). Divisible property includes any equity held in property, which would include any equity held in the family home.

⁷⁴ *Bankruptcy Act 1966* (Cth) s 40(1)(ha).

⁷⁵ *Bankruptcy Act 1966* (Cth) s 185C(3).

⁷⁶ *Bankruptcy Act 1966* (Cth) s 185C(2).

to be dealt with under the agreement;⁷⁷ authorise another person, such as the Official Trustee, or a registered trustee, to deal with the property as specified in the agreement;⁷⁸ and provide that all provable debts in relation to the agreement rank equally.⁷⁹

After lodgement, the Official Receiver must decide whether the proposal should be accepted for processing.⁸⁰ If the decision is made to proceed, the proposal must be sent to all creditors, who may then vote to accept or reject the proposal.⁸¹ In order for the debt agreement to succeed, a majority of creditors representing a majority in number and at least 75% in value must vote in its favour.⁸² Voting does not take place at a meeting, but by postal vote.⁸³ If a majority is secured,⁸⁴ then all creditors, regardless of whether they voted for or against the proposal, are bound by the debt agreement.

We consider data from the Annual Reports on debt agreement proposals. In 2008, 9118 debt agreement proposals were given to the Official Receiver, of which 8315 (91.19%) were accepted by the Official Receiver for creditor vote.⁸⁵ However, the Official Receiver cancelled 238 during the voting period. In total, 72.58% of proposals given to the Official Receiver were eventually accepted by creditors, and 81.94% of those put to creditor vote were accepted.⁸⁶ Following creditor acceptance, details of the debt agreement are entered onto the NPII.⁸⁷ Commercial debt agreement administrators administer the majority of debt agreements.

While a debt agreement is in force, creditors cannot present or proceed with an existing creditor's petition against the debtor,⁸⁸ and nor may they enforce a remedy against the debtor or their property or take a fresh step in legal proceedings in respect of a provable debt.⁸⁹ However, secured creditors' rights are not affected by a debt agreement. Secured creditors may still seize and sell any assets which the debtor had offered as security for credit if the debtor is in default under the original agreement with the secured creditor.

Once in place, the debtor or a creditor may propose a variation or termination of the debt agreement to the Official Receiver.⁹⁰ Creditors then vote on this

⁷⁷ *Bankruptcy Act 1966* (Cth) ss 185C(2)(a), 185C(2)(b).

⁷⁸ *Bankruptcy Act 1966* (Cth) s 185C(2)(c).

⁷⁹ *Bankruptcy Act 1966* (Cth) s 185C(2)(d)(i).

⁸⁰ *Bankruptcy Act 1966* (Cth) s 185E(2).

⁸¹ *Bankruptcy Act 1966* (Cth) s 185EA.

⁸² *Bankruptcy Act 1966* (Cth) s 185EC.

⁸³ *Bankruptcy Act 1966* (Cth) s 185EA.

⁸⁴ *Bankruptcy Act 1966* (Cth) s 185EC.

⁸⁵ Insolvency and Trustee Service Australia, *Annual Report by the Inspector-General in Bankruptcy on the operation of the Bankruptcy Act 2007-2008*, 38.

⁸⁶ *Ibid.*

⁸⁷ *Bankruptcy Act 1966* (Cth) s 185H.

⁸⁸ *Bankruptcy Act 1966* (Cth) ss 185K(1)(a), 185K(1)(b).

⁸⁹ *Bankruptcy Act 1966* (Cth) s 185K(1)(c). However, this does not prevent a creditor from enforcing a remedy under a maintenance agreement, a maintenance order, or a proceeds of crime law: see *Bankruptcy Act 1966* (Cth) s 185K(1)(2).

⁹⁰ *Bankruptcy Act 1966* (Cth) ss 185M, 185P.

proposal in the same manner as for the initial debt agreement proposal.⁹¹ Debtors, creditors, or the Official Receiver may also apply to the court for an order declaring that the debt agreement is void.⁹² A debt agreement may also be terminated by order of the court,⁹³ or if the debtor becomes a bankrupt.⁹⁴

Otherwise, a debt agreement ends when the obligations it created have been discharged.⁹⁵ The debtor is released from provable debts in the same way as if the debtor had been discharged from bankruptcy immediately after the debt agreement proposal for processing was recorded on the NPII.⁹⁶ The debtor is entitled to any property that was subject to the debt agreement but that was not distributed to creditors.⁹⁷ On a practical level, the debtor's credit rating will be affected, which will diminish the ability of the debtor to obtain further credit. Debtors will also likely have to pay bonds for services such as insurance, electricity, rent, and telephone access.

We note that not all the consequences of bankruptcy apply to debt agreement debtors. Debt agreements entail several benefits in comparison to bankruptcies. These benefits might render debt agreements a more attractive option than bankruptcy for those who fall within the prescribed limitations on after tax income, unsecured debts, and divisible property. Debt agreement debtors are not restricted in overseas travel; are not precluded from managing a corporation; are not rendered ineligible to hold a parliamentary seat; are not precluded from holding a statutory office or membership of a statutory authority; and are not restricted in the continuation or commencement of legal proceedings. Further, debt agreements were not intended to carry the stigma that bankruptcy entails.⁹⁸ Combined, these benefits would be very important considerations for those facing the prospect of bankruptcy but falling within the eligibility criteria for debt agreements.

3.3. PART X ARRANGEMENTS

Another alternative to bankruptcy is found under Part X of the Act. Amendments to the Part X regime came into effect on 1 December 2004. We include in our study Part X debtors from both before and after these amendments. We refer to Part X administrations collectively as "Part X arrangements".

⁹¹ *Bankruptcy Act 1966* (Cth) ss 185MA, 185MC, 185PA, 185PC.

⁹² *Bankruptcy Act 1966* (Cth) s 185T.

⁹³ *Bankruptcy Act 1966* (Cth) s 185Q.

⁹⁴ *Bankruptcy Act 1966* (Cth) s 185R.

⁹⁵ *Bankruptcy Act 1966* (Cth) s 185N(1).

⁹⁶ *Bankruptcy Act 1966* (Cth) s 185NA(1).

⁹⁷ *Bankruptcy Act 1966* (Cth) s 185N(2).

⁹⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 June 1996, 2827-8 (Daryl Williams, Attorney-General and Minister for Justice).

3.3.1 Personal insolvency agreements

Amendments to replace the existing Part X regime came into effect on 1 December 2004.⁹⁹ The current Part X regime consists of a sole arrangement called a 'Personal Insolvency Agreement' ("PIA"). The PIA is more formal than a debt agreement, but allows debtors to arrange for the discharge of their debts without having to resort to bankruptcy. The PIA is a simplification of the previous Part X regime and incorporates elements of those previous arrangements (which are explained in section 3.3.2).

An insolvent debtor must firstly authorise the Official Trustee, a registered trustee in bankruptcy, or a solicitor, to call a meeting of creditors ("section 188 authority"),¹⁰⁰ and to take control of the debtor's property.¹⁰¹ The majority of authorisations are given to registered trustees. The signing of this authorisation is an act of bankruptcy, which might then be used by a creditor to apply to court for a sequestration order (however this does not denote that the debtor is a bankrupt). At this time, the insolvent debtor provides a draft personal insolvency agreement,¹⁰² which must specify how the debtor's property and income is to be dealt with.¹⁰³ The debtor must also complete the Statement of Affairs, which is then available for inspection by the debtor's creditors.¹⁰⁴

Once the authority becomes effective, it is irrevocable,¹⁰⁵ and the debtor's property becomes subject to the trustee's control.¹⁰⁶ The debtor can then only deal with their own property with the consent of the trustee.¹⁰⁷ Further, a charge arises over the debtor's property when the section 188 authority comes into effect.¹⁰⁸ The petitions of any creditors pending in court are stayed until either the PIA proposal is accepted at the meeting of creditors,¹⁰⁹ or that meeting is adjourned.¹¹⁰ If the PIA is accepted by a majority of creditors in both number and 75% in value at the meeting,¹¹¹ it is then binding on the debtor and all creditors.¹¹² However, the meeting of creditors may instead

⁹⁹ A deed of assignment or a deed of arrangement executed under Part X before 1 December 2004 remains valid and is called a 'pre-commencement deed'. A composition accepted before 1 December 2004 continues to operate as if the amendments contained in the *Bankruptcy Legislation Amendment Act 2004* (Cth) did not occur.

¹⁰⁰ *Bankruptcy Act 1966* (Cth) s 188(1).

¹⁰¹ *Bankruptcy Act 1966* (Cth) s 189.

¹⁰² *Bankruptcy Act 1966* (Cth) s 188(2E).

¹⁰³ *Bankruptcy Act 1966* (Cth) s 188A(2).

¹⁰⁴ *Bankruptcy Act 1966* (Cth) ss 188B(2), 188B(3).

¹⁰⁵ *Bankruptcy Act 1966* (Cth) s 188(3).

¹⁰⁶ *Bankruptcy Act 1966* (Cth) s 190.

¹⁰⁷ *Bankruptcy Act 1966* (Cth) s 189(2)(a).

¹⁰⁸ *Bankruptcy Act 1966* (Cth) s 189AB.

¹⁰⁹ The PIA must meet certain requirements as specified in the Act: see *Bankruptcy Act 1966* (Cth) s 188A.

¹¹⁰ *Bankruptcy Act 1966* (Cth) s 189AAA.

¹¹¹ *Bankruptcy Act 1966* (Cth) s 204(1)(b).

¹¹² *Bankruptcy Act 1966* (Cth) s 229. However, this does not affect the right of a secured creditor to realise or otherwise deal with the creditor's security: s 229(3).

decide to require the debtor to present a debtor's petition to the court within seven days, which might lead to the bankruptcy of the debtor.¹¹³

A Part X administration may be administered by Registered Trustees, or through ITSA by the Official Trustee. In order for a Part X arrangement to be cost effective, there needs to be a significant level of property or income available to creditors.

During the course of the administration of a PIA, it may be varied.¹¹⁴ A PIA will usually be terminated when the debtor has fulfilled their obligations pursuant to the agreement.¹¹⁵ We note that debtors are disqualified from managing a corporation until they fully comply with the terms of their PIA.¹¹⁶ However, a PIA might end before the fulfilment of these obligations, for example when the court sets aside,¹¹⁷ or terminates,¹¹⁸ the PIA, or when the PIA is terminated by the trustee,¹¹⁹ or by creditors.¹²⁰ On a practical level, the debtor's credit rating will be affected, which will diminish the ability of the debtor to obtain further credit. Debtors will also likely have to pay bonds for services such as insurance, electricity, rent, and telephone access.

We note that not all the consequences of bankruptcy apply to Part X debtors. Similar to debt agreements, a PIA entails several benefits in comparison to bankruptcy. These benefits might render a PIA a more attractive option than bankruptcy for those who do not fall within the prescribed limitations for debt agreements. Part X debtors are not restricted in overseas travel; are not rendered ineligible to hold a parliamentary seat; are not precluded from holding a statutory office or membership of a statutory authority; and are not restricted in the continuation or commencement of legal proceedings. We note that there are disadvantages to a PIA compared to debt agreements. Part X debtors are disqualified from managing a corporation until such time as they comply with the terms of their PIA.¹²¹ Further, a PIA is expensive to administer. Nonetheless, the benefits of a PIA as opposed to the consequences of bankruptcy would be very important considerations for those facing the prospect of bankruptcy and not falling within the eligibility criteria for debt agreements.

3.3.2 Former Part X arrangements

The pre 1 December 2004 scheme consisted of three types of Part X arrangements. Currently as is the case for a PIA, entering into one of these arrangements required the granting of a section 188 authority.

¹¹³ *Bankruptcy Act 1966* (Cth) s 204(1)(d).

¹¹⁴ *Bankruptcy Act 1966* (Cth) s 221A.

¹¹⁵ *Bankruptcy Act 1966* (Cth) s 222D.

¹¹⁶ *Corporations Act 2001* (Cth) s 206B(4).

¹¹⁷ *Bankruptcy Act 1966* (Cth) s 222.

¹¹⁸ *Bankruptcy Act 1966* (Cth) s 222C.

¹¹⁹ *Bankruptcy Act 1966* (Cth) s 222A.

¹²⁰ *Bankruptcy Act 1966* (Cth) s 222B.

¹²¹ *Corporations Act 2001* (Cth) s 206B(4).

3.3.2.1 Deed of assignment

Under a deed of assignment, a debtor assigned all of their divisible property to a trustee. The main difference between a deed of assignment and bankruptcy was that the trustee was not able to claim property acquired after the execution of the deed. Once the property had been assigned, the debtor was then free from all provable debts, the same as if the debtor had been a bankrupt discharged from bankruptcy.

3.3.2.2 Composition

Under a composition, creditors agreed to accept full satisfaction of the debts owed to them by the debtor. Payment was either in full or for an amount less than the full amount owing, either by way of a lump sum or by instalments. After entering into a composition, a debtor was released free from all provable debts, the same as if the debtor had been a bankrupt discharged from bankruptcy.

3.3.2.3 Deed of arrangement

A deed of arrangement was a deed providing for the arrangement of the payment, either in part or in whole, of the debts of a debtor. Essentially, it was an arrangement not covered by a deed of assignment or a composition.

4 RISING PERSONAL INSOLVENCY NUMBERS

Over the last two decades in Australia, growth in personal insolvency activity has averaged almost 6.5% per annum.¹²² Between 1990 and 2008 there was a 261% increase in the total number of personal insolvencies. The rise in Australian personal insolvency numbers is not a phenomenon occurring in isolation. Rises have occurred in a number of other common law jurisdictions, such as in Canada,¹²³ England and Wales,¹²⁴ New Zealand,¹²⁵ and the United States of America.¹²⁶ However, the personal insolvency systems of those jurisdictions vary, and comparisons between them are inherently difficult to make. There exist not only differences in the administration and regulation of personal insolvency, but also different statistical methodologies among the agencies responsible for the collation of data. Therefore, we simply note that the Australian experience of increasing numbers of personal insolvents is not uncommon amongst other comparable jurisdictions which have legal systems inherited from English law.

In this section we use data from the Annual Reports and the ABS to observe the rise in Australian personal insolvency numbers.

4.1 PERSONAL INSOLVENCIES

Figure 1 illustrates the 261% increase in the total number of personal insolvencies in Australia between 1990 and 2008. In 1990, there were 9113 personal insolvencies, which consisted of 8552 bankruptcies and 561 Part X arrangements. In 1997, there were 22385 personal insolvencies, which consisted of 21830 bankruptcies, 48 debt agreements, and 507 Part X arrangements. In 2008, there were 32865 personal insolvencies, which consisted of 25970 bankruptcies, 6618 debt agreements, and 277 Part X arrangements.

¹²² Insolvency and Trustee Service Australia, *Annual Report by the Inspector-General in Bankruptcy on the operation of the Bankruptcy Act 2007-2008*, 7.

¹²³ In 1987, the consumer insolvency rate in Canada was 1.3 per 1000 of the population aged 18 years or older. By 2007, this consumer insolvency rate had reached 3.9. See further Office of the Superintendent of Bankruptcy Canada <[http://www.ic.gc.ca/eic/site/bsfosb.nsf/vwapj/Annual_insolvency_rates_May08_EN.xls/\\$FILE/Annual_insolvency_rates_May08_EN.xls](http://www.ic.gc.ca/eic/site/bsfosb.nsf/vwapj/Annual_insolvency_rates_May08_EN.xls/$FILE/Annual_insolvency_rates_May08_EN.xls)>.

¹²⁴ In 1990, there were 13987 individual insolvencies. In 2007, there were 106645 individual insolvencies. This represented a 662% increase within that period. See further The Insolvency Service <<http://www.insolvency.gov.uk/otherinformation/statistics/historicdata/IndividualInsolvencies.xls>>.

¹²⁵ In 1989-1990, there were 1900 bankruptcies. In 2006-2007, there were 3593 bankruptcies. This represents an 89% increase within that period. Comparisons to 2007-2008 are of less utility as a result of recent amendments to the personal insolvency regime in New Zealand and the introduction of 'No Asset Procedures'. See further New Zealand Insolvency and Trustee Service <<http://www.insolvency.govt.nz/cms/site-tools/about-us/statistics/annual-figures-for-new-estates-since-1988>>.

¹²⁶ In 1990, there were 718107 non-business bankruptcy filings. In 2005, there were 2,039,215 non-business bankruptcy filings. However, recent reforms have led to a decline in these figures. In 2007, there were 822,590 non-business bankruptcy filings. See further U.S. Courts Bankruptcy Statistics <<http://www.uscourts.gov/bkrpctystats/statistics.htm#calendar>>.

FIGURE 1

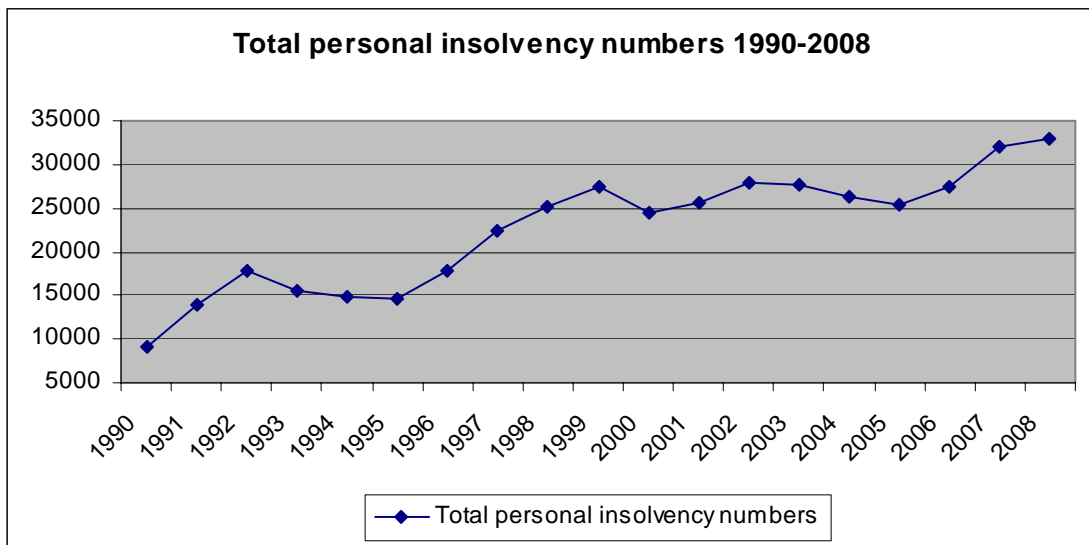
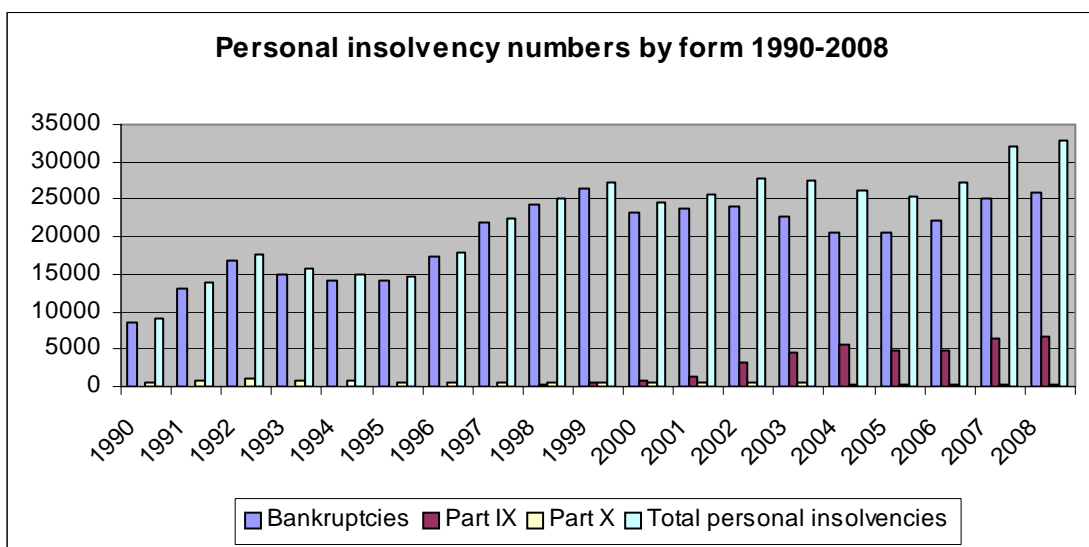


Figure 2 reveals that personal insolvency numbers were rising significantly even before the introduction of debt agreements on 16 December 1996. Figure 2 shows the number of bankruptcies, debt agreements, Part X arrangements, and the total number of personal insolvencies in each year between 1990 and 2008.

FIGURE 2

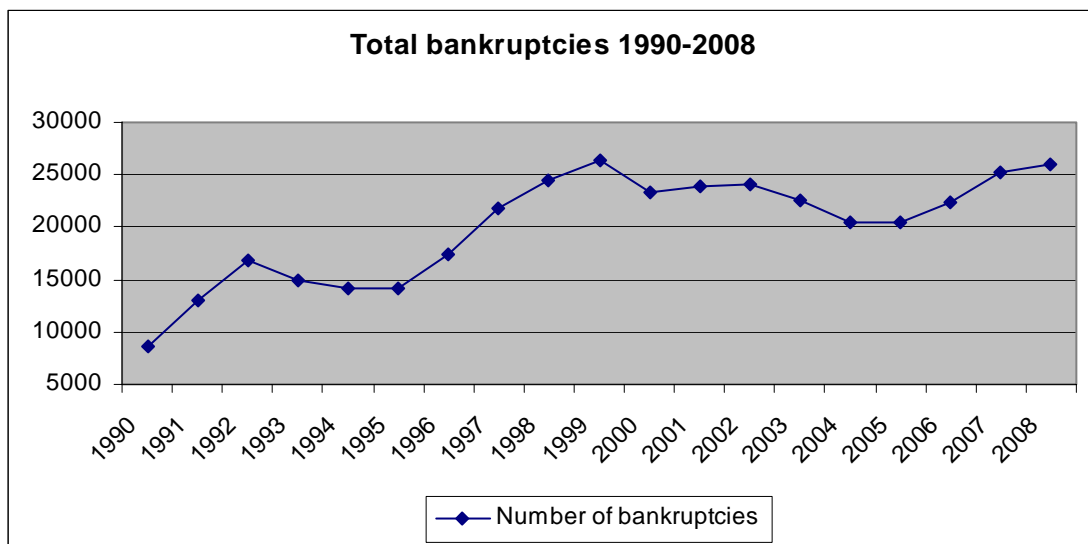


The 261% increase in the number of personal insolvencies between 1990 and 2008, as illustrated in Figure 1 and Figure 2, was significantly greater than the 24% increase in the Australian population during that period. In 2008, 0.15% of the Australian population was in personal insolvency, compared to 0.13% in 2000 and 0.05% in 1990.

4.2 BANKRUPTCIES

In 1997, there were 21830 bankruptcies, representing 97.52% of personal insolvencies in that year. Coinciding with the increasing popularity of debt agreements, Figure 3 illustrates that the number of bankruptcies in fact decreased from a high of 26376 in 1999, representing 96.50% of personal insolvencies, to a low of 20496 in 2004, representing 77.98% of personal insolvencies. However the number of bankruptcies has since increased. In 2008, there were 25970 bankruptcies, although this proportion represented only 79.02% of personal insolvencies in that year. One explanation for the decrease in bankruptcies as a proportion of personal insolvencies might be that following the introduction of debt agreements, those who might otherwise have become bankrupt instead were able to enter into a debt agreement and avoid the consequences of bankruptcy. Whilst the number of bankruptcies has again been rising since 2005, the percentage of bankruptcies as a proportion of personal insolvencies has remained stable. In 2005, 2006, 2007, and 2008, those proportions were 80.57%, 81.59%, 78.94%, and 79.02%.

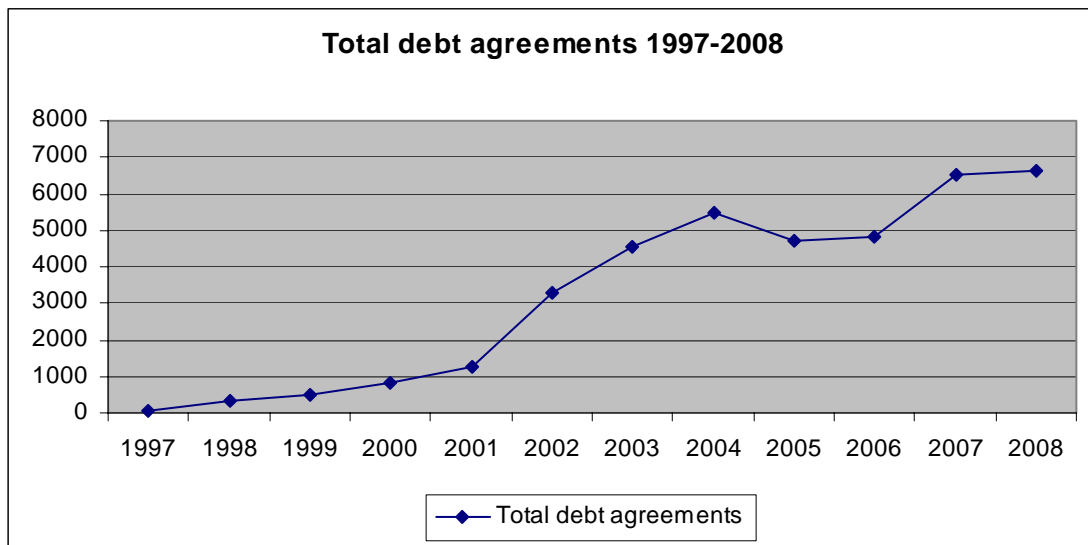
FIGURE 3



4.3 DEBT AGREEMENTS

Part IX debt agreements were introduced on 16 December 1996. Figure 4 illustrates the significant increase in the number of debt agreements since their inception. Whilst in 1997 there were just 48 debt agreements, in 2008 there were 6618 debt agreements, the highest figure ever reported. Debt agreements represented 0.21% of personal insolvencies in 1997, before representing a high of 20.88% of personal insolvencies in 2004. In 2008, debt agreements represented 20.14% of personal insolvencies. As for bankruptcies, the percentage of debt agreements as a proportion of personal insolvencies has remained relatively stable since 2005. In 2005, 2006, 2007, and 2008, those proportions were 18.62%, 17.74%, 20.38%, and 20.14%.

FIGURE 4

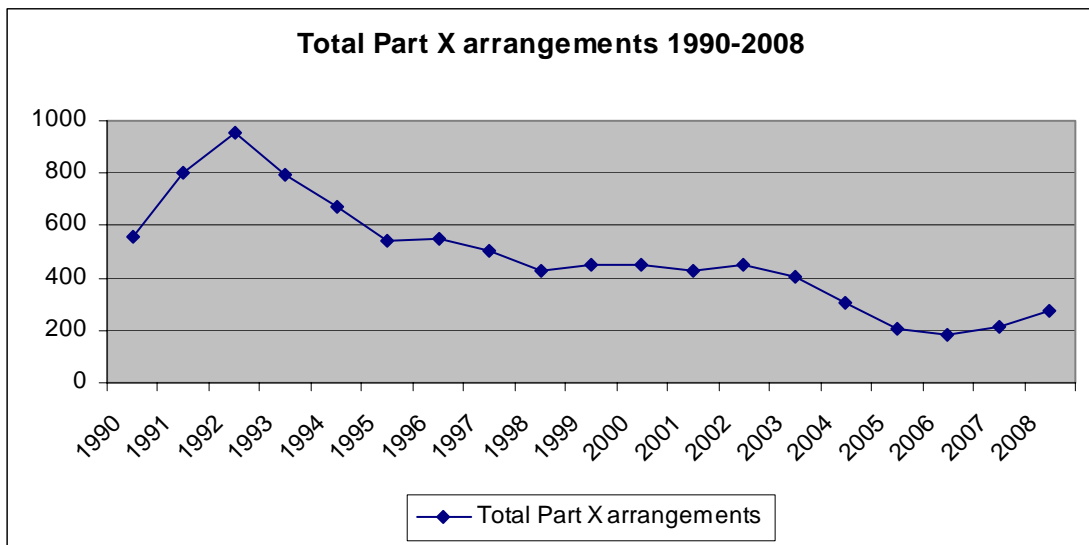


4.4 PART X ARRANGEMENTS

In contrast with increases in the number of bankruptcies and debt agreements, between 1990 and 2008 the number of Part X arrangements decreased. As will be recalled, amendments to Part X of the Act came into force on 1 December 2004. We note that the fall in the number of Part X arrangements began to occur in 1993, well before those amendments came into force. In 1990, there were 561 Part X arrangements. In 1992, there were 953 Part X arrangements. However, this number decreased to a low of 182 in 2006. Since 2006, the number of Part X arrangements has slightly increased. In 2008, there were 277 Part X arrangements. Figure 5 illustrates the decrease in the number of Part X arrangements between 1990 and 2008.

There has been a significant decrease in the number of Part X arrangements as a proportion of personal insolvencies between 1990 and 2008. In 1997, there were 507 Part X arrangements, representing 6.16% of personal insolvencies. In 2008, there were 277 Part X arrangements, representing 0.84% of personal insolvencies. As for bankruptcies and debt agreements, the percentage of Part X arrangements as a proportion of personal insolvencies has remained relatively stable since 2005. In 2005, 2006, 2007, and 2008, those proportions were 0.81%, 0.67%, 0.68%, and 0.84%.

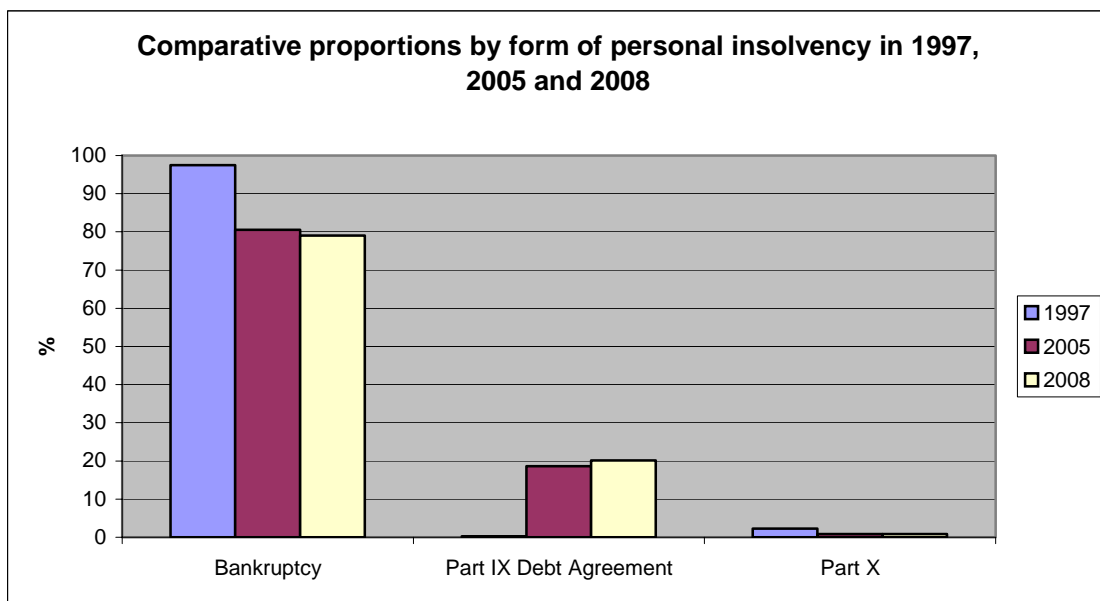
FIGURE 5



4.5 RELATIVE PROPORTIONS OF FORM OF PERSONAL INSOLVENCY

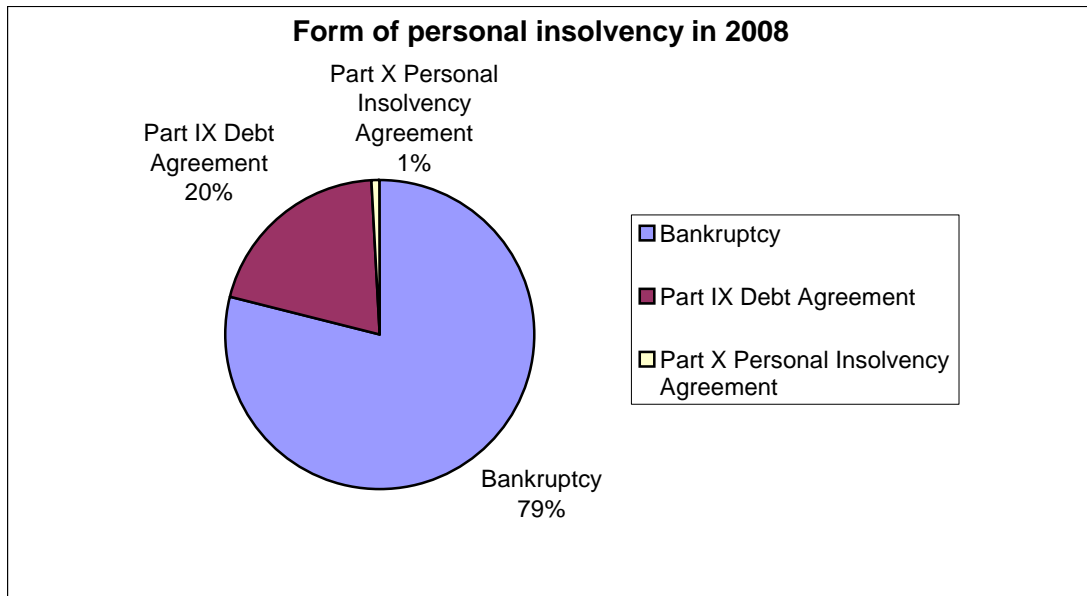
We have noted that the proportions of bankruptcies, debt agreements, and Part X arrangements remained relatively stable between 2005 and 2008. Figure 6 illustrates this relative stability and highlights the change in those proportions from 1997. We speculate that by 2005 awareness of the advantages of debt agreements as an alternative to bankruptcy was more widespread among insolvents and those providing insolvency related services.

FIGURE 6



Of the total number of personal insolvencies in 1997, 21830 (97.52%) were bankruptcies, 48 (0.21%) were debt agreements, and 507 (2.26%) were Part X arrangements (consisting of 76 deeds of assignment, 213 deeds of arrangement, and 218 compositions). In 2005, 20501 (80.57%) of personal insolvencies were bankruptcies, 4738 (18.62%) were debt agreements, and 207 (0.81%) were Part X arrangements. In 2008, 25970 (79.02%) of personal insolvencies were bankruptcies, 6618 (20.14%) were debt agreements, and 277 (0.84%) were Part X arrangements. Figure 7 illustrates the proportions of the forms of personal insolvency in 2008.

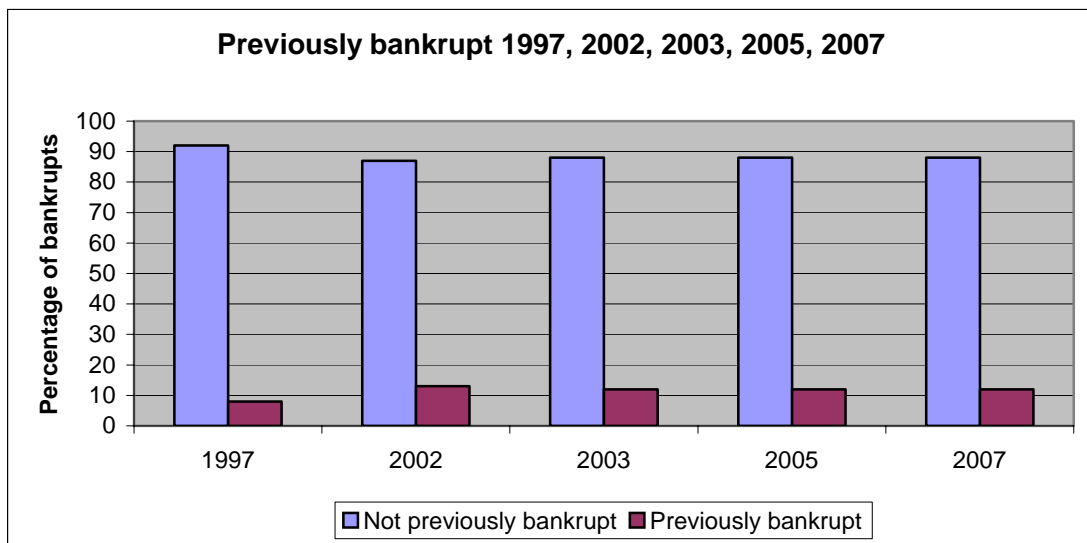
FIGURE 7



4.6 REPEAT BANKRUPTCIES

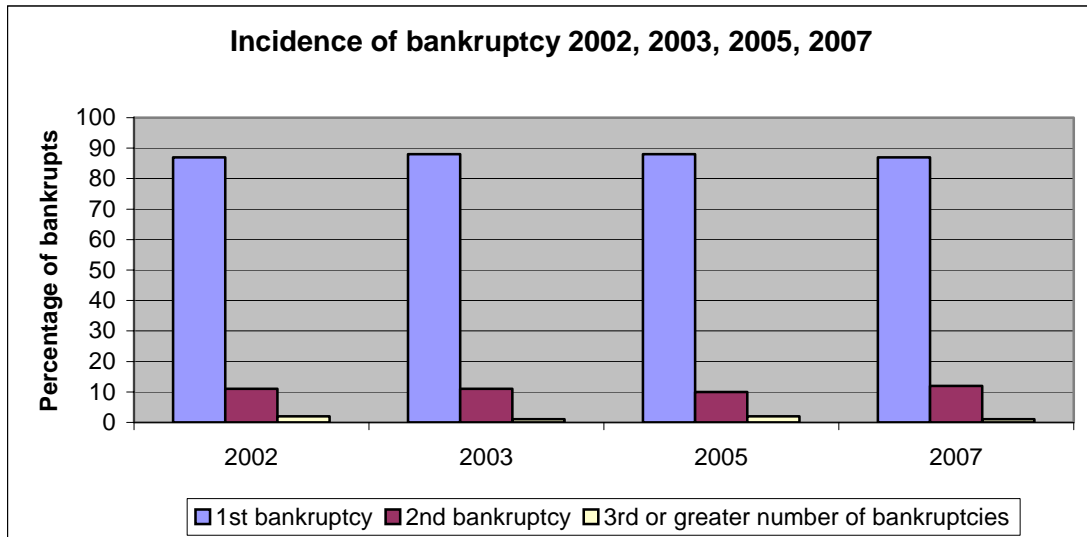
We use data from the Profiles to note that the significant rise in the number of bankruptcies is not explicable on the basis that it is the same people who are becoming bankrupt. In 1997, 8% of bankrupts had been previously bankrupt. In 2007, 12% of bankrupts had been previously bankrupt. Figure 8 shows the proportion of those previously bankrupt in 1997, 2002, 2003, 2005 and 2007.

FIGURE 8



We note further from data in the Profiles that the proportion of bankruptcies who have had three or more bankruptcies is low. In 2007, 87% of bankruptcies entered into their first bankruptcy, 12% entered into their second bankruptcy, and only 1% entered into their third or greater number of bankruptcies. Figure 9 reveals that the proportion of bankruptcies who have had more than one bankruptcy remained relatively stable between 2002 and 2007.

FIGURE 9



5 PERSONAL INSOLVENCY BY STATE/TERRITORY

In this section we observe changes in the proportion of insolvents in each of Australia's states and territories based on data from the Annual Reports and the ABS.

5.1 BANKRUPTCIES

In 2008 there were 25970 bankruptcies. NSW contained the highest proportion of bankruptcies (38.25%), followed by Victoria (22.04%), Queensland (21.98%), SA (8.01%), WA (5.51%), Tasmania (2.90%), the ACT (0.82%), and the NT (0.48%). Figure 10 illustrates the changes in and differences between the proportion of bankruptcies in each of the states and territories between 1997 and 2008.

FIGURE 10

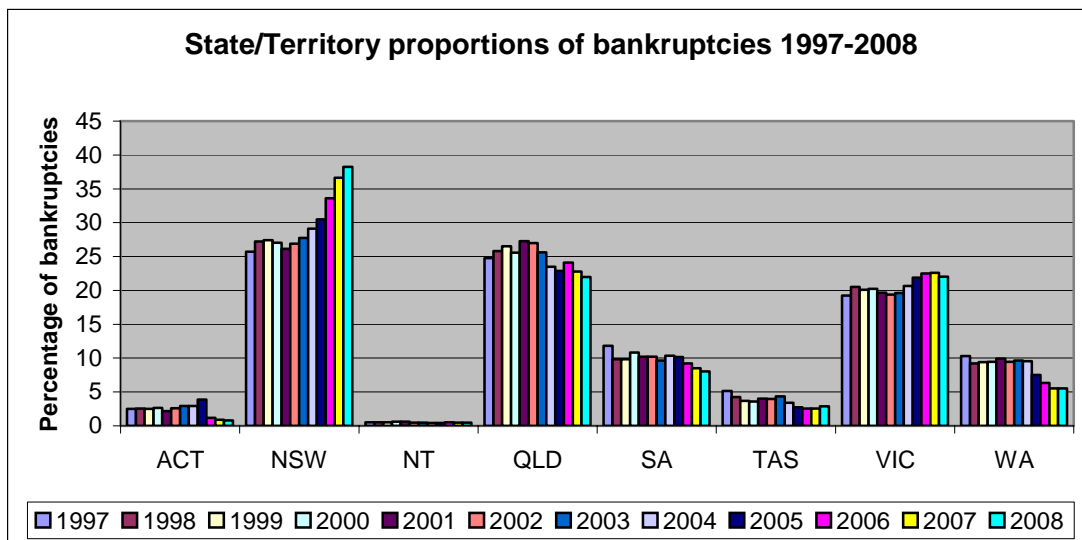
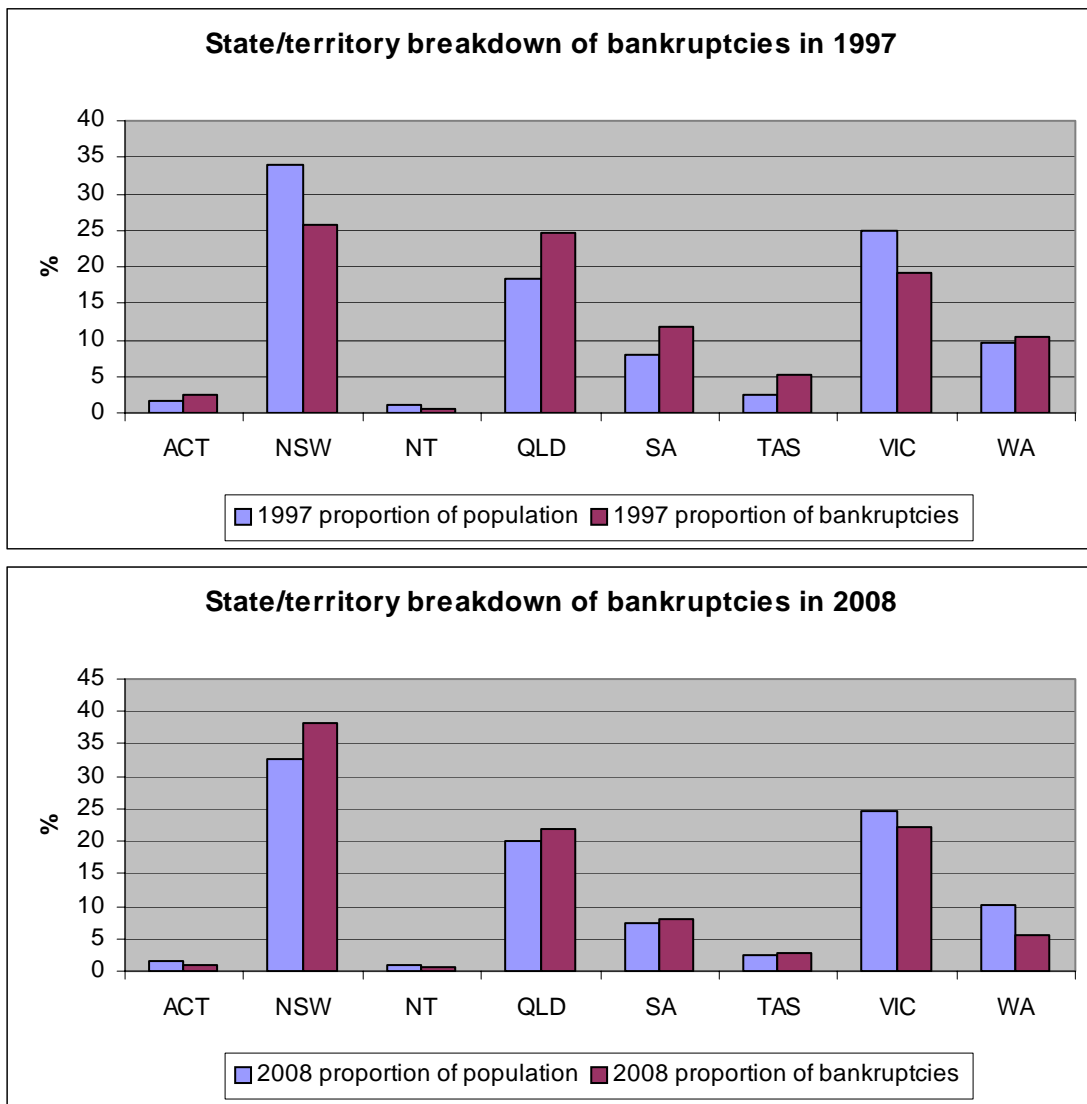


Figure 10 reveals changes in the proportion of bankruptcies in all states and territories between 1997 and 2008. In that period there were decreases in the proportion of bankruptcies in the ACT, NT, Queensland, SA, Tasmania, and WA. At the same time, there was a rise in the proportion of bankruptcies in NSW and Victoria. NSW had the highest proportion of bankruptcies in each year between 1997 and 2008 excluding in 2002, when NSW had 26.89% of bankruptcies and Queensland had 26.97% of bankruptcies. In contrast to the decreases in the other states and territories and the increase in Victoria, the increase in the proportion of bankruptcies in NSW has been rapid, largely occurring after 2003. The proportion of bankruptcies in NSW rose from 27.74% in 2003 to 38.25% in 2008.

The significance of these figures is better understood when contrasted with the respective proportion of the Australian population resident in the states and territories in the relevant year. Figure 11 illustrates the differences in the proportion of the population and the proportion of bankruptcies in the states and territories in 1997 and 2008.

FIGURE 11



In 2008, NSW, Queensland, SA and Tasmania had an overrepresentation in bankruptcies in comparison with their proportion of the Australian population. In 2008, NSW contained 32.60% of the population and 38.25% of bankruptcies; Queensland contained 20.02% of the population and 21.98% of bankruptcies; SA contained 7.49% of the population and 8.01% of bankruptcies; and Tasmania contained 2.33% of the population and 2.90% of bankruptcies. In 2007, these four states contained 62.44% of the population, yet 71.14% of bankruptcies were located in them.

At the same time, in 2008 the remaining states and territories had an underrepresentation in bankruptcies in comparison with their proportion of the Australian population. In 2008, Victoria contained 24.79% of the population and 22.04% of bankruptcies; WA contained 10.12% of the population and 5.51% of bankruptcies; the NT contained 1.03% of the population and 0.48% of bankruptcies; and the ACT contained 1.61% of the population and 0.82% of bankruptcies. Together, these four states and territories contained 37.55% of the Australian population, yet only 28.86% of bankruptcies were located in them.

We observe that the most notable increase in the proportion of bankruptcies took place in NSW. Whilst the population of NSW as a proportion of the Australian population decreased from 33.90% in 1997 to 32.60% in 2008, the proportion of bankruptcies increased considerably from 25.71% in 1997 to 38.25% in 2008. This represents a 49% increase in the proportion of bankruptcies in NSW between 1997 and 2008. Notably, the majority of the increase in the proportion of bankruptcies in NSW has occurred since 2003. The proportions of bankruptcies in NSW since then were as follows: 27.74% in 2003; 29.13% in 2004; 30.48% in 2005; 33.61% in 2006; 36.64% in 2007; and 38.25% in 2008.

Whilst decreases occurred in the proportion of bankruptcies in the majority of the states and territories, we make several further observations.

A significant decrease in the proportion of bankruptcies in comparison with an increase in the proportion of the population occurred in WA. In 1997, WA contained 9.69% of the population and 10.31% of bankruptcies. In 2008, WA's proportion of the population had increased to 10.12%, yet the proportion of bankruptcies had decreased to 5.51%.

A significant decrease in the proportion of bankruptcies in comparison with the proportion of the population also took place in Tasmania. In 1997, Tasmania contained 2.56% of the population and 5.13% of bankruptcies. In 2008, Tasmania contained 2.33% of the population and 2.90% of bankruptcies.

A decrease in the proportion of bankruptcies in comparison with the proportion of the population also took place in SA. In 1997, SA contained 8.00% of the population and 11.80% of bankruptcies. In 2008, SA contained 7.49% of the population and 8.01% of bankruptcies.

Despite an increase in the proportion of the Australian population, Queensland experienced a decrease in the state's proportion of bankruptcies. In 1997, Queensland contained 18.33% of the population and 24.75% of bankruptcies. In 2008, Queensland contained 20.02% of the population and 21.98% of bankruptcies.

Victoria continues to remain underrepresented in the state's proportion of bankruptcies in comparison with the proportion of the population. In 1997, Victoria contained 24.83% of the population and 19.25% of bankruptcies. In 2008, Victoria contained 24.79% of the population and 22.04% of bankruptcies.

5.2 DEBT AGREEMENTS

In 2008, there were 6618 debt agreements. NSW contained the highest proportion of debt agreements (33.39%), followed by Victoria (28.36%), Queensland (24.89%), WA (5.73%), SA (3.35%), Tasmania (2.10%), the ACT (1.25%), and the NT (0.92%). Figure 12 illustrates the changes in and differences between the proportion of debt agreements in each of the states and territories between 1997 and 2008. This order of proportions is almost identical to the order for bankruptcies. The only change in the order is the inversion of the positions of SA and WA.

FIGURE 12

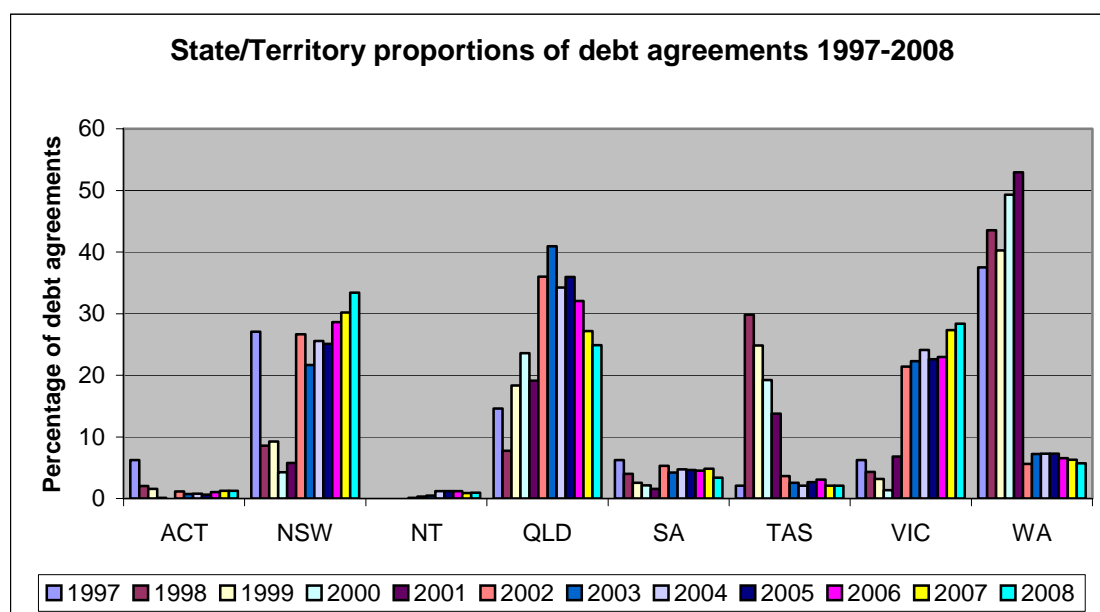


Figure 12 reveals significant variations in the proportion of debt agreements in all states and territories between 1997 and 2008.

In 1998, the first year for which data spanning an entire financial year is available, there were only 349 debt agreements. 43.55% of these debt agreements were in WA, and 29.80% were in Tasmania. We recall that debt agreements were introduced on 16 December 1996. We speculate that these initial high proportions of debt agreements in states with smaller populations is explicable on the basis of both a higher level of awareness in those states of the practicalities of debt agreements as an alternative to bankruptcy, and the availability of practitioners willing to administer them.

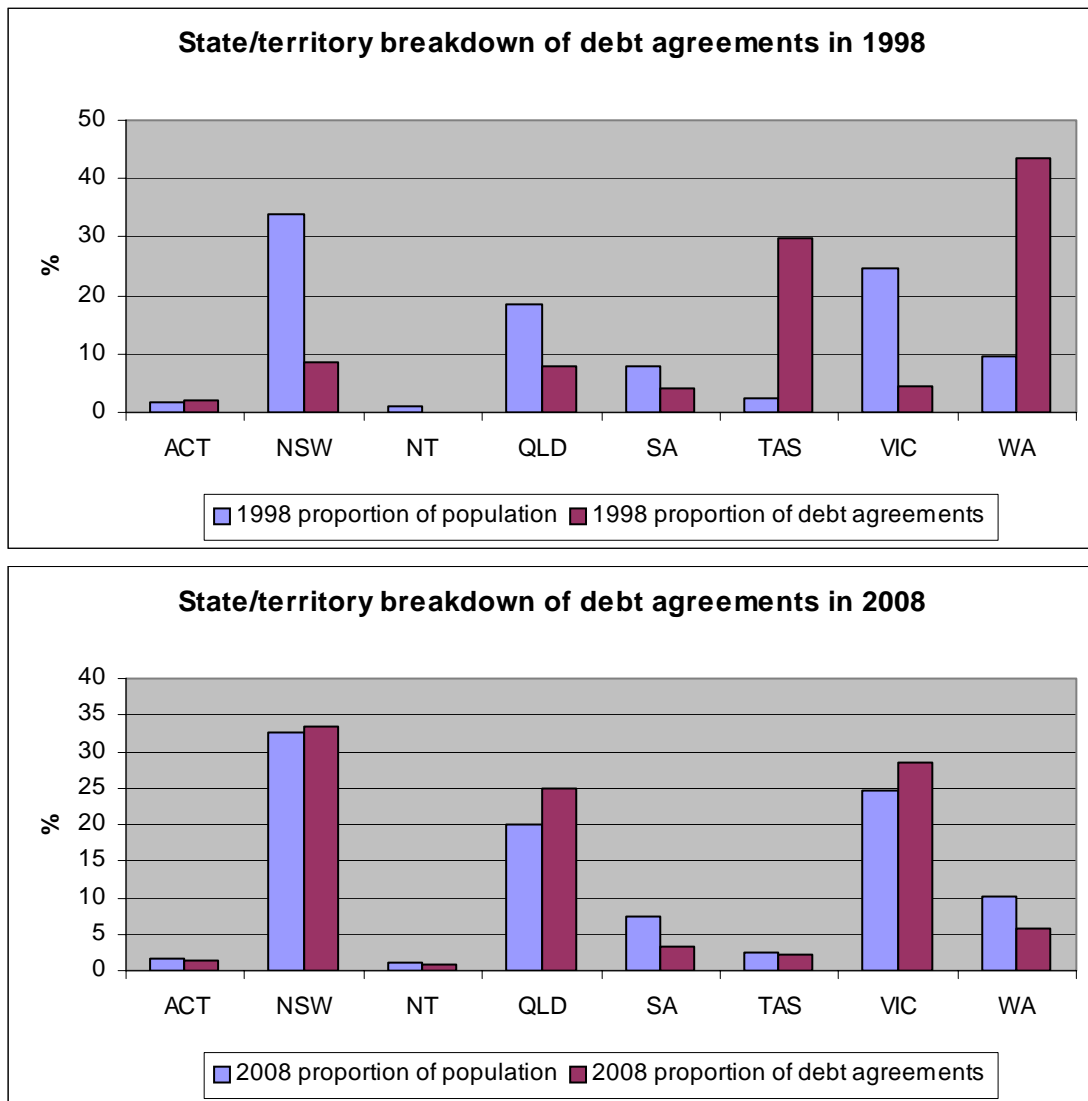
Since 2002 the proportion of debt agreements in each of the states and territories has become more reflective of their proportions of the Australian population than was the case in the years immediately following their introduction. We recall the relative stability in the proportions of bankruptcies, debt agreements and Part X arrangements as a proportion of all Australian personal insolvencies between 2005 and 2008.¹²⁷ We speculate one reason

¹²⁷ See above Section 4.5.

for this recent stability is a greater balance in the levels of awareness of the practicalities of debt agreements across the states and territories.

Figure 13 illustrates the differences in the proportion of the population and the proportion of debt agreements in each of the states and territories in 1998 and 2008. We use data from 1998 because that is the first year for which data spanning an entire financial year is available.

FIGURE 13



We do not find the 1998 data to be of utility on the basis of the small number of debt agreements in that year (349) and our speculation on a lack of uniform awareness across Australia on their practicalities.

In 2008, NSW, Queensland and Victoria all had a disproportionate number of debt agreements in comparison with their proportions of the Australian population. In 2008, Victoria contained 24.79% of the population and 28.36% of debt agreements; Queensland contained 20.02% of the population and 24.89% of debt agreements; and NSW contained 32.60% of the population and 33.39% of debt agreements.

We note that in 2008 the overrepresentation in the proportion of debt agreements in NSW was not as significant as that state's overrepresentation in its proportion of bankruptcies.

We also note that the underrepresentation in the proportion of debt agreements in WA in 2008 was similar to the state's underrepresentation in bankruptcies. In 2008, WA contained 10.12% of the population, but only 5.73% of debt agreements.

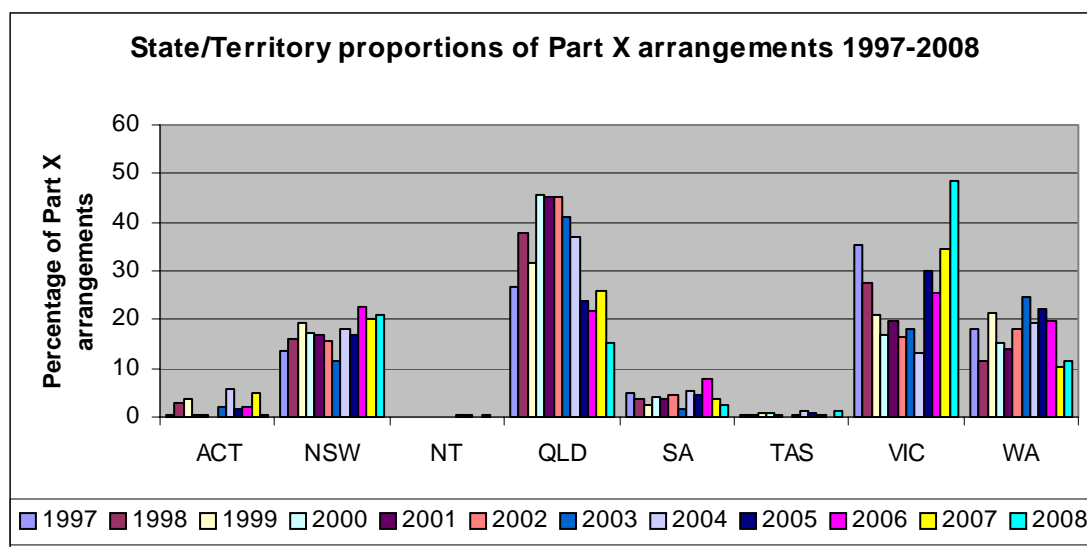
However, we observe that Victoria, a state with an underrepresentation in its proportion of bankruptcies, was overrepresented in its proportion of debt agreements.

We also find a large underrepresentation in the proportion of debt agreements in SA in comparison with the state's proportion of the population. In 2008, SA contained 7.49% of the population but only 3.35% of debt agreements. This is in contrast to SA's slight overrepresentation in bankruptcies in 2008. We speculate there may be less awareness or understanding of debt agreements as an alternative to bankruptcy in SA.

5.3 PART X ARRANGEMENTS

In 2008, there were 277 Part X arrangements. Victoria contained the highest proportion of Part X arrangements (48.38%), followed by NSW (20.94%), Queensland (15.16%), WA (11.55%), SA (2.53%), Tasmania (1.08%), and the ACT (0.36%); there were no Part X arrangements in the NT. Figure 14 illustrates the changes in and differences between the proportion of Part X arrangements in each of the states and territories between 1997 and 2008.

FIGURE 14

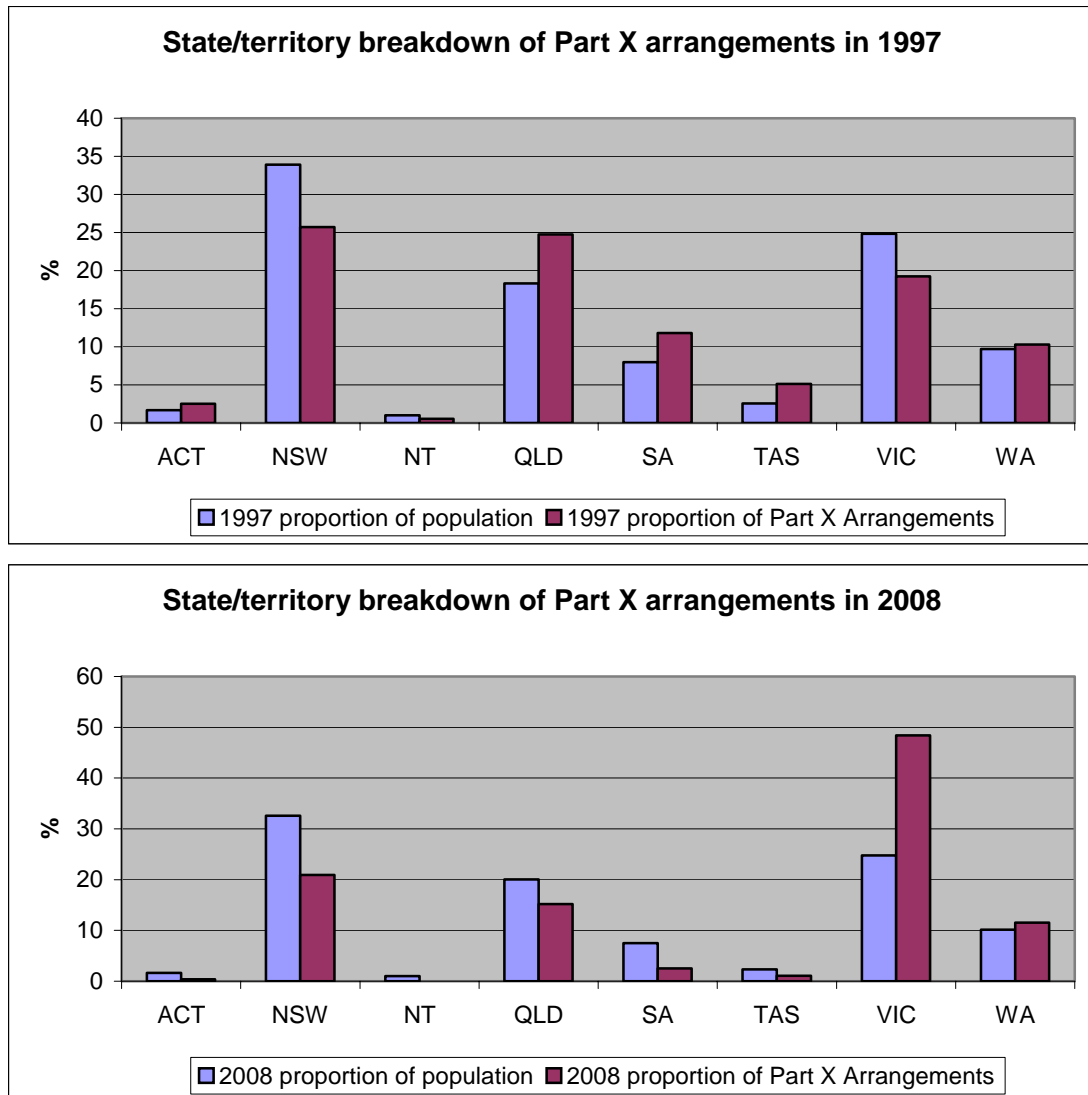


We recall that the number of Part X arrangements has become substantially lower than the number of bankruptcies and debt agreements. In 2008, they

accounted for only 0.84% of personal insolvencies. Nonetheless, it is striking that in 2008 almost half of all Part X arrangements were in Victoria. We observe that the rise in the proportion of Part X arrangements in Victoria began to occur following amendments to the Part X regime, which came into effect on 1 December 2004.

Figure 15 illustrates the differences in the proportion of the population and the proportion of Part X arrangements in each of the states and territories in 1997 and 2008.

FIGURE 15



In 2008, the largest overrepresentation of Part X arrangements was in Victoria, containing 24.79% of the population and 48.38% of Part X arrangements.

In contrast to an overrepresentation in both bankruptcies and debt agreements, Figure 15 shows that NSW has experienced an underrepresentation in Part X arrangements. In 2008, NSW contained 32.60% of the population and only 20.94% of Part X arrangements. Whilst Figure 14

shows that the proportion of Part X arrangements in NSW increased between 2003 and 2008, this increase was significantly less sharp than the increase in the state's proportion of bankruptcies.

In contrast to an underrepresentation in both bankruptcies and debt agreements, we observe that in both 1997 and 2008, WA had a more proportionate number of Part X arrangements in comparison to the state's proportion of the population. In 2008, WA contained 10.12% of the population and 11.55% of Part X arrangements.

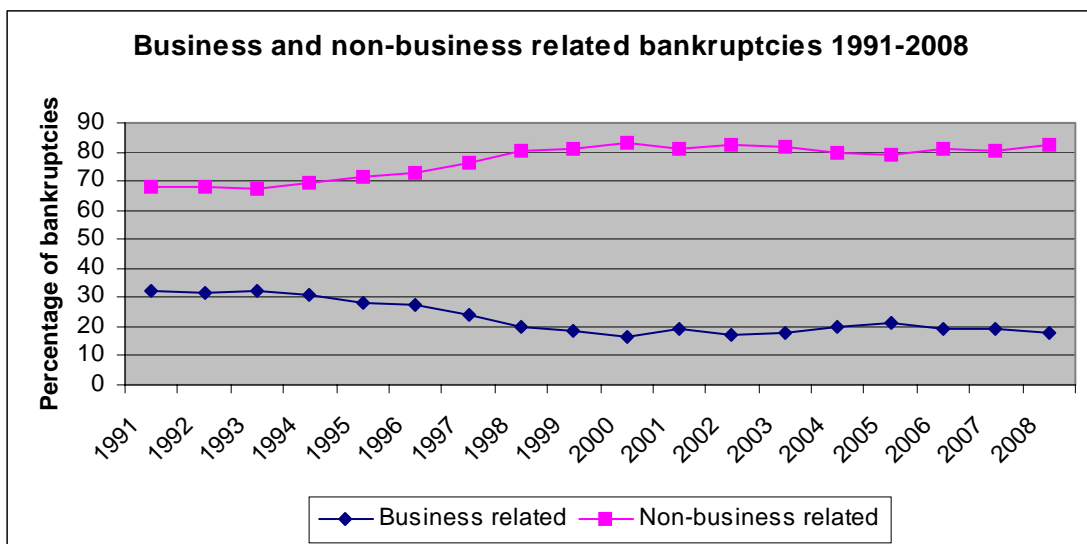
6 BUSINESS AND NON-BUSINESS RELATED PERSONAL INSOLVENCIES

In this section we observe changes in the proportion of business and non-business related insolvencies based on data from the Annual Reports. In their Statements of Affairs, insolvents classify their insolvency as either business or non-business related. Under this classification, insolvency is business related if an individual's bankruptcy, debt agreement or Part X arrangement is directly related to an insolvent's proprietary interest in a business. This classification is made on the basis of the insolvent's understanding of their insolvency. We note that no substantive definition is provided to insolvents to assist them in making this classification.

6.1 BANKRUPTCIES

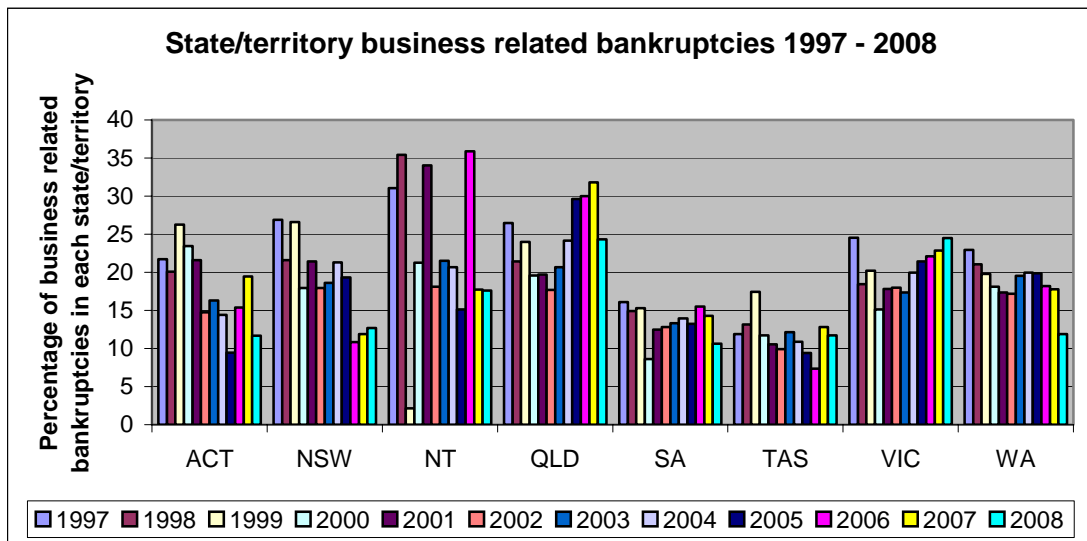
In 2008, there were 25970 bankruptcies. Of these, 4590 were business related (17.67%), and 21380 were non-business related (82.34%). Figure 16 illustrates the proportions of business and non-business related bankruptcies between 1991 and 2008. In 1991, 32.11% of bankruptcies were business related and 67.89% were non-business related. Between 1991 and 2008, Figure 16 reveals an increase in the proportion of non-business related bankruptcies. Therefore, the rise in bankruptcy numbers between 1991 and 2008 is attributable in part to an increase in the proportion of non-business related bankruptcies.

FIGURE 16



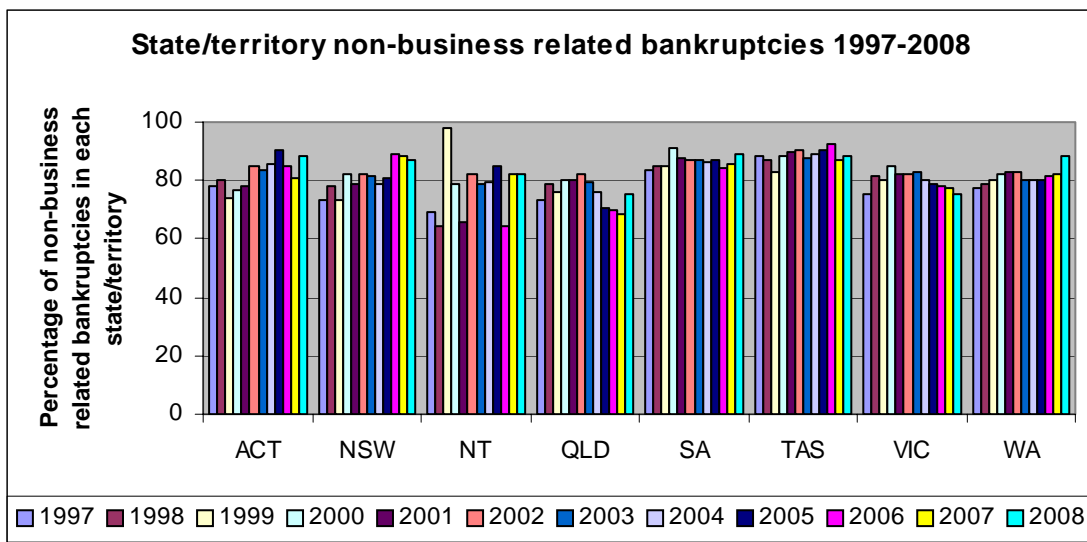
In 2008, as a proportion of bankruptcies in each state and territory, Victoria had the highest proportion of business related bankruptcies (24.49%), followed by Queensland (24.33%), the NT (17.60%), NSW (12.70%), WA (11.88%), Tasmania (11.70%), the ACT (11.68%), and SA (10.62%). Figure 17 shows the differences in business related bankruptcies as a proportion of total bankruptcies in each of the states and territories between 1997 and 2008.

FIGURE 17



In 2008, as a proportion of bankruptcies in each state and territory, SA had the highest proportion of non-business related bankruptcies (89.38%), followed by the ACT (88.32%), Tasmania (88.30%), WA (88.12%), NSW (87.30%), the NT (82.40%), Queensland (75.67%), and Victoria (75.51%). Figure 18 shows the differences in non-business related bankruptcies as a proportion of total bankruptcies in each of the states and territories between 1997 and 2008.

FIGURE 18



We speculate that Figures 17 and 18 provide a partial explanation for the overrepresentation and underrepresentation in the proportion of bankruptcies in certain states in comparison with their proportion of the population.

We recall the significant increase in the proportion of bankruptcies in NSW between 1997 and 2008. NSW contained 25.71% of bankruptcies in 1997 and 38.25% of bankruptcies in 2008. In 2008, NSW was overrepresented in

bankruptcies, as the state contained only 32.60% of the population. Figure 18 reveals an increase in the proportion of non-business related bankruptcies in NSW between 1997 and 2008. In 1997, 73.11% of bankruptcies in NSW were non-business related, whereas in 2008, 87.30% of bankruptcies in NSW were non-business related. Therefore the rise in the proportion of bankruptcies in NSW is explicable in part by the increase in the proportion of non-business related bankruptcies in that state.

In contrast to NSW we observe that Queensland, a state also overrepresented in bankruptcies, experienced a much lower rate of non-business related bankruptcies between 1997 and 2008. In 1997, 73.52% of bankruptcies in Queensland were non-business related. In 2008, 75.67% of bankruptcies in Queensland were non-business related. In previous years, the proportion of non-business related bankruptcies in Queensland had been even lower: 70.36% in 2005; 70.01% in 2006; and 68.18% in 2007. However, between 1997 and 2008, Queensland's overrepresentation in its proportion of bankruptcies in comparison to the state's proportion of the population declined. In 1997, Queensland contained 18.33% of the population and 24.75% of bankruptcies. In 2008, Queensland contained 20.02% of the population and 22.79% of bankruptcies. The decline in Queensland's overrepresentation in bankruptcies coincided with relative stability in the state's proportion of non-business related bankruptcies, whereas the overrepresentation of bankruptcies in NSW coincided with an increase in the proportion of non-business related bankruptcies in NSW.

Whilst Victoria remained underrepresented in its proportion of bankruptcies in 2008, containing 24.79% of the population and 22.04% of bankruptcies, we observe that Victoria had a lower proportion of non-business related bankruptcies than NSW. In 2008, 75.51% of Victorian bankruptcies were non-business related, in comparison to 87.30% of bankruptcies in NSW.

However, we note that between 1997 and 2008, WA experienced an increase in its proportion of non-business related bankruptcies, yet a decrease in its proportion of Australian bankruptcies. In 1997, WA contained 9.69% of the population and 10.31% of bankruptcies, of which 77.07% were non-business related. In 2008, WA contained 9.69% of the population and only 5.51% of bankruptcies, yet 88.12% of these were non-business related.

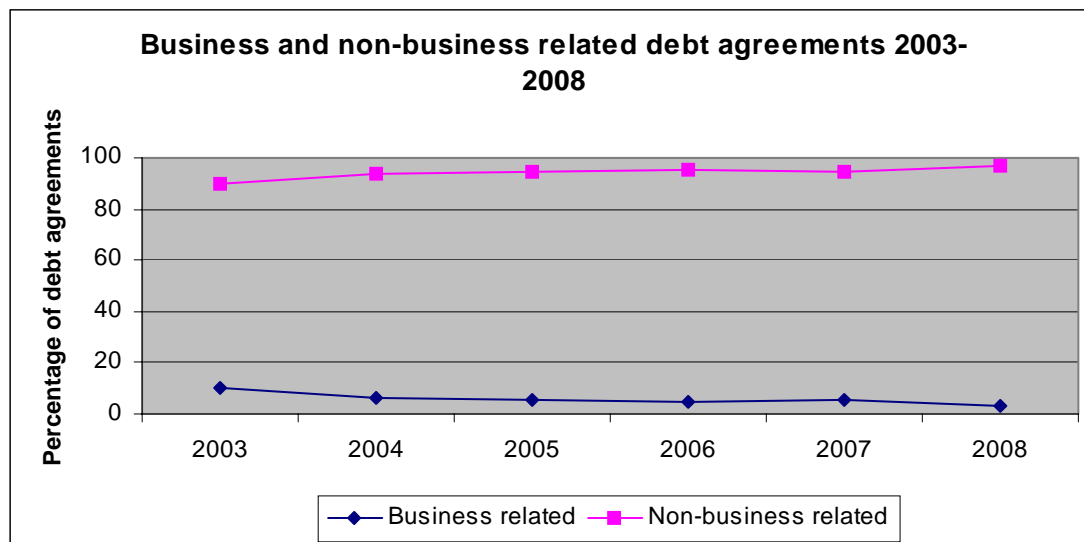
From these observations we do not find any consistent correlation between the proportion of business and non-business related bankruptcies in each of the states and territories and their overrepresentation or underrepresentation in their proportions of Australian bankruptcies.

6.2 DEBT AGREEMENTS

In 2008, there were 6618 debt agreements. Of this total there were 218 (3.29%) business related and 6400 (96.71%) non-business related debt agreements. Between 2003 and 2008, the proportion of non-business related debt agreements increased. In 2003, there were 4550 debt agreements, of

which 479 (10.53%) were business related and 4071 (89.47%) were non-business related. Figure 19 illustrates the increase in the proportion of non-business related debt agreements and the decrease in the proportion of business related debt agreements between 2003 and 2008.

FIGURE 19



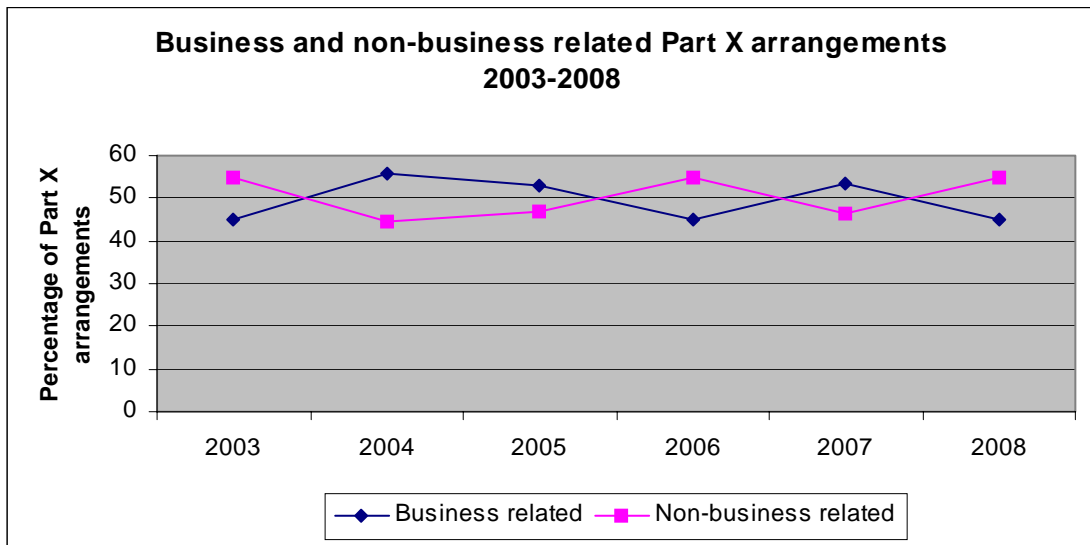
We note that in every year between 2003 and 2008 there were a greater proportion of non-business related debt agreements than non-business related bankruptcies. We speculate that one reason for the greater proportion of non-business related debt agreements is that the majority of insolvents from business-related bankruptcies are precluded from entering into debt agreements. We recall there are certain criteria determining eligibility for debt agreements, including limitations on unsecured debt, income, and divisible property levels.¹²⁸ We suggest that those from business-related insolvencies tend to have higher levels of unsecured debt, income, and divisible property than those permissible within these limitations. We also suggest that those from business related insolvencies tend to have higher levels of debt, income, and property than those from non-business related insolvencies.

6.3 PART X ARRANGEMENTS

In 2008, there were 277 Part X arrangements. Of this total there were 125 (45.13%) business related and 152 (54.87%) non-business related Part X arrangements. These proportions are similar to those from 2003, when there were 405 Part X arrangements, of which 182 (44.94%) were business related and 223 (55.06%) were non-business related. Between 2003 and 2008, the proportions of business and non-business related Part X arrangements did not remain constant, although we observe that Part X arrangements tended to be roughly half business and half non-business related. Figure 20 shows the proportion of business and non-business related Part X arrangements between 2003 and 2008.

¹²⁸ See section 3.2.

FIGURE 20



We speculate that one reason for the greater proportion of business related Part X arrangements in comparison to the lower proportion of business related bankruptcies and debt agreements is that insolvents in Part X arrangements tend to have higher income, asset and property ownership levels than bankrupts or debt agreement debtors.¹²⁹ This is consistent with our suggestion above that those from business-related insolvencies tend to have higher levels of debt, income, and property than those from non-business related insolvencies.

¹²⁹ See below sections 8.6, 8.9, and 8.10.

7 CAUSES OF PERSONAL INSOLVENCY

In this section we observe changes in the causes of insolvency for both business and non-business related insolvencies based on data from the Annual Reports.¹³⁰ In their Statements of Affairs, insolvents identify the main cause of their insolvency. We note that no substantive guidance is provided to insolvents to assist them in ascertaining what the main cause of their insolvency was. Rather, identification of the main cause is based on the insolvent's perception.

7.1 BUSINESS RELATED

7.1.1 Bankruptcies

In 2008, there were 4590 business related bankruptcies. The main causes of these business related bankruptcies were as follows: economic conditions 29.59%; other causes or cause not stated 15.16%; lack of business ability 11.50%; excessive drawings 10.27%; lack of capital 7.75%; personal reasons including ill health 7.30%; excessive interest 6.85%; failure to keep proper books 4.05%; inability to collect debts 3.62%; seasonal conditions 2.56%; and gambling or speculation 1.34%. Figure 21 illustrates the causes of business related bankruptcies between 2000 and 2008.

FIGURE 21

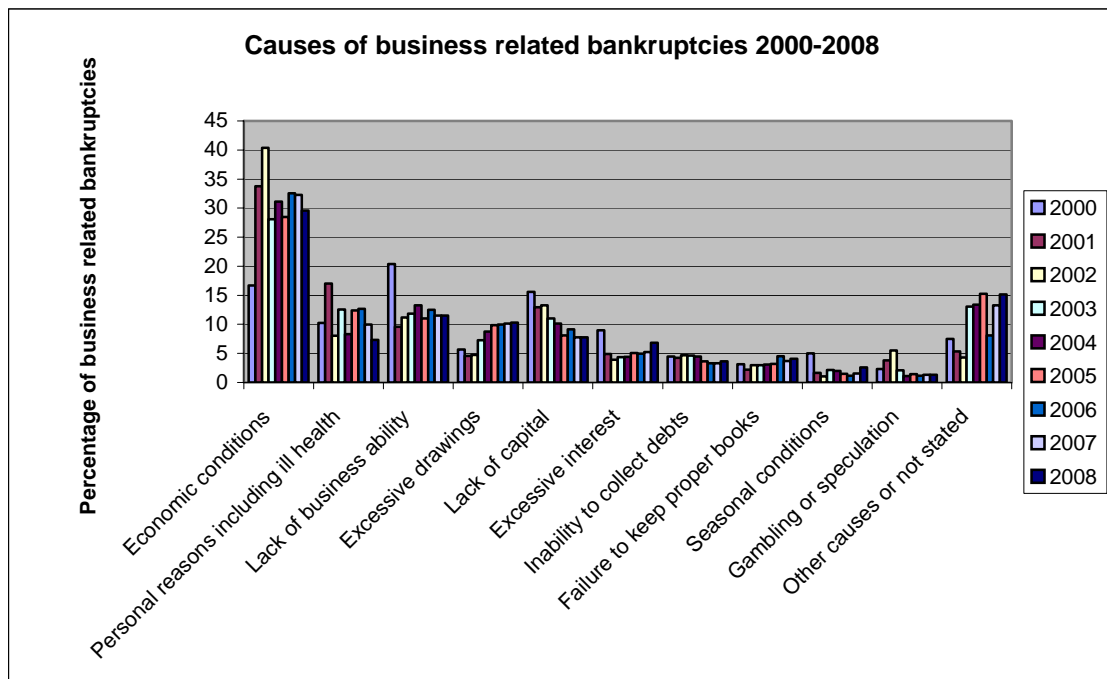


Figure 21 reveals that economic conditions caused the most business related bankruptcies between 2001 and 2008; in 2000, the greatest cause was lack of

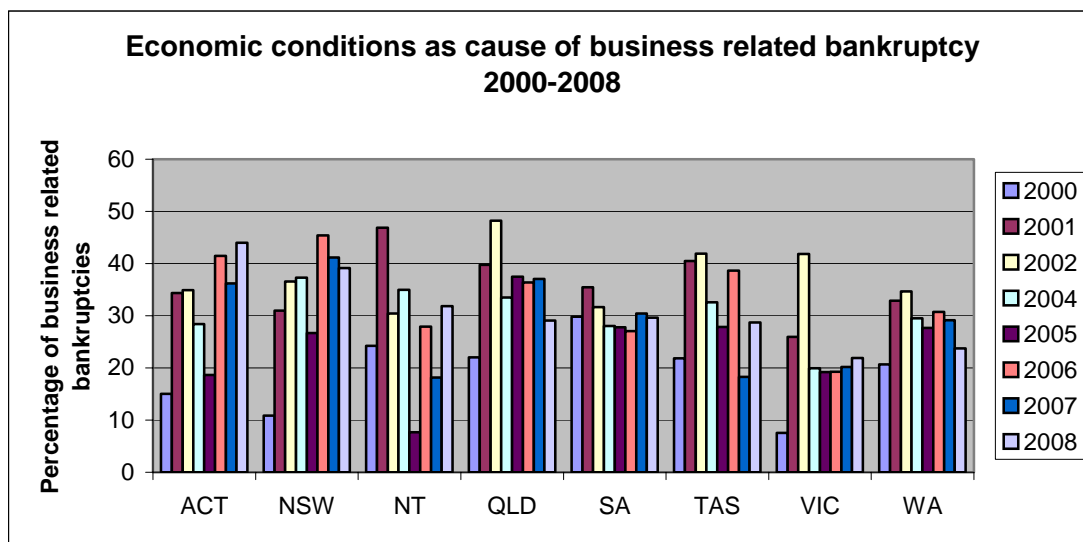
¹³⁰ ITSA treat bankruptcy proceedings involving two or more partners as one administration. Therefore there may be a small difference between the total number of causes identified by insolvents and the total number of bankruptcies in each year in question.

business ability. We note an increase in business related bankruptcies caused by excessive drawings from 5.67% in 2000 to 10.27% in 2008. We note a decrease in business related bankruptcies caused by lack of capital from 15.61% in 2000 to 7.75% in 2008.

We also observe changes in the major causes of business related bankruptcies in each of the states and territories based on data from the Annual Reports. We restrict our observations to the major causes for the reason that the less cited causes contain low numbers of bankruptcies, which can lead to volatile differences in results between different years.

Figure 22 illustrates the proportion of business related bankruptcies in each of the states and territories between 2000 and 2008 caused by economic conditions. In 2008, the proportions of business related bankruptcies in each state and territory caused by economic conditions were as follows: 44% in the ACT; 39.16% in NSW; 31.82% in the NT; 29.64% in SA; 29.08% in Queensland; 28.72% in Tasmania; 23.73% in WA; and 21.89% in Victoria.

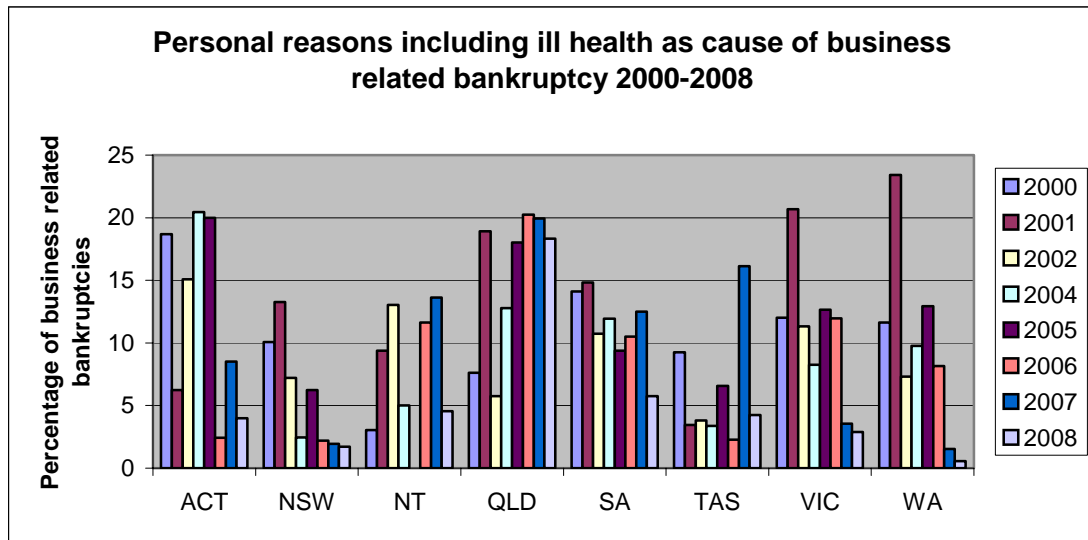
FIGURE 22



We recall from Figure 17 that between 2000 and 2008, Queensland and Victoria tended to have higher proportions of business related bankruptcies compared to most other states and territories. In 2008, 24.49% of bankruptcies in Victoria were business related, compared to 24.33% in Queensland. We note from Figure 22 that between 2000 and 2008, Victoria tended to have a lower proportion of bankruptcies caused by economic conditions, whereas Queensland tended to have a higher proportion of bankruptcies caused by economic conditions compared to other states and territories. Between 2000 and 2008, NSW tended to have lower proportions of business related bankruptcies compared to most other states and territories. In 2008, 12.70% of bankruptcies in NSW were business related. We note that between 2000 and 2008, NSW tended to have a higher proportion of business related bankruptcies caused by economic conditions compared to most other states and territories.

Figure 22 illustrates the proportion of business related bankruptcies in each of the states and territories between 2000 and 2008 caused by personal reasons including ill health. In 2008, the proportions of business related bankruptcies in each state and territory caused by personal reasons including ill health were as follows: 18.34% in Queensland; 5.75% in SA; 4.55% in the NT; 4.26% in Tasmania; 4% in the ACT; 2.90% in Victoria; 1.71% in NSW; and 0.56% in WA.

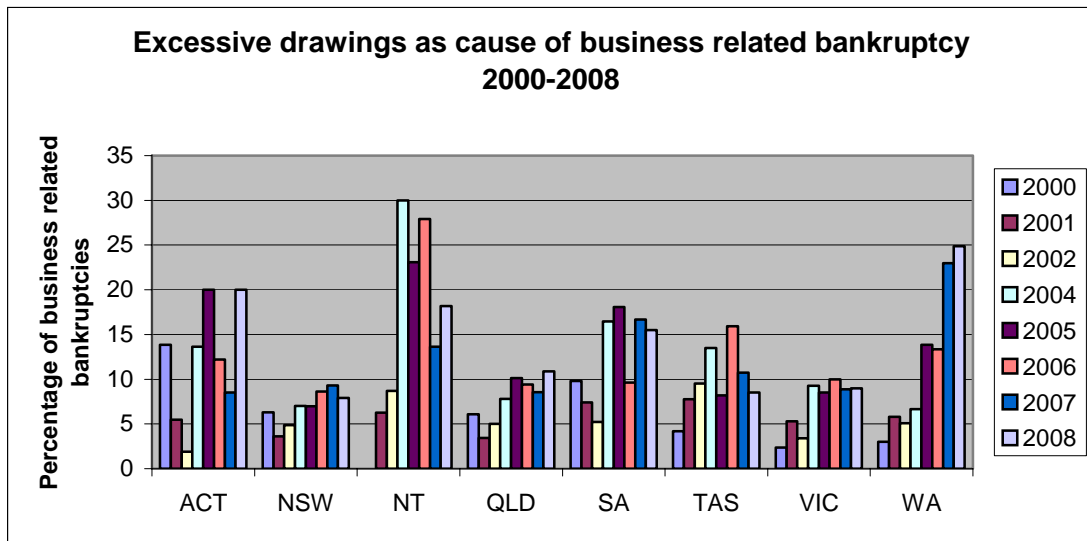
FIGURE 23



We note that Queensland, a state which tended to have a higher proportion of business related bankruptcies between 2000 and 2008, also tended to have a larger proportion of business related bankruptcies caused by personal reasons including ill health compared to most other states and territories. We note that NSW, a state which tended to have a lower proportion of business related bankruptcies between 2000 and 2008, tended to have a lower proportion of business related bankruptcies caused by personal reasons including ill health compared to most other states and territories.

Figure 24 illustrates the proportion of business related bankruptcies in each of the states and territories between 2000 and 2008 caused by excessive drawings. In 2008, the proportions of business related bankruptcies in each state and territory caused by excessive drawings were as follows: 24.86% in WA; 20% in the ACT; 18.18% in the NT; 15.49% in SA; 10.89% in Queensland; 8.97% in Victoria; 8.51% in Tasmania; and 7.93% in NSW.

FIGURE 24

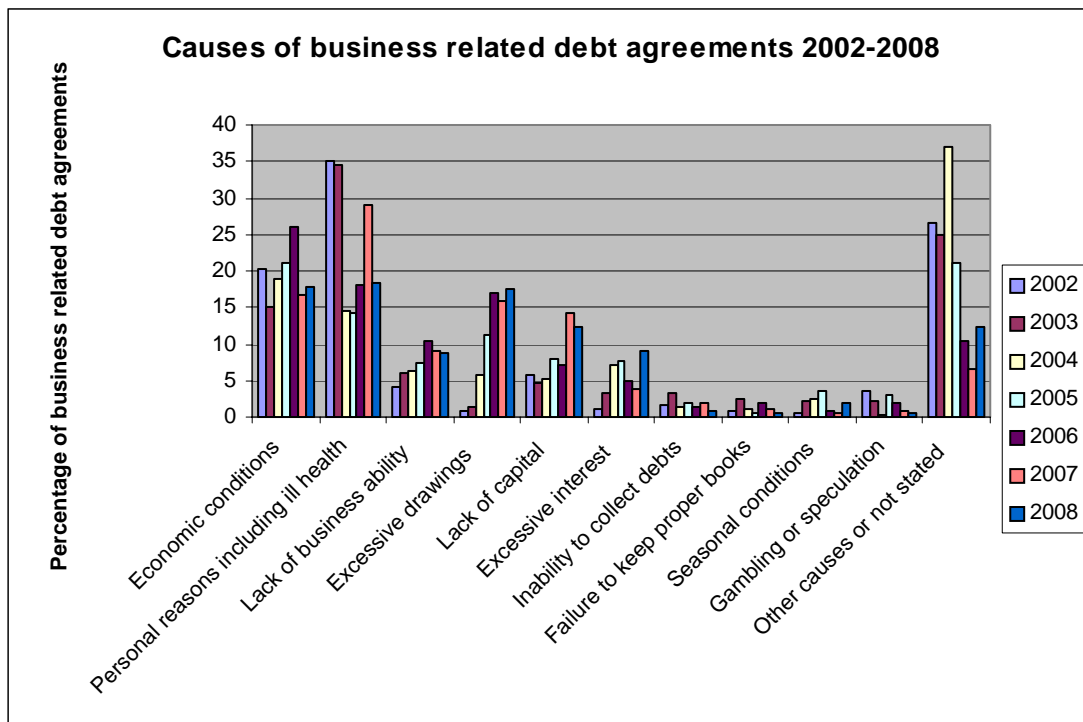


We note that between 2000 and 2008 in WA there was a significant increase in the proportion of business related bankruptcies caused by excessive drawings. In 2000, 13 business related bankruptcies in WA were caused by excessive drawings (3.02%), compared to 44 in 2008 (24.86%).

7.1.2 Debt agreements

In 2008, there were 218 business related debt agreements. The main causes of business related debt agreements in 2008 were as follows: personal reasons including ill health 18.35%; economic conditions 17.89%; excessive drawings 17.43%; lack of capital 12.39%; other cause/cause not stated 12.39%; excessive interest 9.17%; lack of business ability 8.72%; seasonal conditions 1.83%; inability to collect debts 0.92%; failure to keep proper books 0.46%; and gambling or speculation 0.46%. Figure 25 illustrates the causes of business related debt agreements between 2002 and 2008.

FIGURE 25



We recall that both the number and proportion of business related debt agreements decreased between 2003 and 2008. In 2003, 479 debt agreements were business related (10.53%), compared to 218 in 2008 (3.29%).

We observe significant increases in several causes of business related debt agreements between 2002 and 2008. In 2002, 4.22% of business related debt agreements were caused by lack of business ability, compared to 8.72% in 2008. In 2002, 0.75% of business related debt agreements were caused by excessive drawings, compared to 17.43% in 2008. In 2002, 5.87% of business related debt agreements were caused by lack of capital, compared to 12.39% in 2008. In 2002, 1.05% of business related debt agreements were caused by excessive interest, compared to 9.17% in 2008.

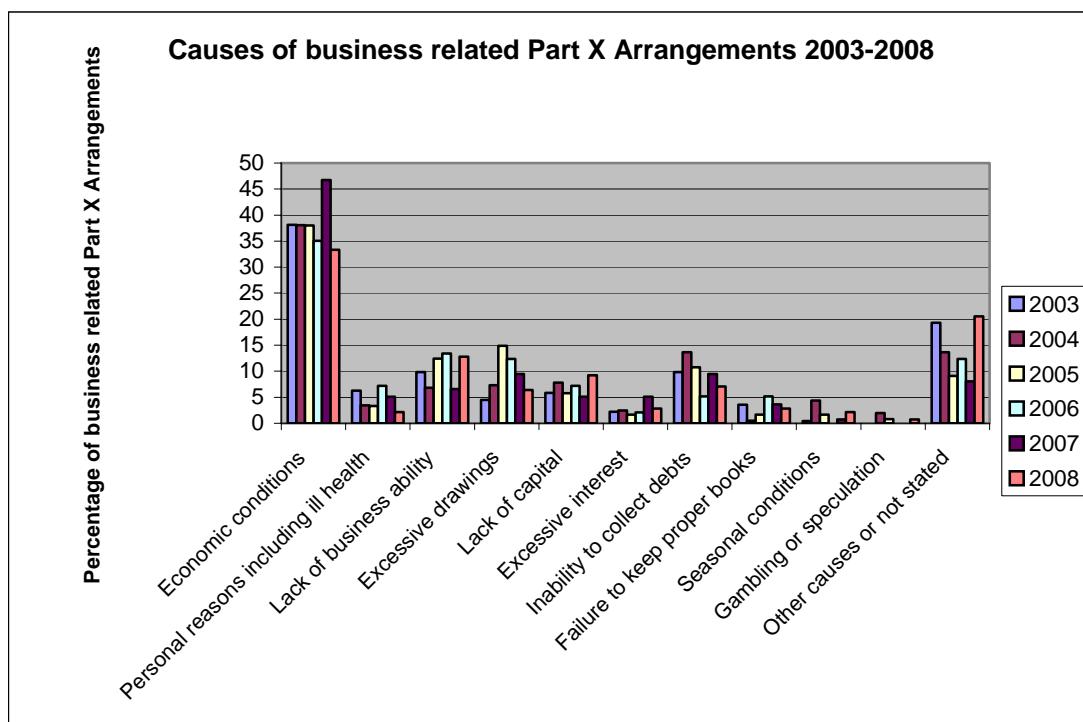
We observe significant decreases in two causes of business related debt agreements between 2002 and 2008. In 2002, 35.09% of business related debt agreements were caused by personal reasons including ill health, compared to 18.35% in 2008. In 2002, 3.46% of business related debt agreements were caused by gambling or speculation, compared to 0.46% in 2008.

We do not observe changes in the major causes of business related debt agreements in each of the states and territories. As a result of the small number of business related debt agreements, we do not find observations on these changes to be of utility.

7.1.3 Part X arrangements

In 2008, there were 125 business related Part X arrangements. The main causes of these business related Part X Arrangements were as follows: economic conditions 33.33%; other cause/cause not stated 20.57%; lack of business ability 12.77%; lack of capital 9.22%; inability to collect debts 7.09%; excessive drawings 6.38%; excessive interest 2.84%; failure to keep proper books 2.84%; personal reasons including ill health 2.13%; seasonal conditions 2.13%; and gambling or speculation 0.71%. Figure 26 illustrates the causes of business related Part X arrangements between 2003 and 2008. We note that the greatest proportion of business related Part X arrangements between 2003 and 2008 were caused by economic conditions.

FIGURE 26



We do not observe changes in the major causes of business related Part X arrangements in each of the states and territories. As a result of the small number of business related Part X arrangements, we do not find observations on these changes to be of utility.

7.2 NON-BUSINESS RELATED

7.2.1 Bankruptcies

In 2008, there were 21380 non-business related bankruptcies. The causes of these non-business related bankruptcies were as follows: unemployment 31.17%; excessive use of credit 27.55%; domestic discord 12.37%; ill health 11.78%; adverse litigation 4.46%; gambling or speculation 4.28%; liabilities on guarantees 2.14%; and other cause/cause not stated 6.24%. Figure 27

illustrates the causes of non-business related bankruptcies between 1997 and 2008.

FIGURE 27

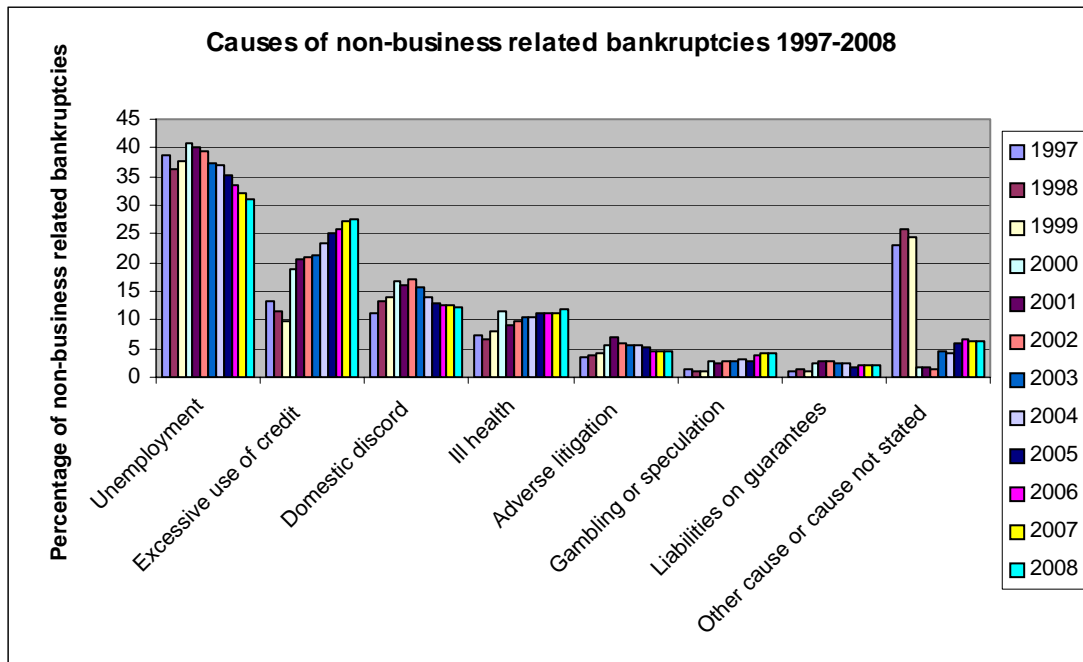


Figure 27 reveals that unemployment was the largest cause of non-business related bankruptcies between 1997 and 2008. However, the proportion of non-business related bankruptcies caused by unemployment decreased during this period. In 1997, unemployment caused 6469 non-business related bankruptcies (38.88%), compared to 6699 in 2008 (31.17%).

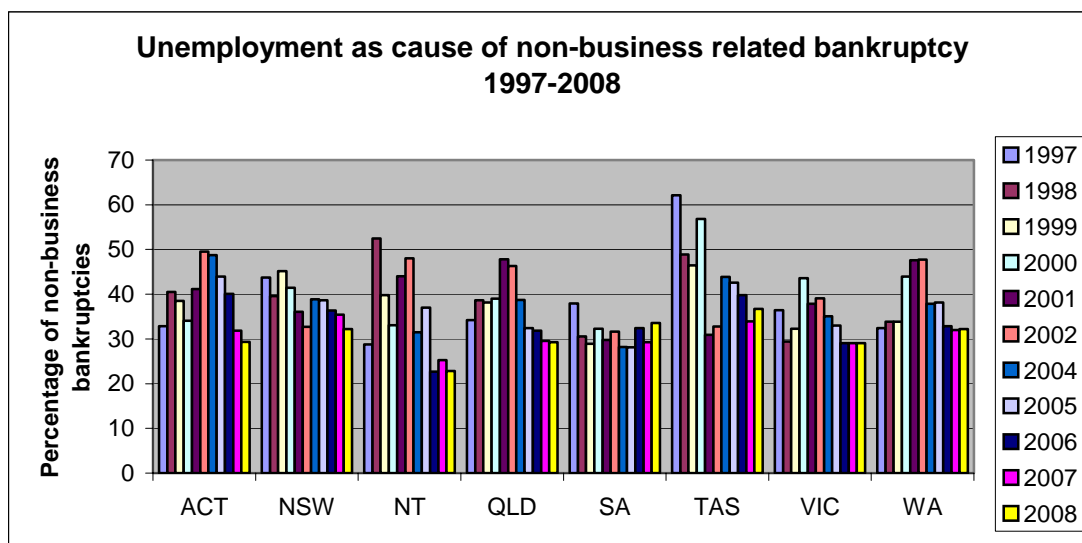
We note significant increases in the proportions of three causes of non-business related bankruptcies between 1997 and 2008. In 1997, excessive use of credit caused 2223 non-business related bankruptcies (13.36%), compared to 5922 in 2008 (27.55%). In 1997, ill health caused 1237 non-business related bankruptcies (7.43%), compared to 2531 in 2008 (11.78%). In 1997, gambling or speculation caused 217 non-business related bankruptcies (1.30%), compared to 921 in 2008 (4.28%). This represents a 229% increase between 1997 and 2008 in the proportion of non-business related bankruptcies caused by gambling or speculation.

We also observe changes in the major causes of non-business related bankruptcies in each of the states and territories based on data from the Annual Reports. We restrict our observations to the major causes for the reason that the less cited causes contain low numbers of bankruptcies, which can lead to volatile differences in results between different years.

Figure 28 illustrates the proportion of non-business related bankruptcies in each of the states and territories between 1997 and 2008 caused by unemployment. In 2008, the proportions of non-business related bankruptcies in each of the states and territories caused by unemployment were as follows:

Tasmania 36.73%; SA 33.58%; NSW 32.18%; WA 32.02%; the ACT 29.32%; Queensland 29.29%; Victoria 29.08%; and the NT 22.86%.

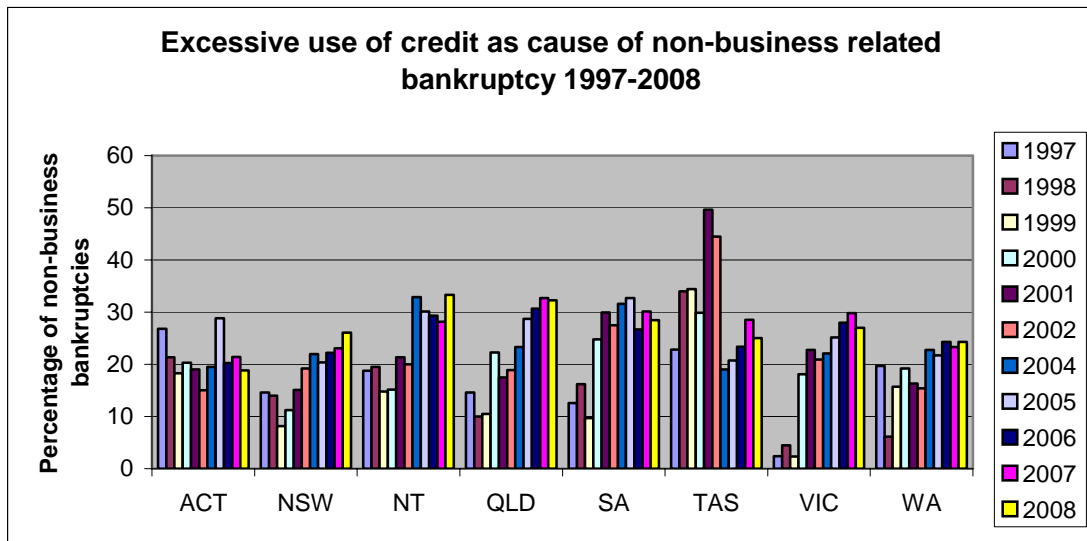
FIGURE 28



We observe that the decrease in the proportion of non-business related bankruptcies between 1997 and 2008 caused by unemployment occurred in all states and territories. We do not find that unemployment as a cause of non-business related bankruptcies explains the disproportionate rates of non-business related bankruptcies in certain states and territories. We note the significant decrease in the proportion of non-business related bankruptcies caused by unemployment in Tasmania, from 62.11% in 1997 (613 bankruptcies) to 36.73% in 2008 (245 bankruptcies).

Figure 29 illustrates the proportion of non-business related bankruptcies in each of the states and territories between 1997 and 2008 caused by excessive use of credit. In 2008, the proportion of non-business related bankruptcies in each of the states and territories caused by excessive use of credit were as follows: 33.33% in the NT; 32.29% in Queensland; 28.44% in SA; 27.01% in Victoria; 26.06% in NSW; 25.04% in Tasmania; 24.31% in WA; and 18.85% in the ACT.

FIGURE 29



We observe that the increase in the proportion of non-business related bankruptcies between 1997 and 2008 caused by excessive use of credit occurred in all states and territories (excluding the ACT, where excessive use of credit caused 26.81% of non-business related bankruptcies in 1997, compared to 18.85% in 2008). We do not find that excessive use of credit as a cause of non-business related bankruptcy explains the disproportionate rates of non-business related bankruptcies in certain states and territories.

7.2.2 Debt agreements

In 2008, there were 6400 non-business related debt agreements. The causes of these non-business related debt agreements were as follows: excessive use of credit 39.41%; unemployment 35.58%; domestic discord 13.17%; ill health 7.51%; other cause/cause not stated 2.47%; gambling or speculation 1.42%; adverse litigation 0.23%; and liabilities on guarantees 0.20%. Figure 30 illustrates the causes of non-business related debt agreements between 2002 and 2008.

FIGURE 30

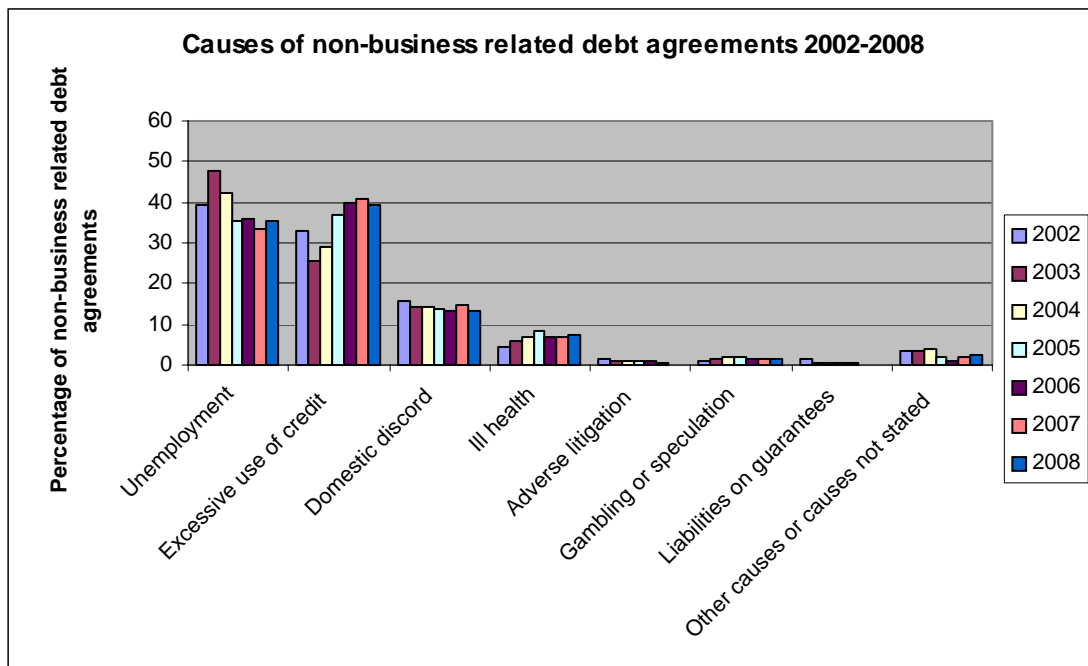


Figure 30 reveals that, unlike non-business related bankruptcies, there was no single largest cause of non-business related debt agreements in each year between 2002 and 2008. However, as for non-business related bankruptcies, unemployment and excessive use of credit caused the greatest proportion of non-business related debt agreements between 2002 and 2008. The proportion of non-business related debt agreements caused by unemployment decreased during this period. In 2002, unemployment caused 1340 non-business related debt agreements (39.50%), compared to 2278 in 2008 (35.58%). The proportion of non-business related debt agreements caused by excessive use of credit increased during this period. In 2002, excessive use of credit caused 1114 non-business related debt agreements (32.84%), compared to 2523 in 2008 (39.41%).

We also observe changes in the major causes of non-business related debt agreements in each of the states and territories based on data from the Annual Reports in 2002 and between 2004 and 2008. We restrict our observations to the major causes for the reason that the less cited causes contain low numbers of debt agreements, which can lead to volatile differences in results between different years.

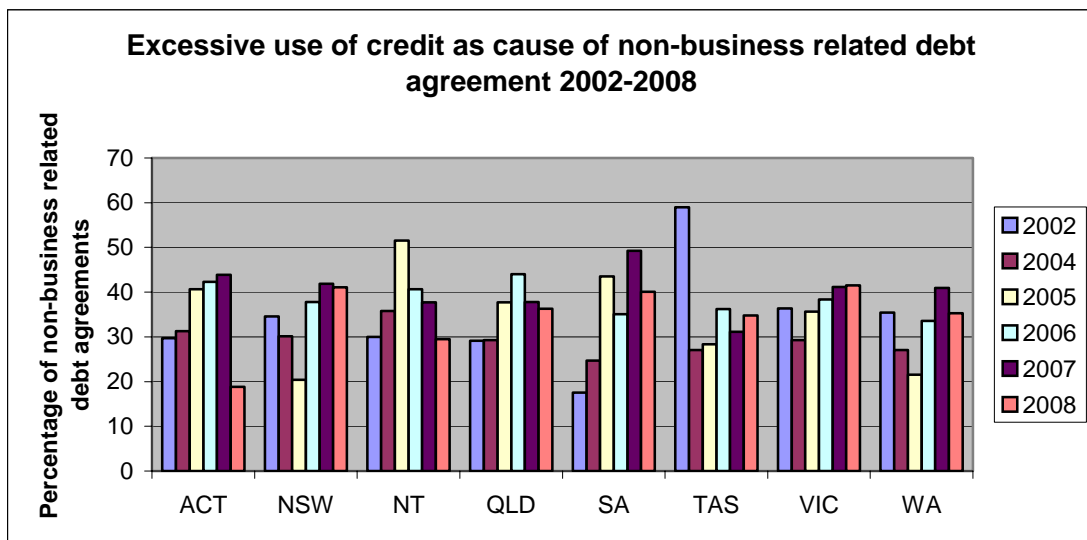
Figure 31 illustrates the proportion of non-business related debt agreements in each of the states and territories in 2002 and between 2004 and 2008 caused by unemployment. In 2008, the proportion of non-business related debt agreements in each of the states and territories caused by unemployment were as follows: Queensland 38.07%; the NT 36.07%; NSW 35.87%; WA 34.49%; SA 33.78%; Victoria 33.48%; Tasmania 31.85%; and the ACT 29.32%.

FIGURE 31



Figure 32 illustrates the proportion of non-business related debt agreements in each of the states and territories in 2002 and between 2004 and 2008 caused by excessive use of credit. In 2008, the proportion of non-business related debt agreements in each of the states and territories caused by excessive use of credit were as follows: Victoria 41.51%; NSW 41.09%; SA 40.09%; Queensland 36.30%; WA 35.29%; Tasmania 34.81%; the NT 29.51%; and the ACT 18.85%.

FIGURE 32

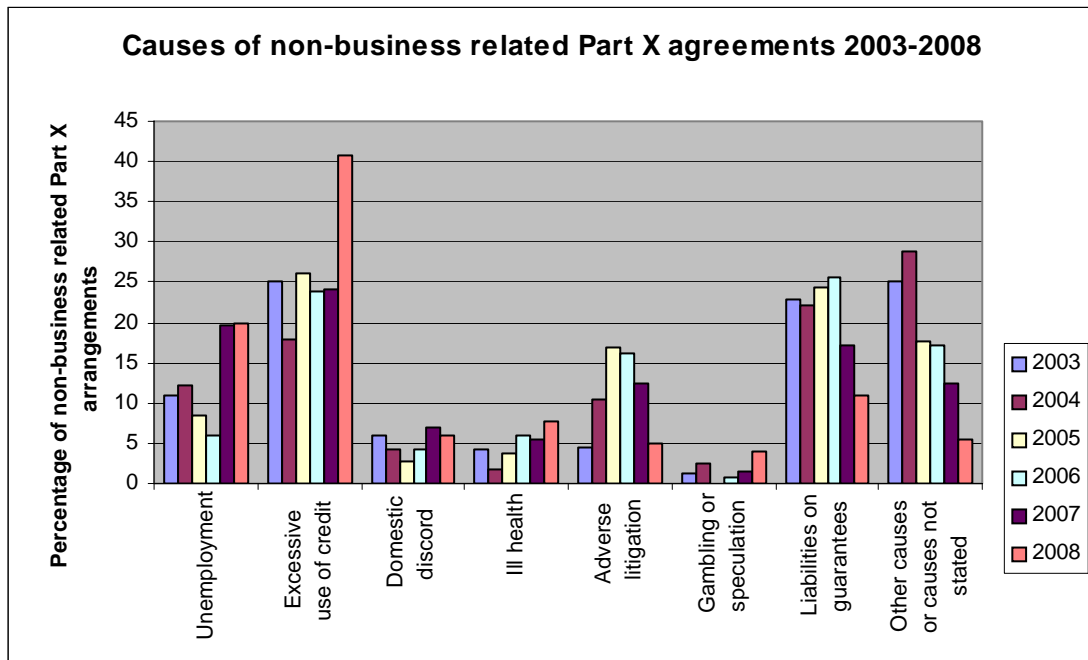


7.2.3 Part X arrangements

In 2008, there were 152 non-business related Part X arrangements. The causes of these non-business related Part X Arrangements were as follows: excessive use of credit 40.88%; unemployment 19.89%; liabilities on guarantees 11.05%; ill health 7.73%; domestic discord 6.08%; other cause/cause not stated 5.52%; adverse litigation 4.97%; and gambling or

speculation 3.87%. Figure 33 illustrates the causes of non-business related Part X arrangements between 2003 and 2008.

FIGURE 33



We observe increases in the proportions of non-business related Part X arrangements caused by unemployment and excessive use of credit. In 2003, unemployment caused 29 non-business related Part X arrangements (10.90%), compared to 36 in 2008 (19.89%). In 2003, excessive use of credit caused 67 non-business related Part X arrangements (25.19%), compared to 74 in 2008 (40.88%).

We do not observe changes in the major causes of non-business related Part X arrangements in each of the states and territories. As a result of the small number of non-business related Part X arrangements, we do not find observations on these changes to be of utility.

8 CHANGES IN THE CHARACTERISTICS OF AUSTRALIAN PERSONAL INSOLVENTS BETWEEN 1997 AND 2008

In this section we observe changes in the characteristics of personal insolvents between 1997 and 2008. We use data from the Annual Reports, the Profiles, and the ABS.

8.1 GENDER

We observe changes in the gender of insolvents nationally as well as in each of Australia's states and territories. We use 1997 data from the Profiles, which is based on calendar year figures. We use data between 2001 and 2008 from the Annual Reports, which is based on financial year figures. We also use data from the ABS.

In 2008, it was estimated that 49.73% of the Australian population was male and 50.27% of the population was female.

8.1.1 Bankrupts

In 2008, 56.89% of bankrupts were male and 43.11% were female. Figure 34 reveals that the proportions of male and female bankrupts remained stable between 2001 and 2008 and were similar to the proportions in 1997. During this period, the highest proportion of males (57.72%) and the lowest proportion of females (42.28%) were in 2007. The lowest proportion of males (54.62%) and the highest proportion of females (45.38%) were in 2003.

FIGURE 34

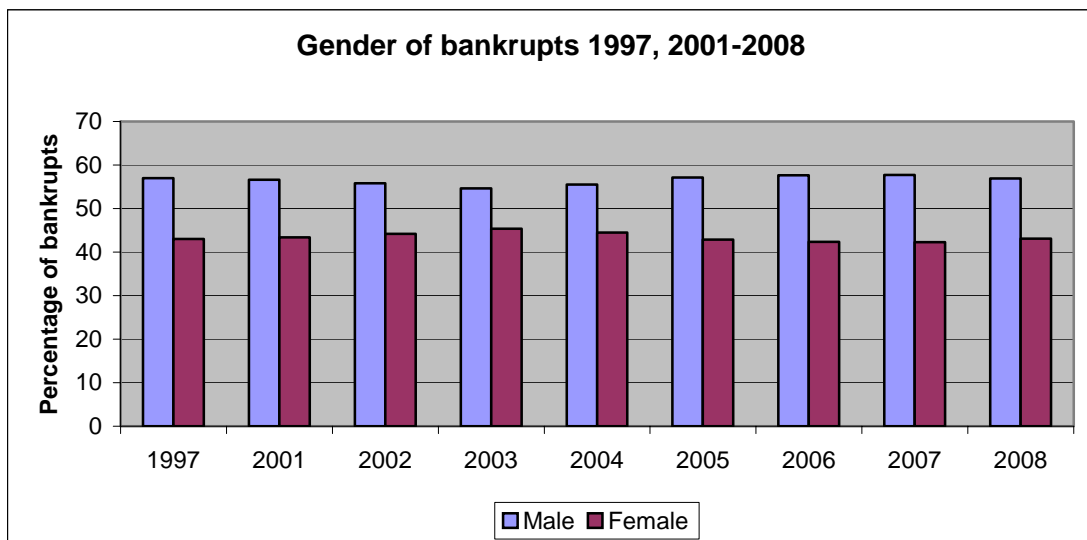


Figure 35 illustrates the changes in and differences between the proportion of male bankrupts in each of the states and territories between 2001 and 2008. Figure 36 illustrates the changes in and differences between the proportion of female bankrupts in each of the states and territories between 2001 and 2008.

The data we use from the Annual Reports combines NSW and the ACT into one group, and SA and the NT into another group, whilst data for the remaining states remains separate.

FIGURE 35

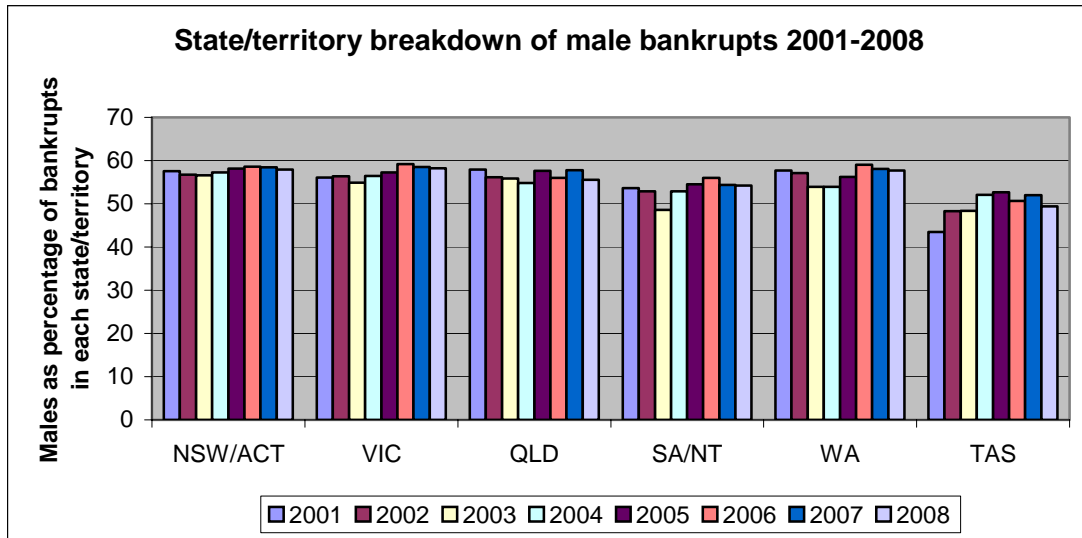
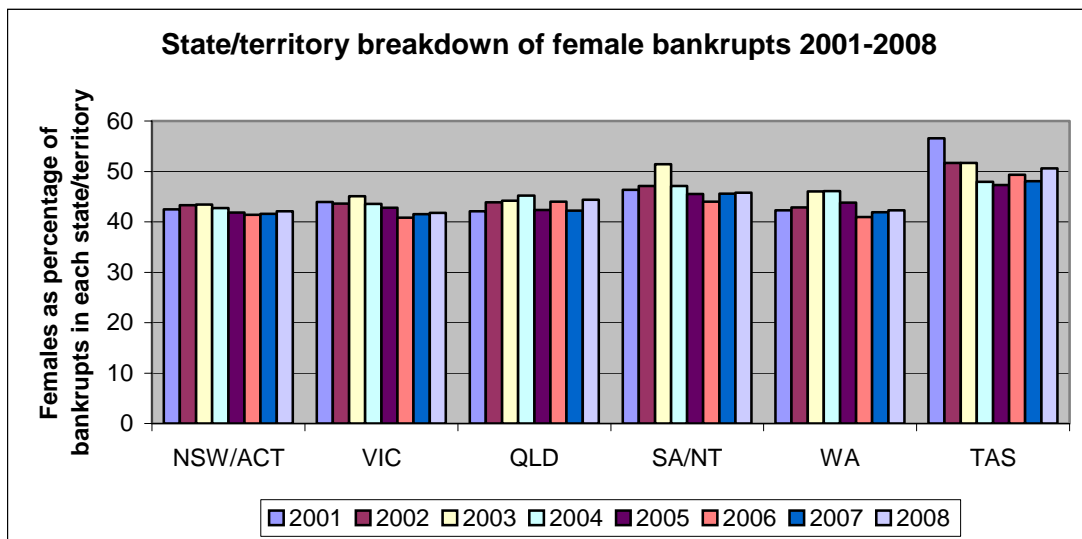


FIGURE 36



We observe that the higher proportion of male bankrupts in each of the state and territory groups remained relatively consistent between 2001 and 2008 with the exception of Tasmania, which tended to have a greater proportion of female bankrupts than the other state and territory groups. In 2008, 50.59% of bankrupts in Tasmania were female.

8.1.2 Debt agreement debtors

In 2008, 51.31% of debt agreement debtors were male and 48.69% were female. Figure 37 shows the proportions of male and female debt agreement debtors have not always been near parity. In 1997, 61% of debt agreement

debtors were male and 39% were female. Between 2001 and 2008, Figure 37 reveals that the proportion of female debt agreement debtors increased.

FIGURE 37

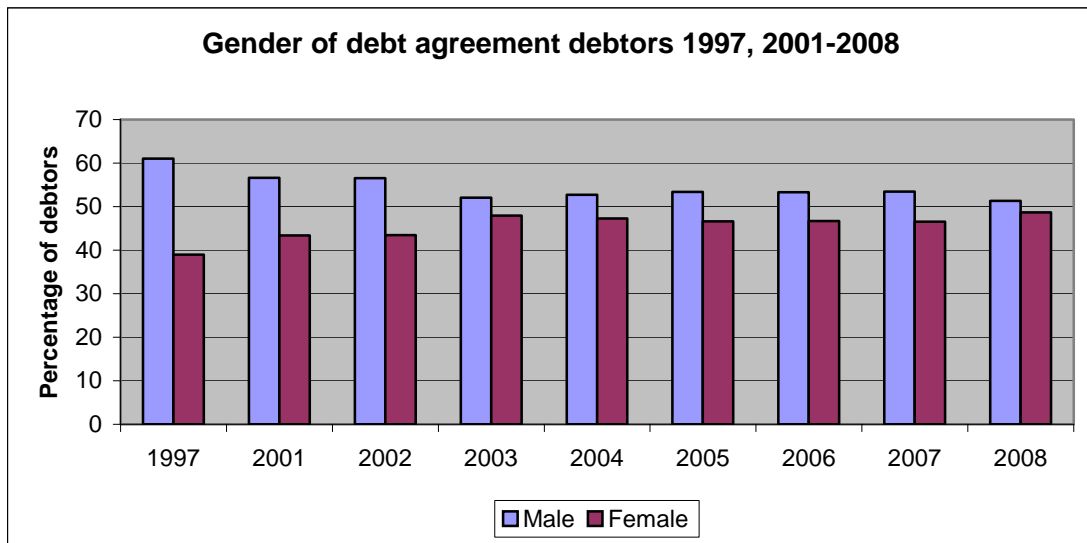


Figure 38 illustrates the changes in and differences between the proportion of male debt agreement debtors in each of the states and territories between 2001 and 2008. Figure 39 illustrates the changes in and differences between the proportion of female debt agreement debtors in each of the states and territories between 2001 and 2008. The data we use from the Annual Reports combines NSW and the ACT into one group, and SA and the NT into another group, whilst data for the remaining states remains separate.

FIGURE 38

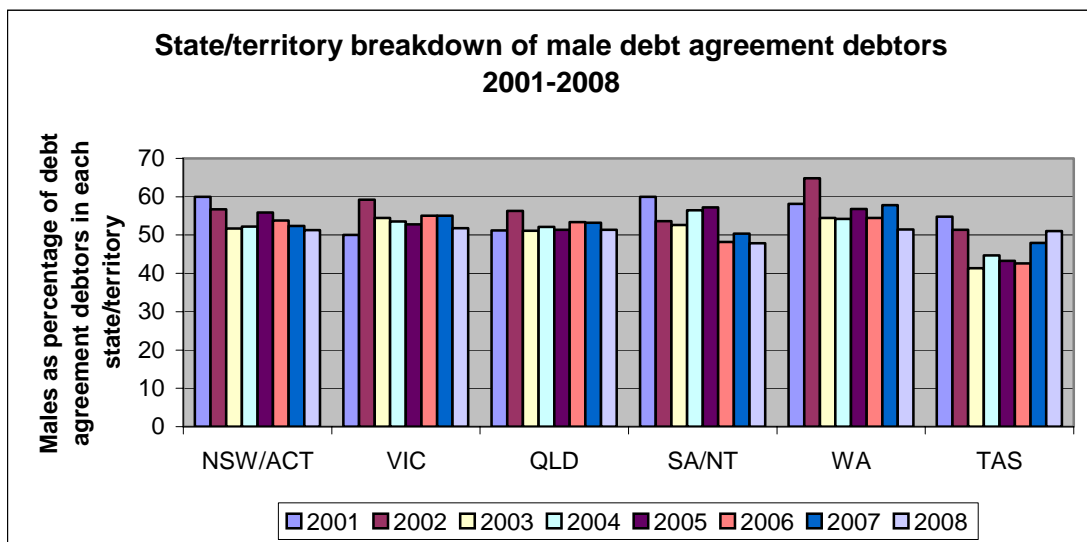
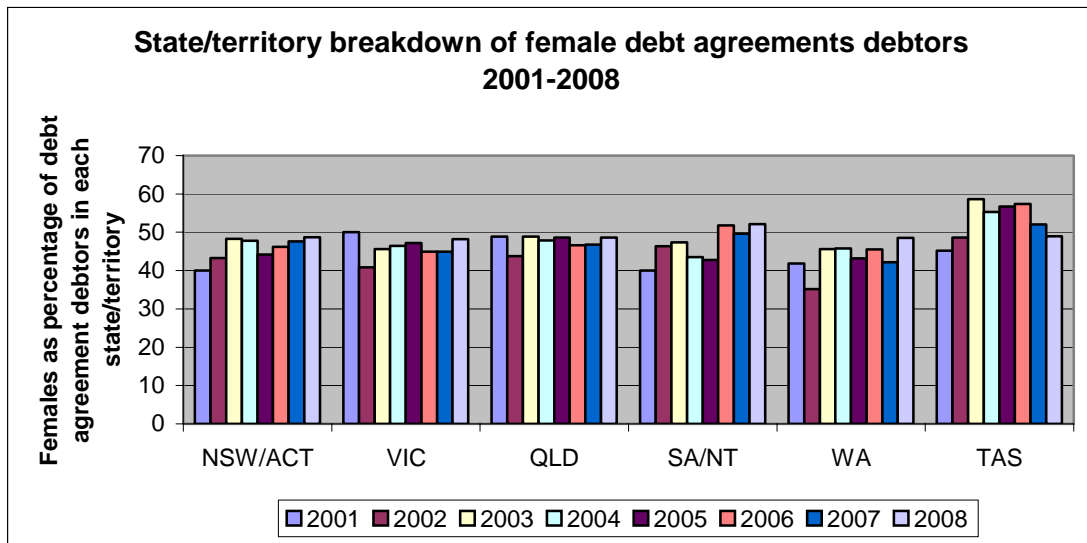


FIGURE 39



We observe that generally there were a higher proportion of male debt agreement debtors in each of the state and territory groups between 2001 and 2008. However we note that, as for bankrupts, there tended to be more female debt agreement debtors in Tasmania than in the other state and territory groups.

8.1.3 Part X debtors

In 2008, 72.36% of Part X debtors were male and 27.64% were female. Figure 40 illustrates that the proportions of male and female Part X debtors remained relatively stable between 2001 and 2008, similar to the relative stability in the proportions of male and female bankrupts during this period. In 2005, the proportion of male Part X debtors increased slightly. This may have been as a result of amendments to Part X of the Act, which came into effect on 1 December 2004 and saw a decrease in the number of Part X debtors.

FIGURE 40

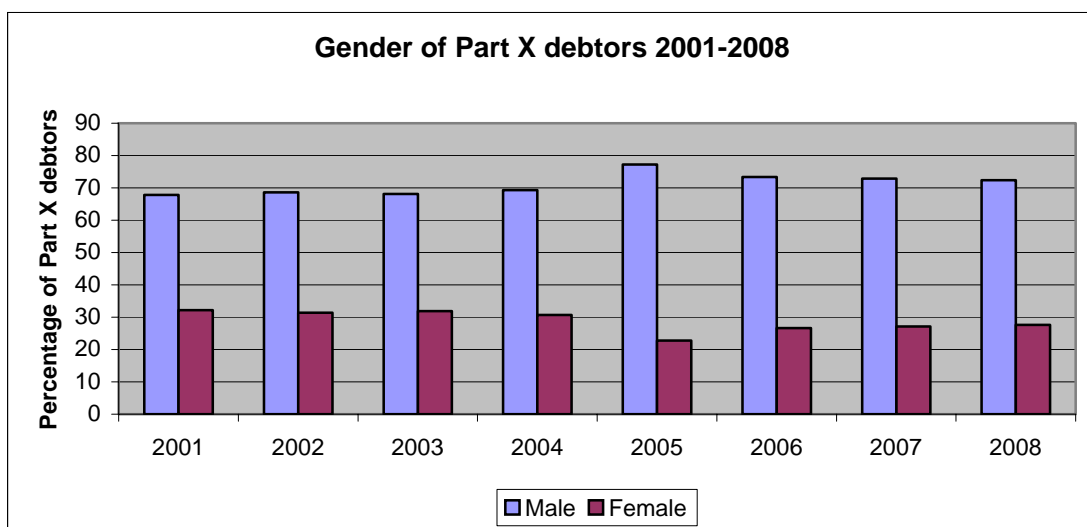


Figure 41 illustrates the changes in and differences between the proportion of male Part X debtors in each of the states and territories between 2001 and 2008. Figure 42 illustrates the changes in and differences between the proportion of female Part X debtors in each of the states and territories between 2001 and 2008. The data we use from the Annual Reports combines NSW and the ACT into one group, and SA and the NT into another group, whilst data for the remaining states remains separate. Due to the small number of Part X debtors, we do not find the state and territory breakdowns to be of utility. For example, in 2008 there were only three Part X debtors in Tasmania, and in 2007 there were no Part X debtors in that state. This explains the rapid increases in the proportions of male Part X debtors in Tasmania in comparison to the state's higher proportions of female bankrupts and female debt agreement debtors.

FIGURE 41

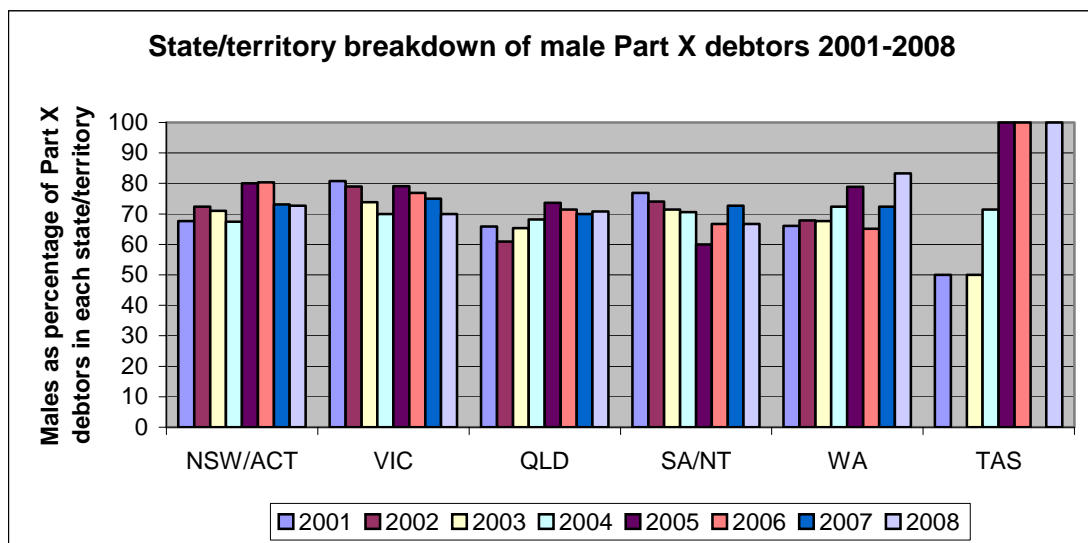
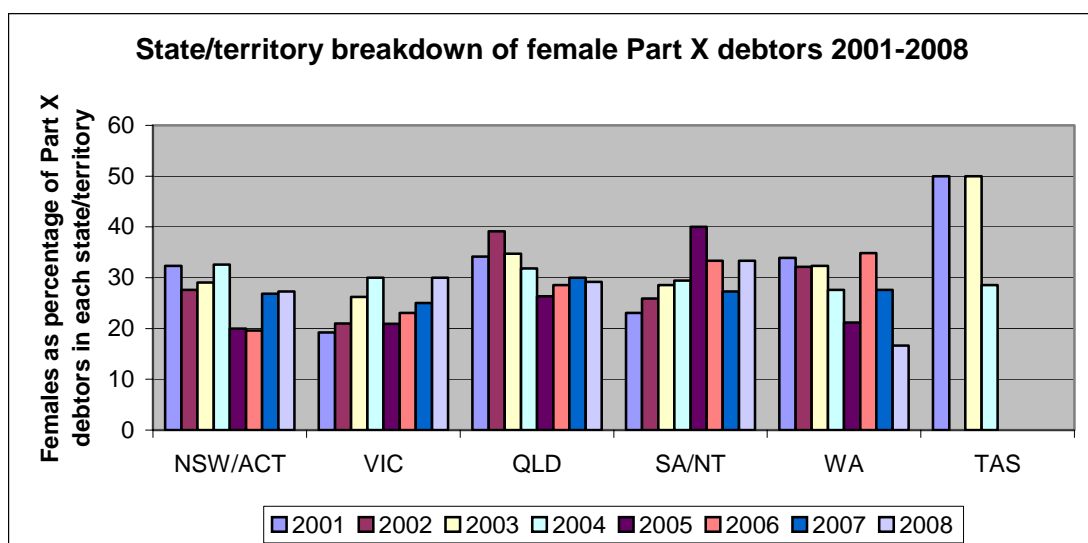


FIGURE 42



8.2 AGE

In section 8.2.1 we observe global changes in the age of insolvents, as well as changes in age in relation to the causes of both business related and non-business related insolvencies. In section 8.2.2 we observe changes in the age of insolvents linked to the cause of insolvency. We use data from the Annual Reports and the ABS.¹³¹

On 30 June 1997, the median age in Australia was 34.3. On 30 June 2008, the median age in Australia was 36.9.

8.2.1 Age of personal insolvents

8.2.1.1 Bankrupts

In 2008, 7.41% of bankrupts were aged less than 25; 20.11% were aged between 25 and 34; 27.49% were aged between 35 and 44; 23.05% were aged between 45 and 54; and 21.94% were aged older than 54. Figure 43 shows the changes in and differences between the proportion of bankrupts in each of these five age brackets between 1997 and 2008.

FIGURE 43

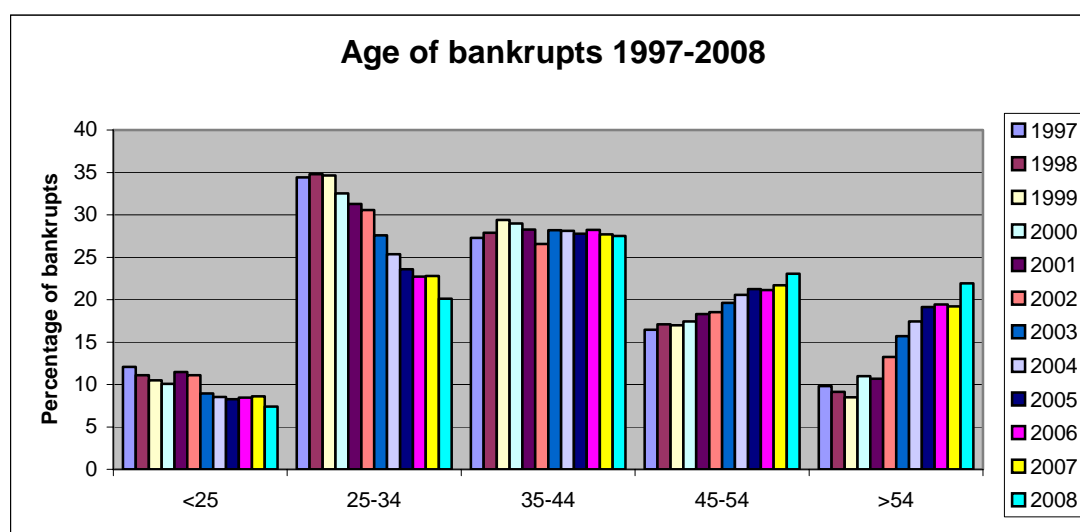


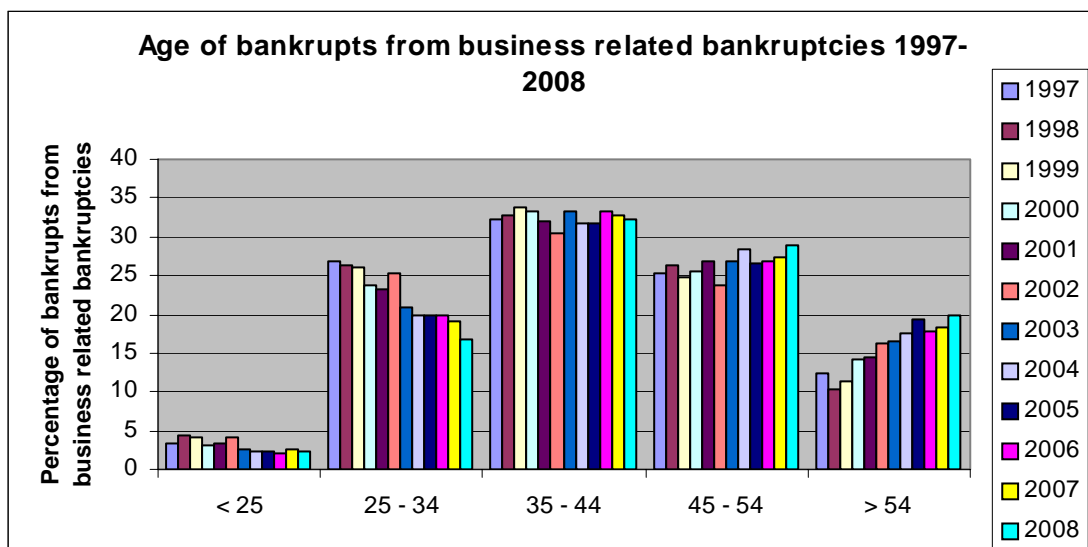
Figure 43 shows that between 1997 and 2008 the proportion of bankrupts aged less than 25 fell from a high in 1997 (12.06%) to a low in 2008 (7.41%). During this period, the proportion of bankrupts aged between 25 and 34 also decreased from a high in 1998 (34.78%) to a low in 2008 (20.11%). Whilst the proportion of bankrupts aged between 35 and 44 remained relatively stable throughout the period, the proportion of bankrupts aged 45 or older increased significantly. The proportion of those aged 45 to 54 increased from a low in 1997 (16.45%) to a high in 2008 (23.05%). The proportion of those aged 54 or

¹³¹ ITSA treat bankruptcy proceedings involving two or more partners as one administration. Therefore there may be a small difference between the total number of bankrupts according to age groups and the total number of bankruptcies in each year in question.

older increased from 9.80% in 1997 to 21.94% in 2008. Whereas in 1997, 46.48% of bankrupts were aged 34 or less and 26.25% were aged 45 years or more, the situation in 2008 was almost inverted: 27.52% of bankrupts were aged 34 or less and 44.99% were aged 45 or more.

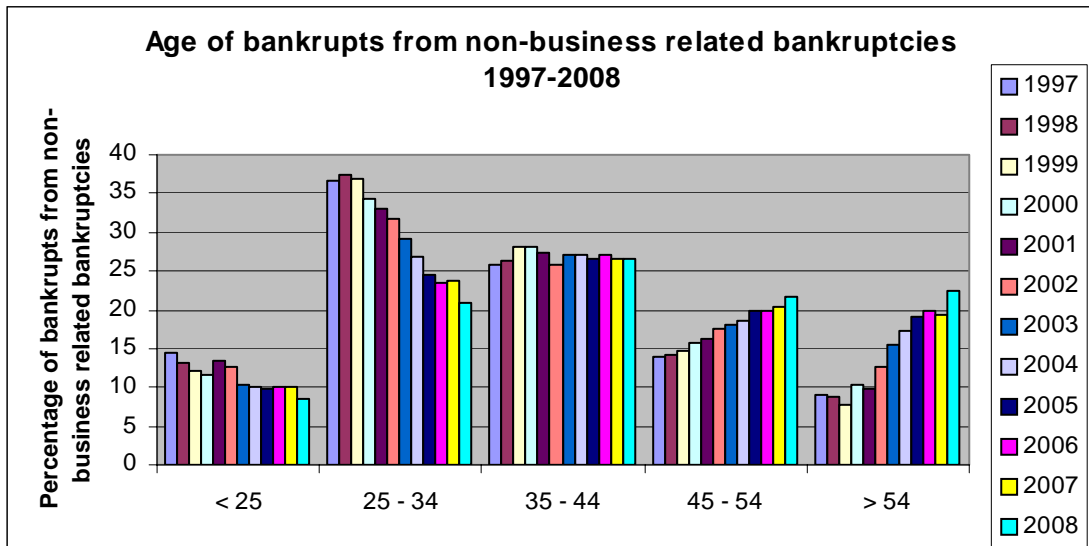
In 2008, there were 4590 business related bankruptcies. In 2008, 2.22% of bankrupts from business related bankruptcies were aged less than 25; 16.67% were aged between 25 and 34; 32.31% were aged between 35 and 44; 28.86% were aged between 45 and 54; and 19.94% were aged older than 54. Figure 44 illustrates the changes in and differences between the age groups of bankrupts from business related bankruptcies between 1997 and 2008.

FIGURE 44



In 2008, there were 21380 non-business related bankruptcies. In 2008, 8.53% of bankrupts from non-business related bankruptcies were aged less than 25; 20.85% were aged between 25 and 34; 26.45% were aged between 35 and 44; 21.80% were aged between 45 and 54; and 22.37% were aged older than 54. Figure 45 illustrates the changes in and differences between the age groups of bankrupts from non-business related bankruptcies between 1997 and 2008.

FIGURE 45



We observe that bankrupts from business related bankruptcies tended to be older than bankrupts from non-business related bankruptcies. Notably, despite increases and decreases in the proportion of bankrupts in other age brackets, it remained highly unlikely that a bankrupt from a business related bankruptcy would be aged less than 25.

8.2.1.2 Debt agreement debtors

In 2008, 16.18% of debt agreement debtors were aged less than 25; 35.80% were aged between 25 and 34; 26.36% were aged between 35 and 44; 16.39% were aged between 45 and 54; and 5.27% were aged older than 54. Figure 46 shows the changes in and differences between the proportion of debt agreement debtors in each of these five age brackets between 2002 and 2008.

FIGURE 46

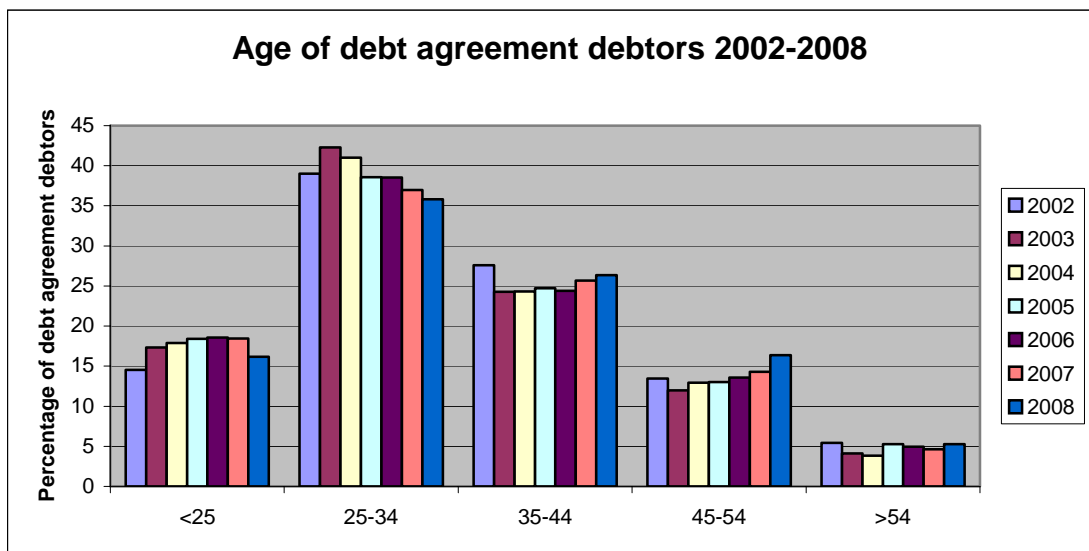
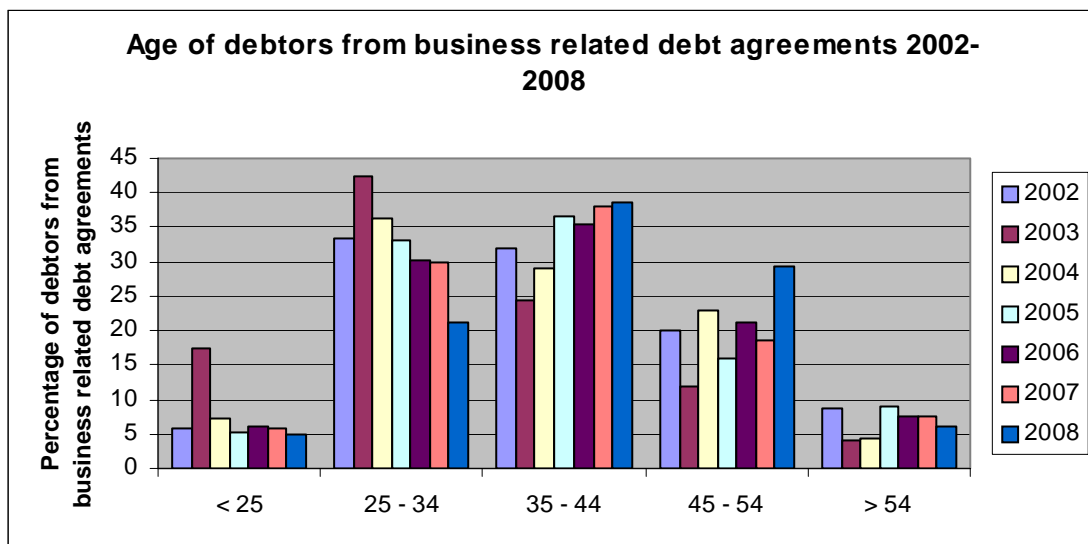


Figure 46 reveals that between 2002 and 2008 there were no significant changes in the proportion of debt agreement debtors in each of the five age brackets. This is in contrast to Figure 43, which revealed a significant increase in the age of bankrupts. We note that debt agreement debtors tend to be younger than bankrupts. Between 2002 and 2008, the highest proportion of debt agreement debtors were aged between 25 and 34 and the lowest proportion were aged 54 or older.

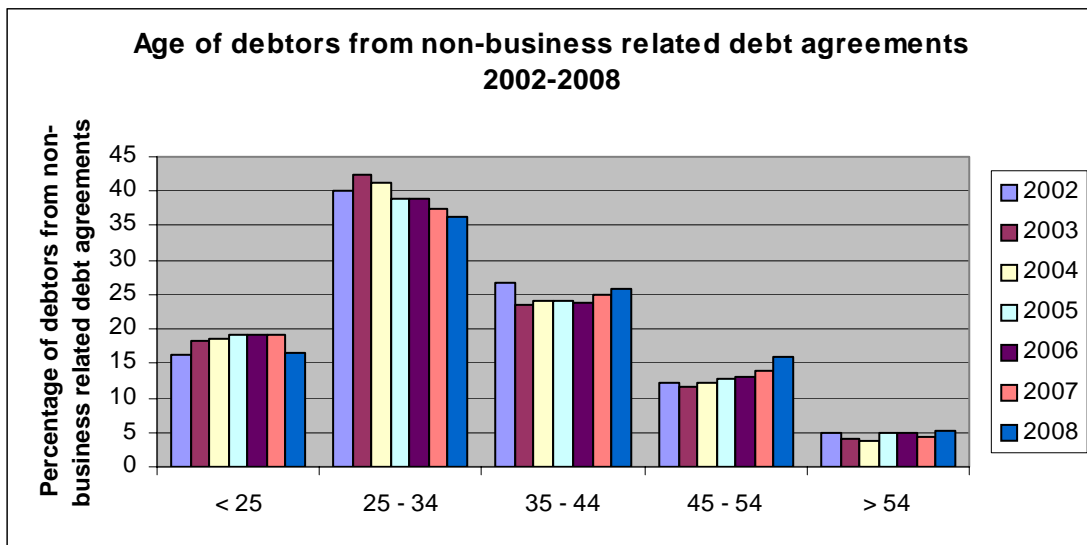
In 2008, there were 218 business related debt agreements. In 2008, 5.04% of debt agreement debtors from business related debt agreements were aged less than 25; 21.10% were aged between 25 and 34; 38.53% were aged between 35 and 44; 29.36% were aged between 45 and 54; and 5.96% were aged older than 54. Figure 47 illustrates the changes in and differences between the age groups of debt agreement debtors from business related debt agreements between 2002 and 2008. We note the occasionally stark variations in these proportions are explicable in part on the basis of the small number of business related debt agreements.

FIGURE 47



In 2008, there were 6400 non-business related debt agreements. In 2008, 16.56% of debt agreement debtors from non-business related debt agreements were aged less than 25; 36.30% were aged between 25 and 34; 25.95% were aged between 35 and 44; 15.95% were aged between 45 and 54; and 5.25% were aged older than 54. Figure 48 illustrates the changes in and differences between the age groups of debt agreement debtors from non-business related debt agreements between 2002 and 2008.

FIGURE 48



We observe that debtors from business related debt agreements tended to be older than debtors from non-business related debt agreements, similar to our observations on the older age of bankrupts in business related bankruptcies. Similarly, as for business related bankrupts, we observe that it remained highly unlikely that a debt agreement debtor from a business related debt agreement was aged less than 25.

8.2.1.3 Part X debtors

In 2008, 0.31% of Part X debtors were aged less than 25; 9.01% were between 25 and 34; 37.89% were between 35 and 44; 34.16% were between 45 and 54; and 18.63% were older than 54. Figure 49 shows the changes in and differences between the proportion of Part X debtors in each of these five age brackets between 2003 and 2008. We note that the average age of Part X debtors is considerably higher than the average age of both bankrupts and debt agreement debtors. We speculate that this higher average age results from a higher proportion of business-related Part X arrangements.

FIGURE 49

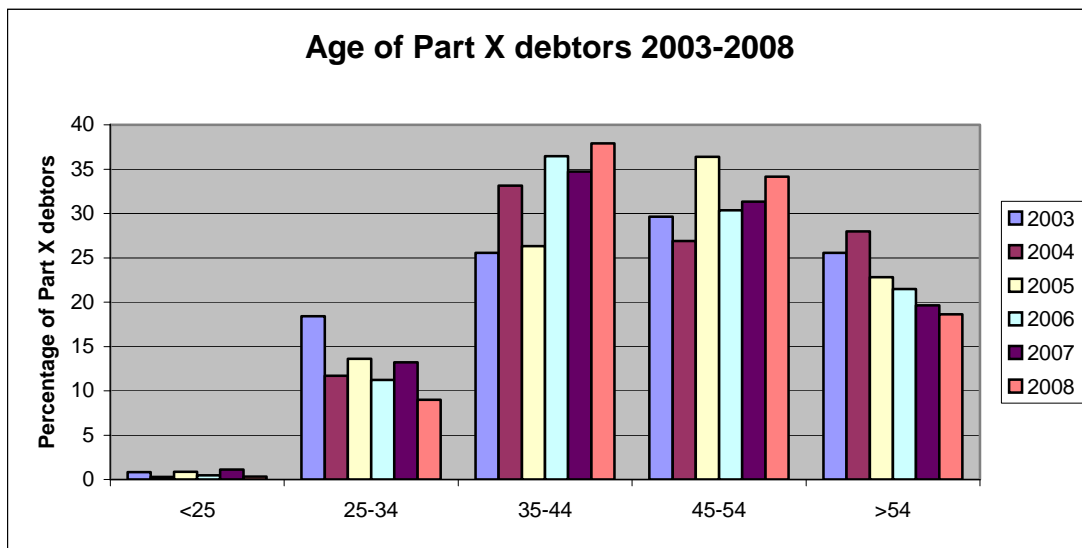
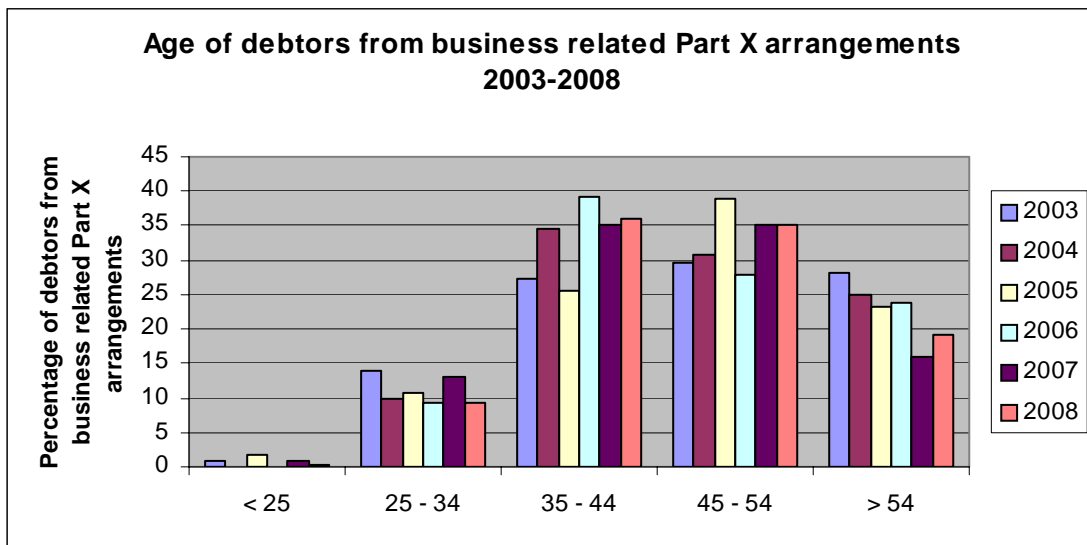


Figure 49 shows that the proportion of Part X debtors aged 34 or less fell from a high in 2003 (19.22%) to a low in 2008 (9.32%). During this period, the proportion of Part X debtors aged over 54 also fell from 25.56% in 2003 to 18.63% in 2008. The greatest increase occurred in the proportion of Part X debtors aged between 35 and 44, from 25.56% in 2003 to 37.89% in 2008.

We note that throughout the period it remained highly unlikely that a Part X debtor was aged less than 25 years. In 2008, only one Part X debtor was aged less than 25. We also note that the proportion of Part X debtors aged older than 54 decreased during the period. In 2003, 25.56% of Part X debtors were aged older than 54, yet in 2008, only 18.63% of Part X debtors were aged older than 54.

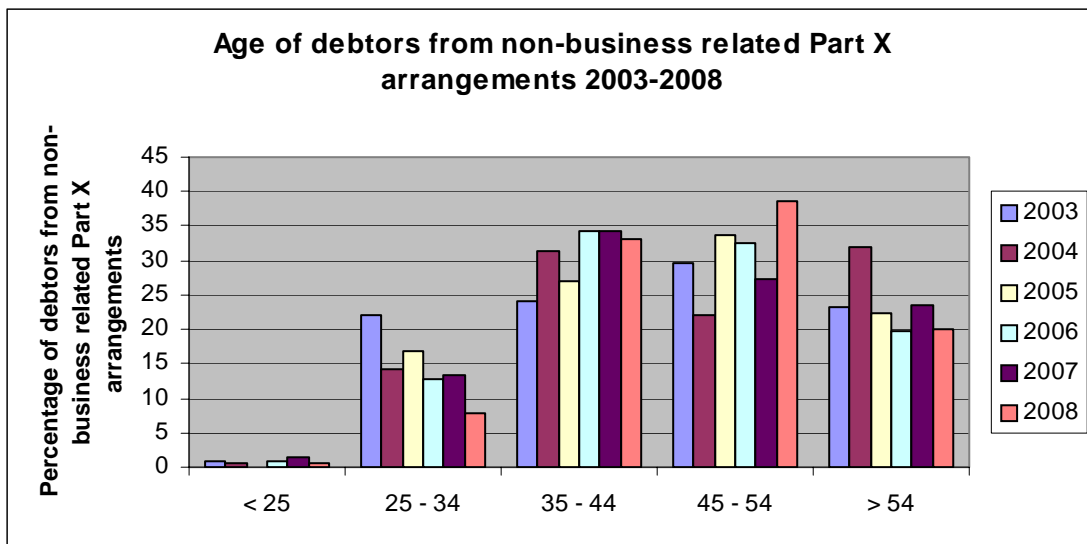
In 2008, there were 125 business related Part X arrangements. In 2008, 0.32% of Part X debtors from business related Part X arrangements were aged less than 25; 9.29% were aged between 25 and 34; 35.90% were aged between 35 and 44; 35.26% were aged between 45 and 54; and 19.23% were aged older than 54. Figure 50 illustrates the changes in and differences between the age groups of Part X debtors from business related Part X arrangements between 2003 and 2008.

FIGURE 50



In 2008, there were 152 non-business related Part X arrangements. In 2008, 0.55% of Part X debtors from non-business related Part X arrangements were aged less than 25; 7.73% were aged between 25 and 34; 33.15% were aged between 35 and 44; 38.67% were aged between 45 and 54; and 19.89% were aged older than 54. Figure 51 illustrates the changes in and differences between the age groups of Part X debtors from non-business related Part X arrangements between 2003 and 2008.

FIGURE 51



8.2.2 Age linked to cause of personal insolvency

We observe changes in the age of insolvents linked to the cause of insolvency based on data from the Annual Reports. We observe changes in relation to age linked to the main causes of insolvency for both business and non-business related bankruptcies, as well as for non-business related debt agreements. However, we do not observe changes in relation to all causes,

nor in relation to age linked to cause of insolvency for business related debt agreements and both business and non-business related Part X arrangements. As a result of the small number of debtors for these categories, we do not find observations on these changes to be of utility.

8.2.2.1 Business related

8.2.2.1.1 Bankruptcies

We observe the main causes of business related bankruptcies linked to age. In 2008, there were 4590 business related bankruptcies. Figures 53 to 57 show the proportion of bankruptcies in each age group caused by the element in question between 2000 and 2008. For example, Figure 52 illustrates the proportions from each of the five age groups whose business related bankruptcy was caused by economic conditions.

We do not observe any significant differences in age linked to cause for any of the main causes of business related bankruptcies between 2000 and 2008.

FIGURE 52

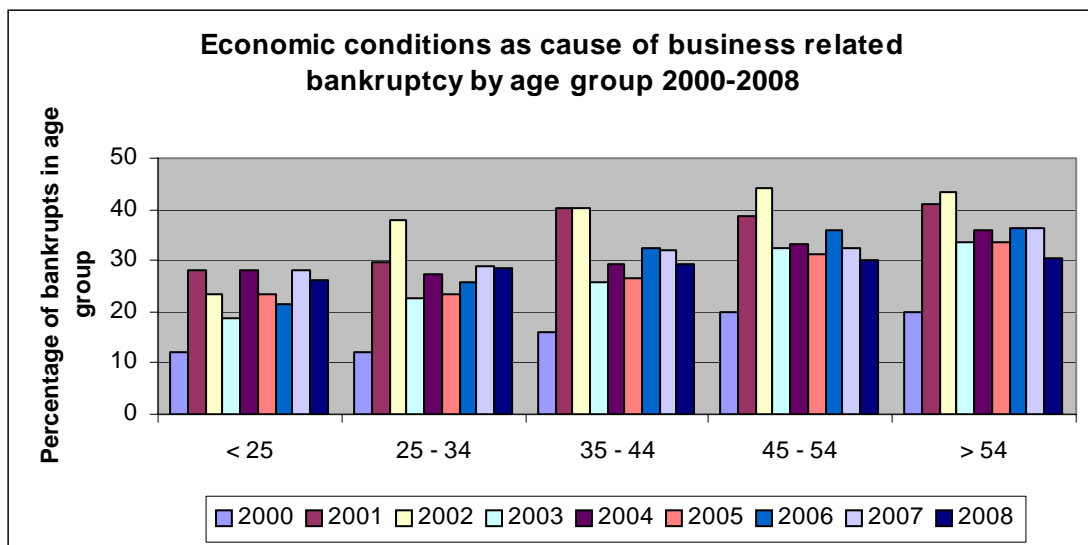


FIGURE 53

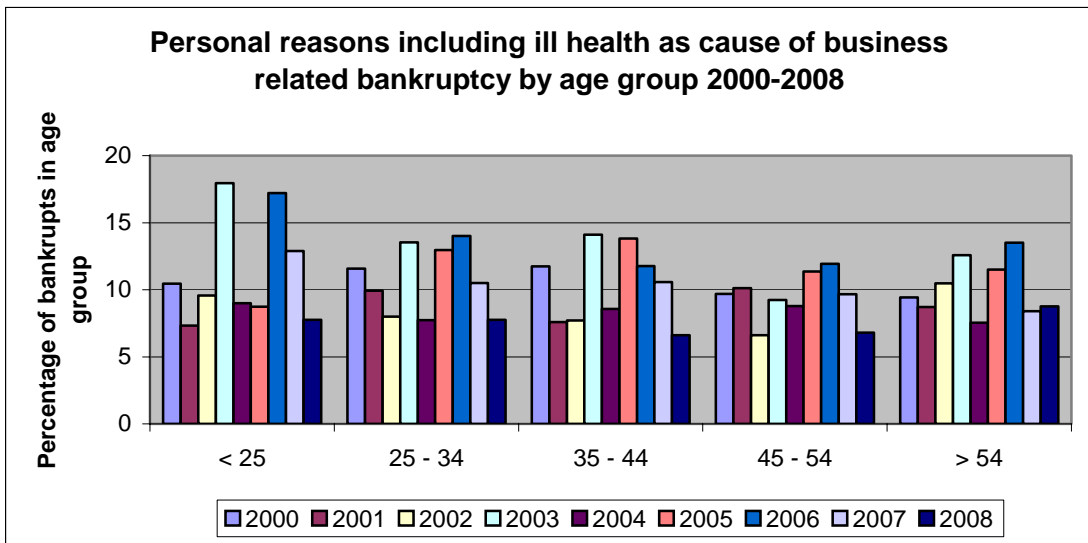


FIGURE 54

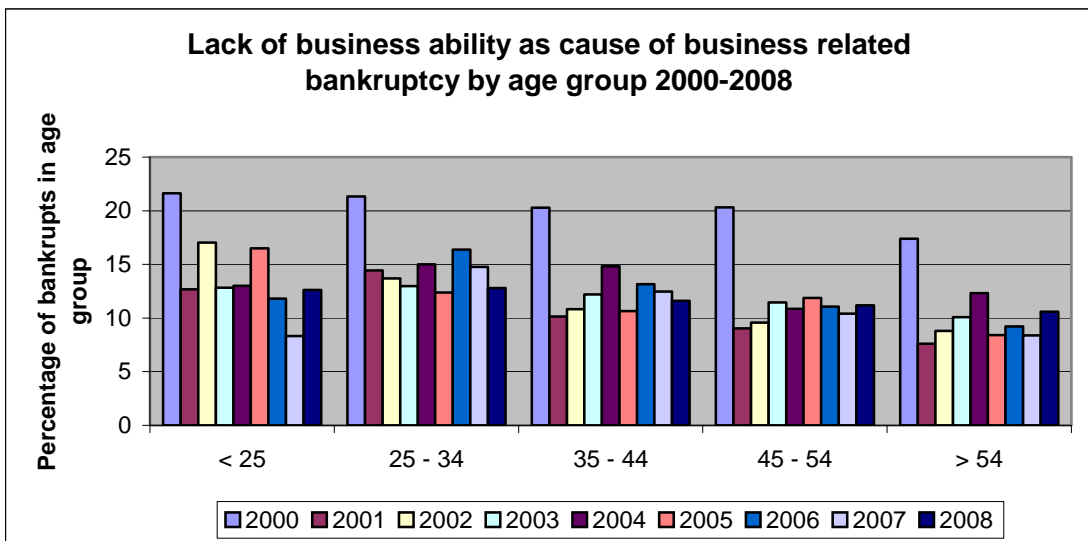


FIGURE 55

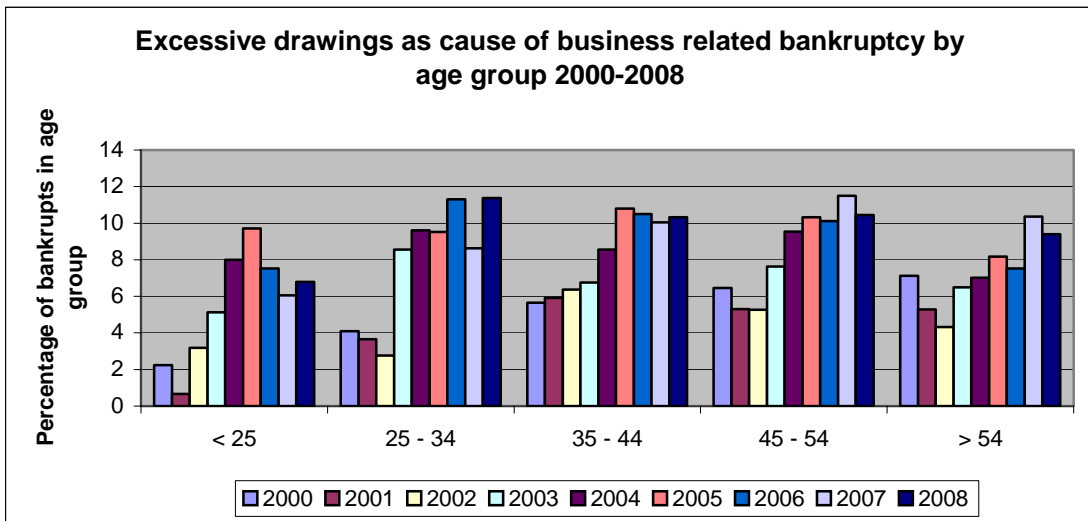


FIGURE 56

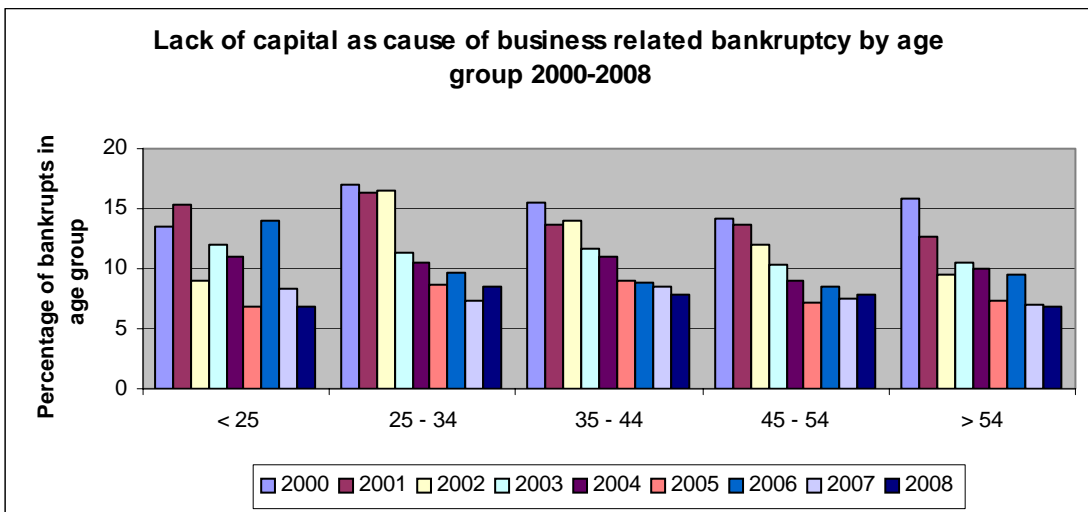
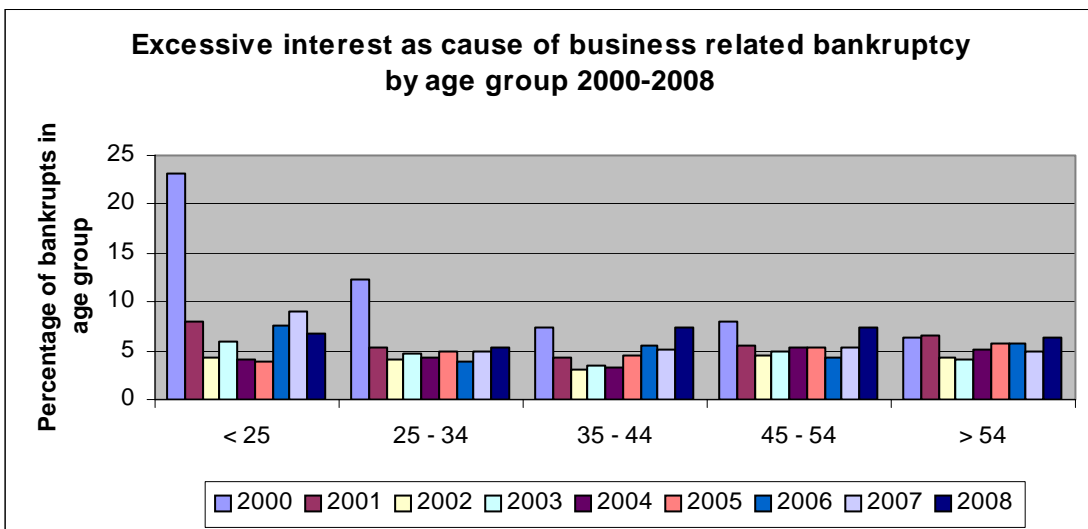


FIGURE 57



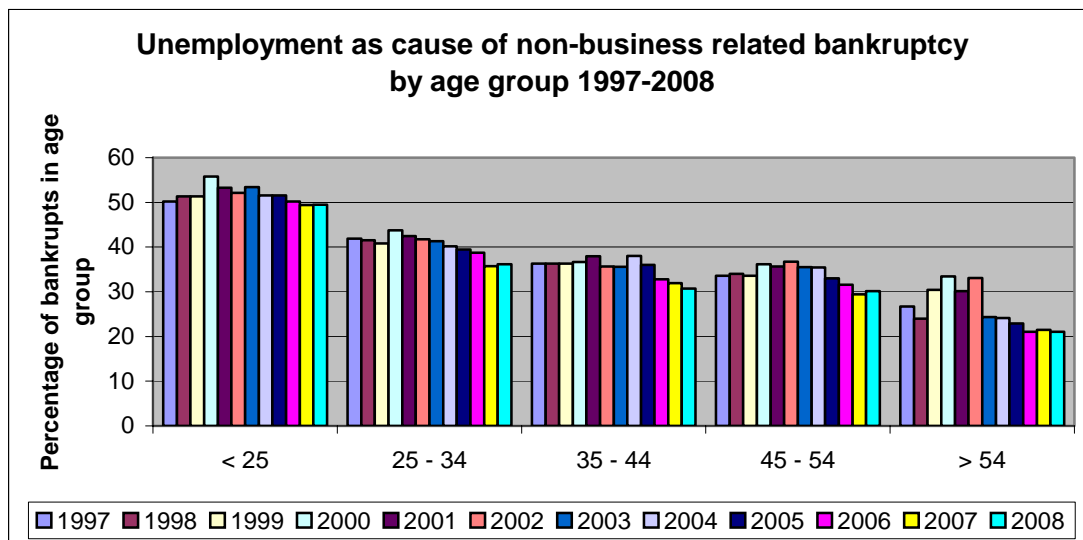
8.2.2.2 Non-business related

8.2.2.2.1 Bankruptcies

We observe the main causes of non-business related bankruptcies linked to age. In 2008, there were 21380 non-business related bankruptcies. We find striking trends in the causes of non-business related bankruptcies linked to age.

We recall that unemployment was the largest cause of non-business related bankruptcies between 1997 and 2008. In 1997, unemployment caused 38.88% of non-business related bankruptcies, compared to 31.17% in 2008. We find that the likelihood that unemployment caused bankruptcy decreases as the age of bankrupts increases. In 2008, the proportions of bankrupts within each age group whose bankruptcy was caused by unemployment were as follows: 49.45% were less than 25; 36.17% were between 25 and 34; 30.72% were between 35 and 44; 30.16% were between 45 and 54; and 21.03% were older than 54. Figure 58 illustrates the proportion of non-business related bankrupts in each of the five age groups between 1997 and 2008 whose bankruptcy was caused by unemployment.

FIGURE 58



We recall that the occurrence of excessive use of credit as the cause of non-business related bankruptcies increased between 1997 and 2008. In 1997, excessive use of credit caused 13.36% of non-business related bankruptcies, compared to 27.55% in 2008. In 2008, the proportions of bankrupts within each age group whose bankruptcy was caused by excessive use of credit were as follows: 25.68% less than 25; 28.07% between 25 and 34; 27.05% between 35 and 44; 26.94% between 45 and 54; and 28.97% older than 54. We comment that this displaces any speculation that it is only younger Australians who abuse credit cards and incur excessive amounts of credit leading to insolvency. We note that excessive use of credit as the cause of non-business related bankruptcies increased amongst all five age groups between 1997 and 2008. Figure 59 illustrates the proportion of non-business

related bankrupts in each of the five age groups between 1997 and 2008 whose bankruptcy was caused by excessive use of credit.

FIGURE 59

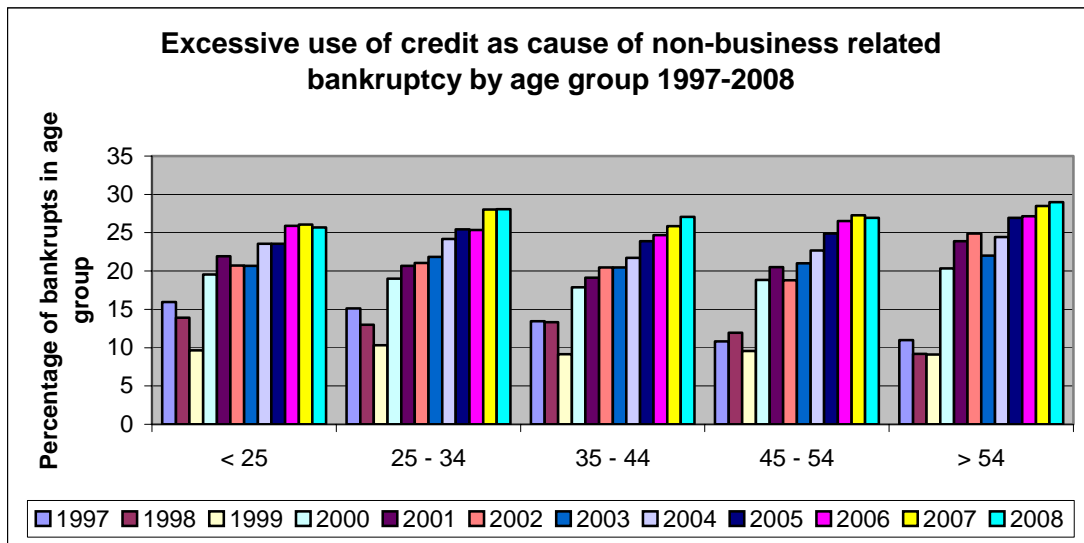
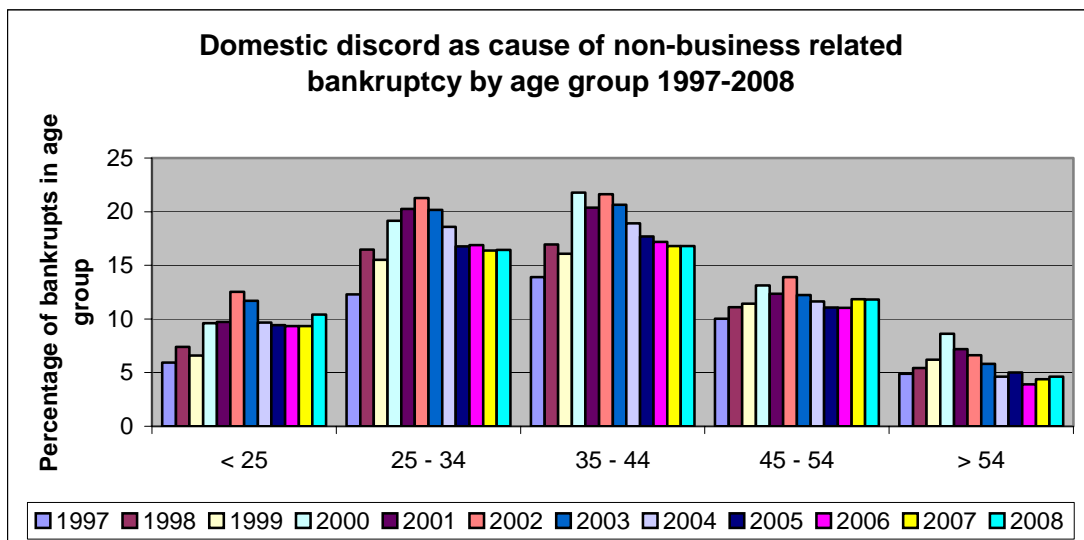


Figure 60 illustrates the proportion of non-business related bankrupts in each of the five age groups between 1997 and 2008 whose bankruptcy was caused by domestic discord. In 2008, the proportions of bankrupts within each age group whose bankruptcy was caused by domestic discord were as follows: 10.41% less than 25; 16.42% between 25 and 34; 16.80% between 35 and 44; 11.82% between 45 and 54; and 4.64% older than 54. We note that the proportion of bankrupts aged older than 54 whose bankruptcy was caused by domestic discord remained lower than the equivalent proportions for the other four age groups for each year between 1997 and 2008.

FIGURE 60

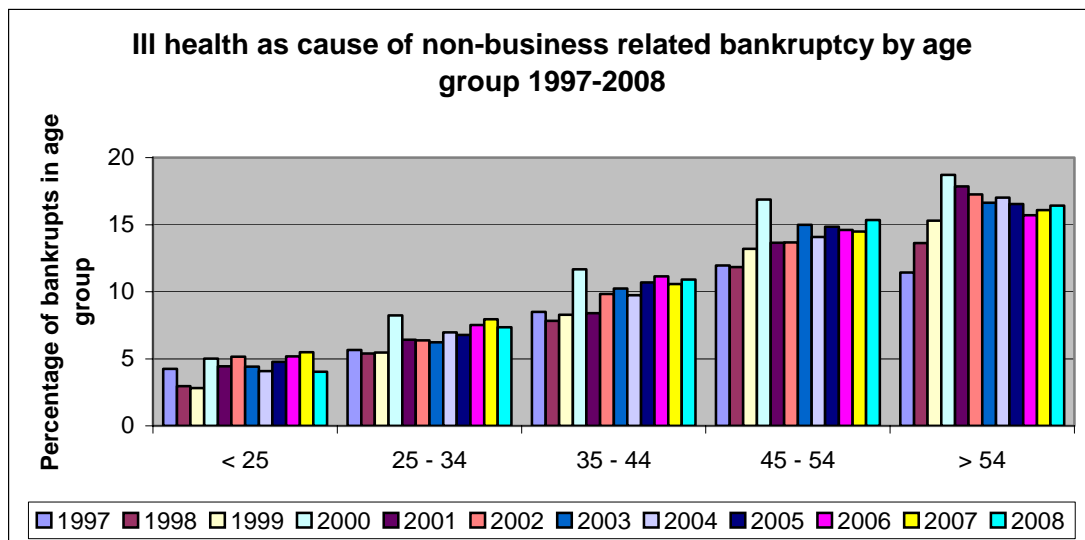


We recall that the occurrence of ill health as the cause of non-business related bankruptcies increased between 1997 and 2008. In 1997, ill health caused 7.43% of non-business related bankruptcies, compared to 11.78% in

2008. We also recall that the proportion of non-business related bankrupts aged 45 and older increased between 1997 and 2008. In 1997, 23.10% of non-business related bankrupts were aged 45 or older, compared to 44.17% in 2008.

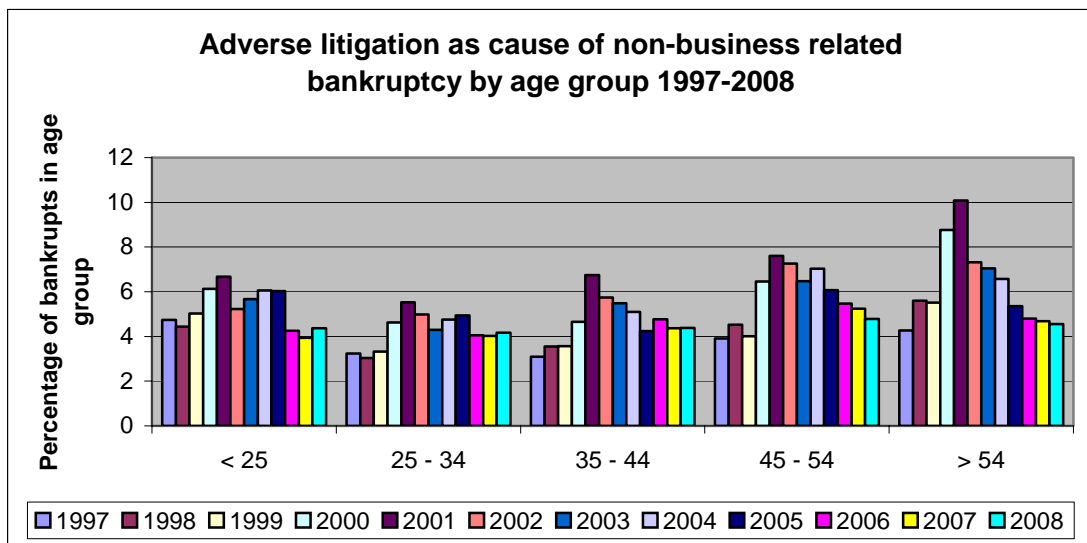
Figure 61 illustrates changes in the proportion of non-business related bankrupts in each of the five age groups between 1997 and 2008 whose bankruptcy was caused by ill health. In 2008, the proportions of bankrupts within each age group whose bankruptcy was caused by ill health were as follows: 4.04% less than 25; 7.34% between 25 and 34; 10.90% between 35 and 44; 13.35% between 45 and 54; and 16.41% aged older than 54. We note that the proportion of non-business related bankruptcies caused by ill health increased for all age groups excluding those aged less than 25. We observe that the likelihood that ill health caused bankruptcy increased with the age of bankrupts.

FIGURE 61



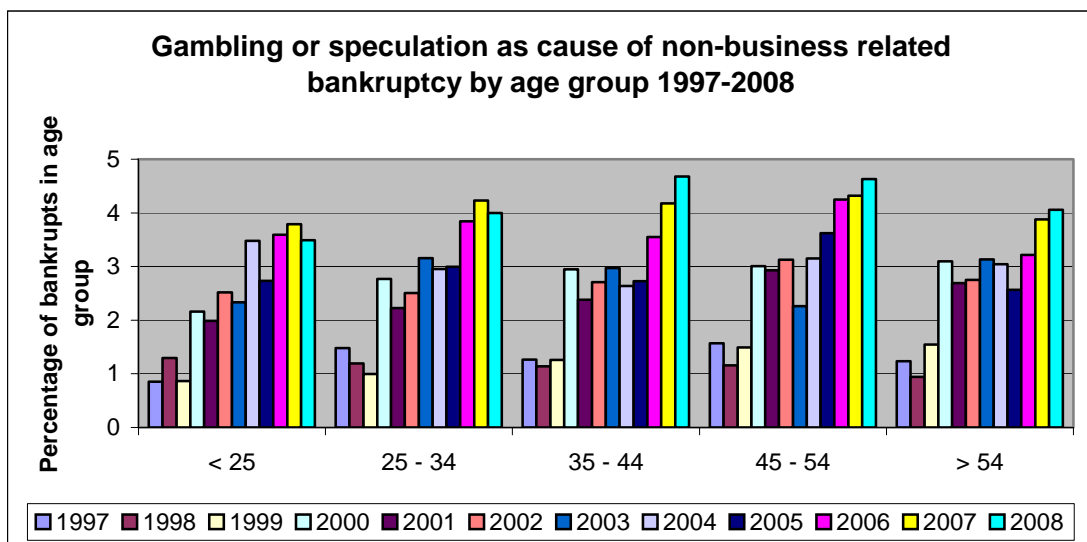
In 2008, the proportions of bankrupts within each age group whose bankruptcy was caused by adverse litigation were as follows: 4.36% less than 25; 4.17% between 25 and 34; 4.38% between 35 and 44; 4.78% between 45 and 54; and 4.55% older than 54. Figure 62 illustrates changes in the proportion of non-business related bankrupts in each of the five age groups between 1997 and 2008 whose bankruptcy was caused by adverse litigation. We do not observe any significant differences between the five age groups.

FIGURE 62



In 2008, the proportions of bankrupts within each age group whose bankruptcy was caused by gambling or speculation were as follows: 3.49% less than 25; 3.99% between 25 and 34; 4.68% between 35 and 44; 4.63% between 45 and 54; 4.06% older than 54. Figure 63 illustrates changes in the proportion of non-business related bankrupts in each of the five age groups between 1997 and 2008 whose bankruptcy was caused by gambling or speculation. We recall that between 1997 and 2008, there was a 229% increase in the proportion of non-business related bankruptcies caused by gambling or speculation. We observe that gambling or speculation as a cause of non-business related bankruptcies increased amongst all five age groups between 1997 and 2008.

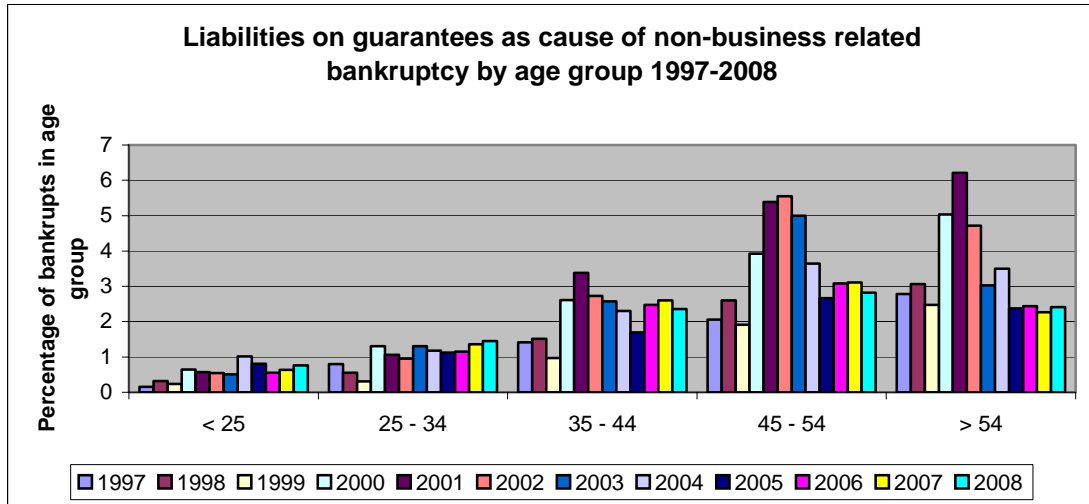
FIGURE 63



In 2008, the proportions of bankrupts within each age group whose bankruptcy was caused by liabilities on guarantees were as follows: 0.76% less than 25; 1.45% between 25 and 34; 2.36% between 35 and 44; 2.82% between 45 and 54; and 2.41% older than 54. Figure 64 illustrates changes in

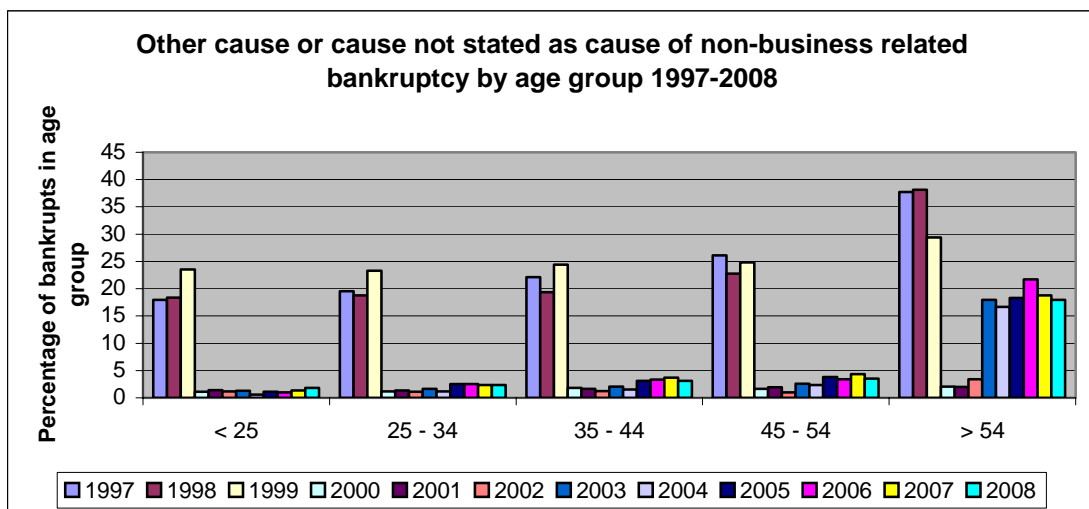
the proportion of non-business related bankrupts in each of the five age groups between 1997 and 2008 whose bankruptcy was caused by liabilities on guarantees. We observe that older bankrupts were more likely to cite liabilities on guarantees as a cause of their non-business related bankruptcy.

FIGURE 64



In 2008, the proportions of bankrupts within each age group whose bankruptcy was caused by some other cause or who did not state a cause were as follows: 1.80% less than 25; 2.37% between 25 and 34; 3.11% between 35 and 44; 3.50% between 45 and 54; and 17.93% aged older than 54. Figure 65 illustrates changes in the proportion of non-business related bankrupts in each of the five age groups between 1997 and 2008 whose bankruptcy had some other cause or who did not state a cause. We include this data because we observe that between 2005 and 2008, higher proportions of non-business related bankrupts aged older than 54 had some other cause or did not state a cause for their bankruptcy in comparison to all other age groups.

FIGURE 65

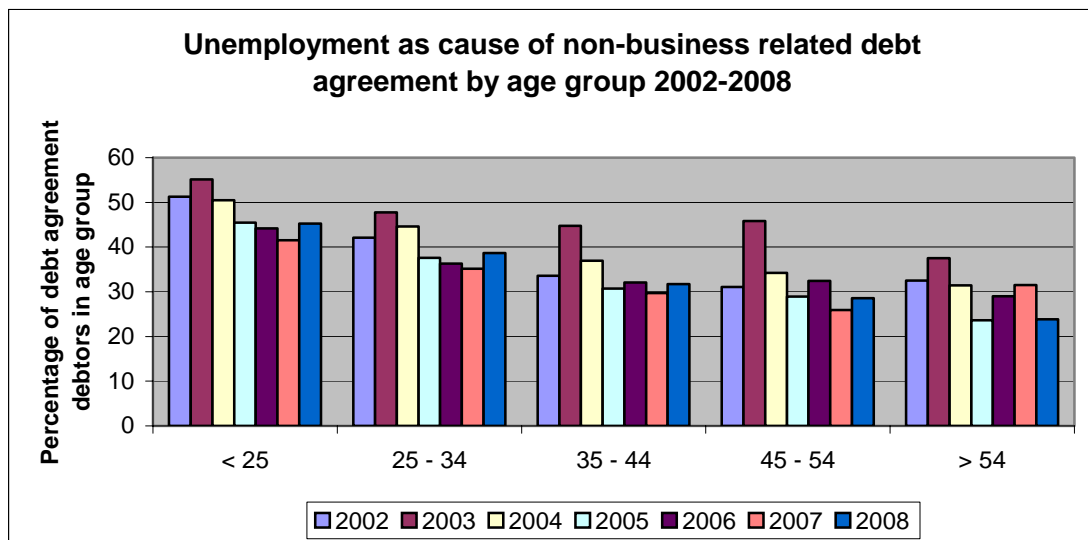


8.2.2.2.2 Debt agreements

We observe the two main causes of non-business related debt agreements linked to age. In 2008, there were 6400 non-business related debt agreements. We do not find utility in data relating to age linked to cause for non-business related debt agreements aside from these two main causes.

Figure 66 illustrates the proportion of non-business related debt agreement debtors in each of the five age groups between 2002 and 2008 whose debt agreement was caused by unemployment. In 2002, unemployment caused 39.50% of non-business related debt agreements, compared to 35.58% in 2008. As for non-business related bankruptcies, we find that the likelihood that unemployment caused the debt agreement decreases as the age of debt agreement debtors increases. In 2008, the proportions of debt agreement debtors within each age group whose debt agreement was caused by unemployment were as follows: 45.28% less than 25; 38.68% between 25 and 34; 31.73% between 35 and 44; 28.60% between 45 and 54; and 23.81% older than 54. Figure 58 illustrates the proportion of non-business related debt agreement debtors in each of the five age groups between 1997 and 2008 whose debt agreement was caused by unemployment.

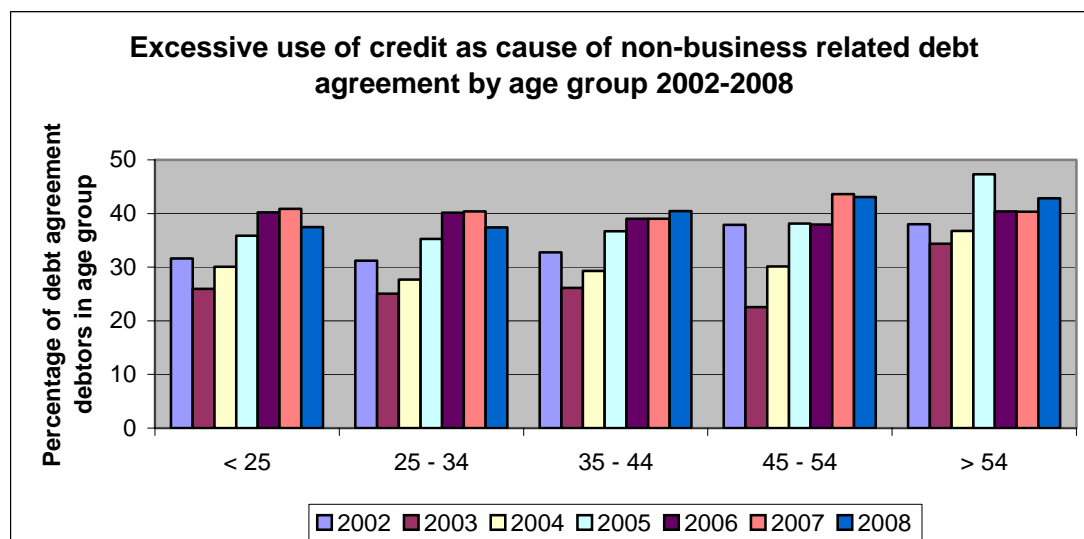
FIGURE 66



We recall that the occurrence of excessive use of credit as the cause of non-business related debt agreements increased between 2002 and 2008. In 1997, excessive use of credit caused 32.84% of non-business related debt agreements, compared to 39.41% in 2008. In 2008, the proportions of debt agreement debtors within each age group whose debt agreement was caused by excessive use of credit were as follows: 37.45% less than 25; 37.44% between 25 and 34; 40.46% between 35 and 44; 43.10% between 45 and 54; and 42.86% older than 54. We comment, as we did for bankrupts, that this displaces any speculation that it is only younger Australians who abuse credit cards and incur excessive amounts of credit leading to insolvency. We note that excessive use of credit as the cause of non-business related debt agreements increased amongst all five age groups between 2002 and 2008.

Figure 67 illustrates the proportion of non-business related debt agreement debtors in each of the five age groups between 2002 and 2008 whose debt agreement was caused by excessive use of credit.

FIGURE 67



8.3 FAMILY SITUATION

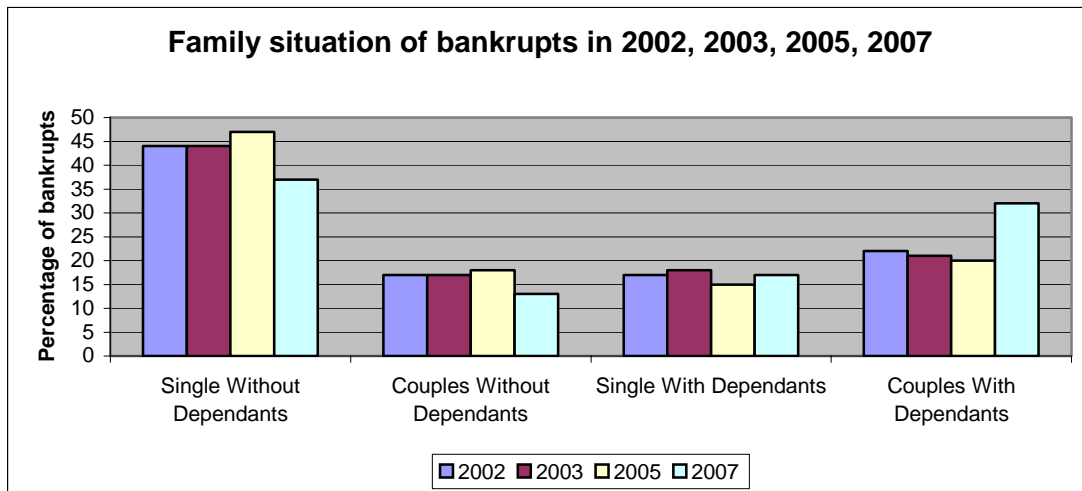
We observe changes in the family situation of insolvents using data from the Profiles and the ABS. We refer to the family situation of insolvents by four categories: single without dependants; couples without dependants; single with dependants; and couples with dependants. Reference made to the proportion of insolvents that were couples with and without dependants does not connote that both members of the couple were insolvents; rather, the insolvent was a member of a couple with or without dependants.

In 1997, 23.6% of Australian households were one-person households, compared to 26.7% in 2007. Of all couple families in 1997, 41.2% were couple-only families (i.e. without dependants), compared to 47.1% in 2007.

8.3.1 Bankrupts

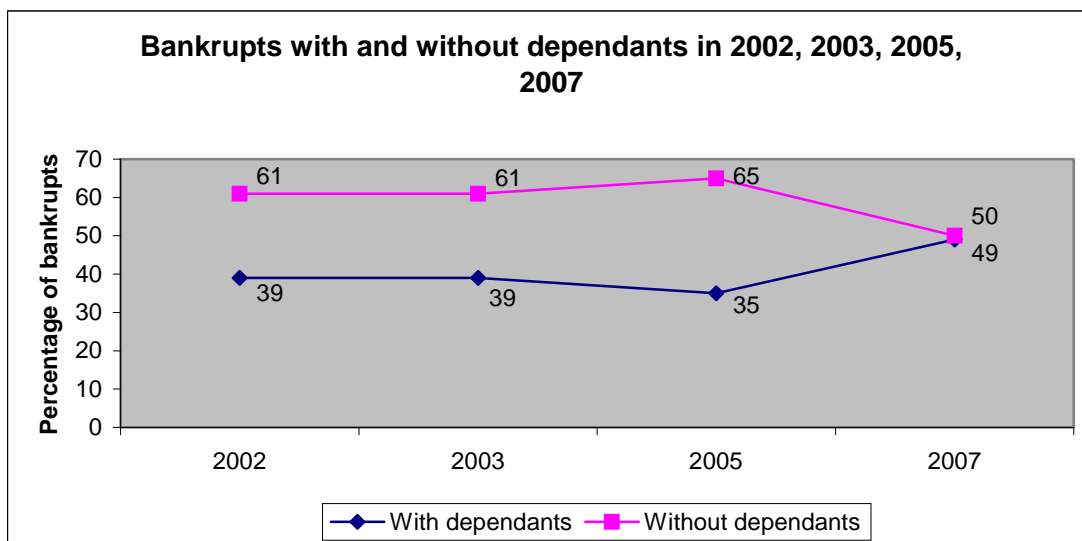
In 2007, 37% of bankrupts were single without dependants; 32% were couples with dependants; 17% were single with dependants; and 13% were couples without dependants. Figure 68 illustrates the family situation of bankrupts in 2002, 2003, 2005 and 2007.

FIGURE 68



We note the largest proportion of bankrupts were single without dependants in 2002 (44%), 2003 (44%), 2005 (47%) and 2007 (37%). However, we note a significant increase in the proportion of couples with dependants between 2005 and 2007. In 2005, 20% of bankrupts were couples with dependants, compared to 32% in 2007. Figure 69 shows the proportion of bankrupts with and without dependants in 2002, 2003, 2005 and 2007.

FIGURE 69

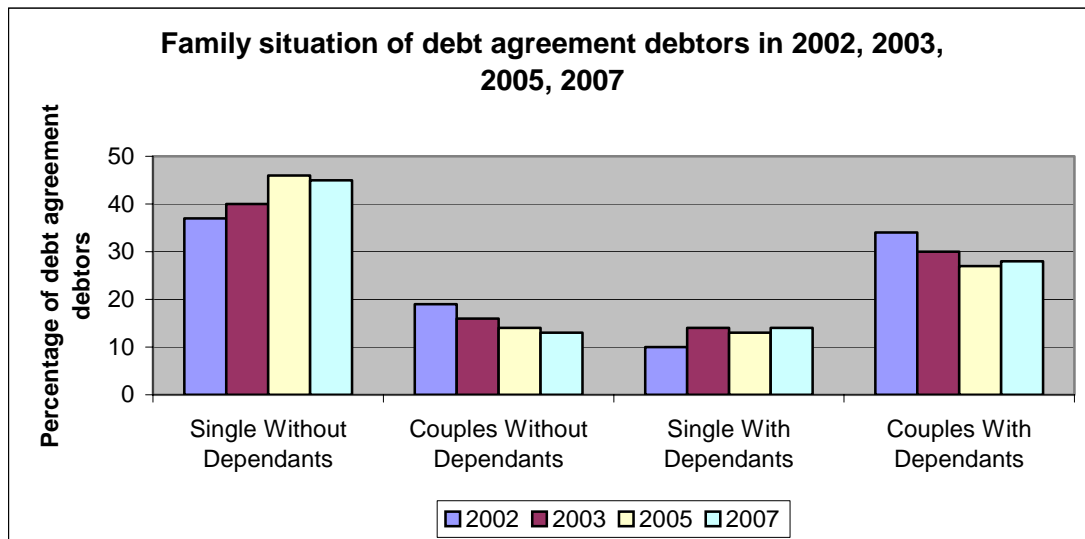


We observe that the majority of bankrupts were without dependants in 2002 (61%), 2003 (61%) and 2005 (65%). Yet in 2007 we observe near parity in the proportion of bankrupts with and without dependants. We recall an increase in the number of bankruptcies between 2005 and 2007. In 2005, there were 20501 bankruptcies; in 2007, there were 25238 bankruptcies. We speculate that a significant rise in the number of bankrupts with dependants contributed to this increase. We speculate further that welfare payments targeted at those with dependants are becoming less sufficient at ameliorating the financial difficulties of some Australians who previously would have been able to avoid bankruptcy.

8.3.2 Debt agreement debtors

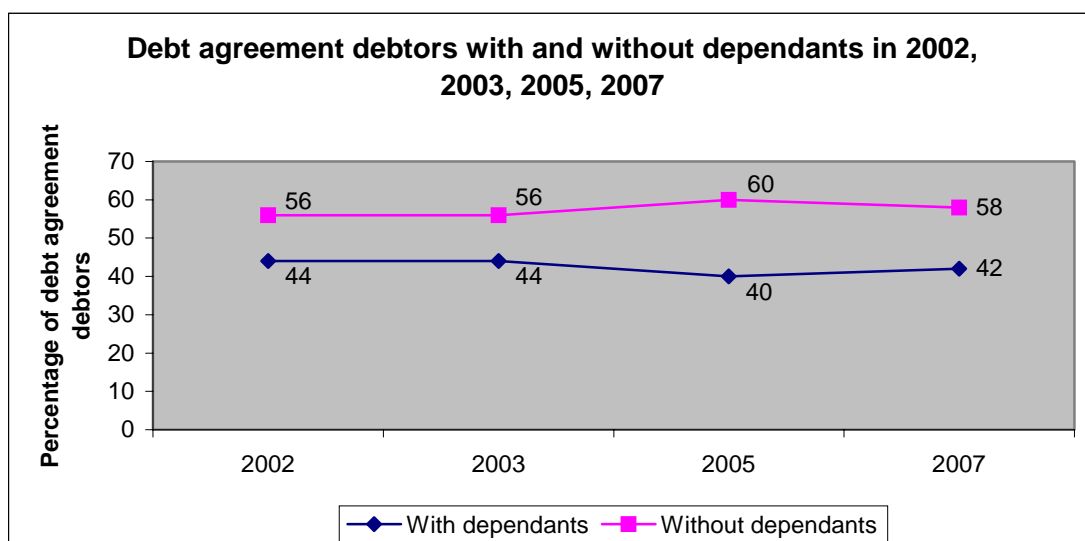
In 2007, 45% of debt agreement debtors were single without dependants; 28% were couples with dependants; 14% were single with dependants; and 13% were couples without dependants. Figure 70 shows the family situation of debt agreement debtors in 2002, 2003, 2005 and 2007.

FIGURE 70



We observe that the largest proportion of debt agreement debtors were single without dependants in 2002 (37%), 2003 (40%), 2005 (46%) and 2007 (45%). We recall that singles without dependants also represented the largest proportion of bankrupts in those four years. However, in contrast to bankrupts, we do not observe a significant increase in the proportion of debt agreement debtors who were couples with dependants between 2005 and 2007. Figure 71 illustrates the proportions of debt agreement debtors with and without dependants in 2002, 2003, 2005 and 2007.

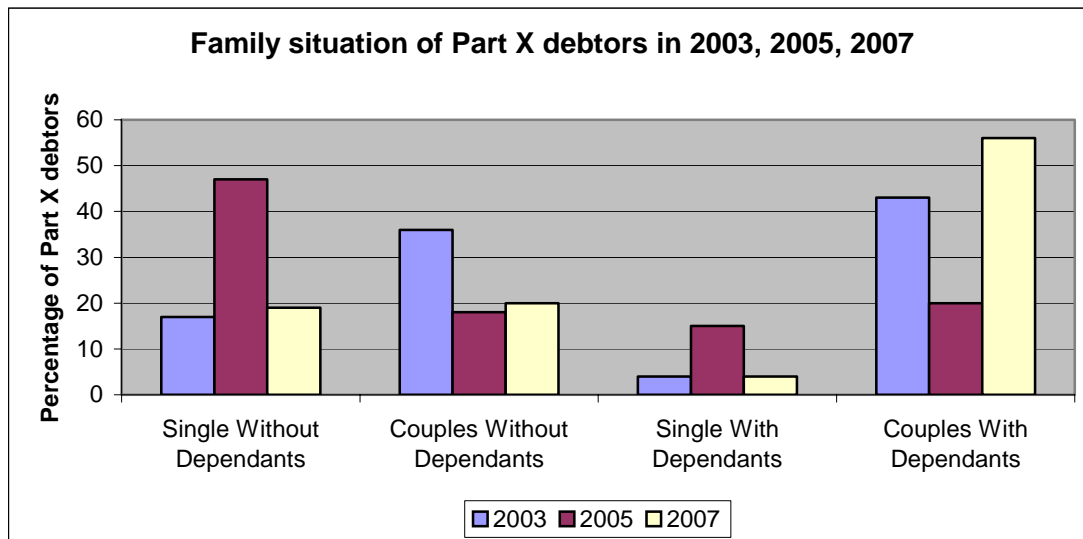
FIGURE 71



8.3.3 Part X debtors

In 2007, 56% of Part X debtors were couples with dependants; 20% were couples without dependants; 19% were single without dependants; and 4% were single with dependants. Figure 72 shows the family situation of Part X debtors in 2003, 2005 and 2007.

FIGURE 72

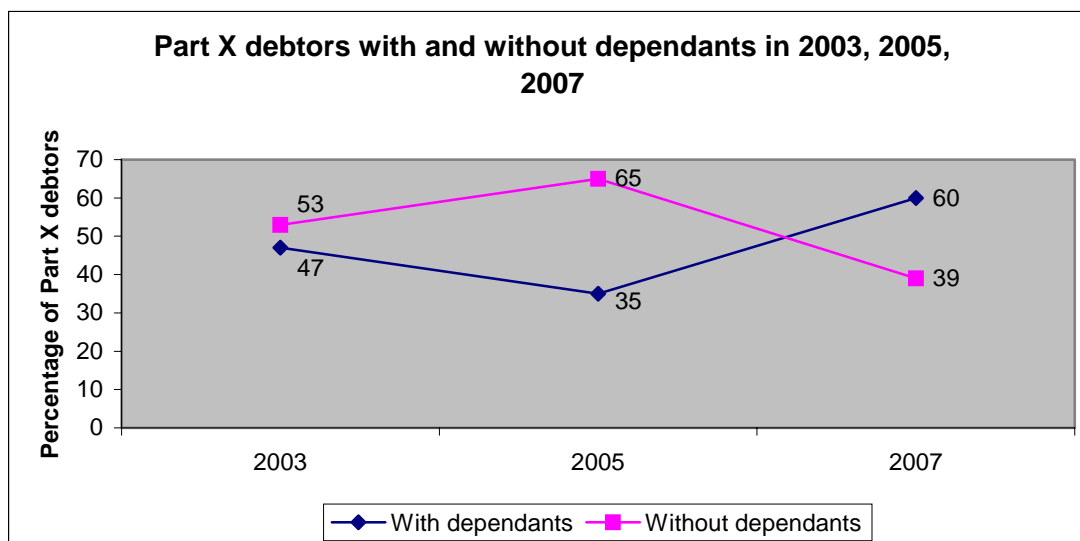


We observe that the family situations of Part X debtors in 2003, 2005 and 2007 were subjected to greater change than the family situations of bankrupts and debt agreement debtors. We recall that amendments to Part X came into effect on 1 December 2004. We also recall the small numbers of Part X arrangements: there were only 405 in 2003; 207 in 2005; and 217 in 2007. We speculate that these two factors explain in part the greater variation in the family situation of Part X debtors.

We note the significant increase in the proportion of Part X debtors who were couples with dependants between 2005 and 2007. This is similar to the increase in the proportion of bankrupts who were couples with dependants. In 2005, 20% of Part X debtors were couples with dependants, compared to 56% in 2007. We recall that Part X debtors tend to be older than bankrupts and debt agreement debtors (see section 8.2), which we speculate might increase the likelihood that a Part X debtor would have dependants.

Figure 73 shows the proportion of Part X debtors with and without dependants in 2003, 2005 and 2007.

FIGURE 73



8.4 OCCUPATION

We observe changes in the occupational status of insolvents based on data from the Annual Reports.¹³²

The occupational status of insolvents is self-attributed in their Statements of Affairs. This information provided by insolvents is subsequently classified into occupational groups from the Australian Standard Classification of Occupations (ASCO). We refer to the occupational status of insolvents according to these occupational groups, which are listed below. We refer to these occupational groups in the Figures of this section by letters allocated in the following list, in which we give some examples of occupations falling within these groups.

- A = Managers and administrators
- B = Professionals (e.g. accountants, lawyers, doctors, dentists, teachers)
- C = Associate professionals (e.g. shop managers, hotel and motel managers, financial dealers and brokers)
- D = Tradespersons and related workers (e.g. mechanics, electricians, plumbers, bakers, hairdressers, florists)
- E = Advanced clerical and service workers (e.g. secretaries and personal assistants, credit and loans officers, insurance agents)
- F = Intermediate clerical, sales and service workers (e.g. receptionists, insurance clerks, sales representatives, personal care and nursing assistants, waiters, bar attendants, fitness instructors)
- G = Intermediate production and transport workers (e.g. crane operators, truck drivers, bus drivers, miners, product quality controllers)

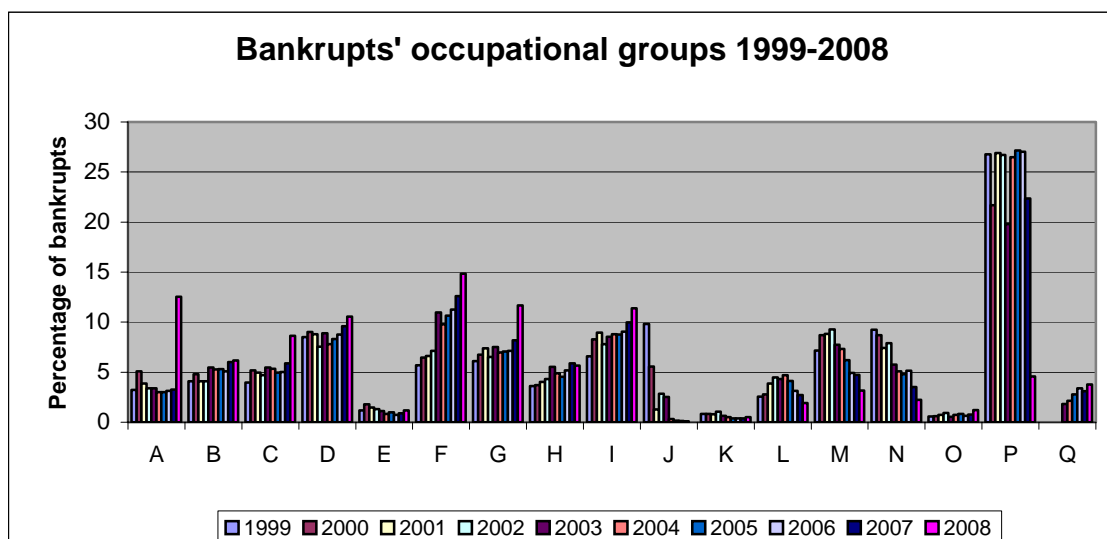
¹³² ITSA treat bankruptcy proceedings involving two or more partners as one administration. Therefore there may be a small difference between the total number of bankrupts according to occupational groups and the total number of bankruptcies in each year in question.

- H = Elementary clerical sales and service workers (e.g. sales assistants, telemarketers, guards and security officers, checkout operators)
- I = Labourers and related workers (e.g. cleaners, kitchenhands, product assemblers)
- J = Uncodable
- K = Students
- L = Invalid pensioners
- M = Other pensioners
- N = Housewives/househusbands
- O = Retired
- P = Unemployed
- Q = Other

8.4.1 Bankrupts

In 2008, 14.84% of bankrupts were intermediate clerical, sales and service workers; 12.55% were managers and administrators; 11.66% were intermediate production and transport workers; 11.37% were labourers and related workers; 10.54% were tradespersons and related workers; 8.62% were associate professionals; 6.16% were professionals; 5.67% were elementary clerical sales and service workers; 4.57% were unemployed; 3.76% were from other miscellaneous categories; 3.18% were other pensioners; 2.24% were housewives or househusbands; 1.91% were invalid pensioners; 1.22% were retired; 1.18% were advanced clerical and service workers; 0.51% were students; and 0.01% were uncodable. Figure 74 illustrates changes in the proportion of bankrupts in each of the occupational groups between 1999 and 2008.

FIGURE 74



We observe significant increases between 1999 and 2008 in the proportion of bankrupts who were managers and administrators, professionals, and associate professionals. In 1999, 3.23% of bankrupts were managers and administrators, compared to 12.55% in 2008. In 1999, 4.09% of bankrupts were professionals, compared to 6.18% in 2008. In 1999, 3.96% of bankrupts were associate professionals, compared to 8.62% in 2008. In 1999, 11.28% of bankrupts were managers or administrators, professionals, or associate professionals, compared to 27.34% in 2008.

We also observe significant increases between 1999 and 2008 in other occupational groups. In 1999, 8.52% of bankrupts were tradespersons and related workers, compared to 10.54% in 2008. In 1999, 5.70% of bankrupts were intermediate clerical, sales and service workers, compared to 14.84% in 2008. In 1999, 6.10% of bankrupts were intermediate production and transport workers, compared to 11.66% in 2008. In 1999, 6.59% of bankrupts were labourers and related workers, compared to 11.37% in 2008.

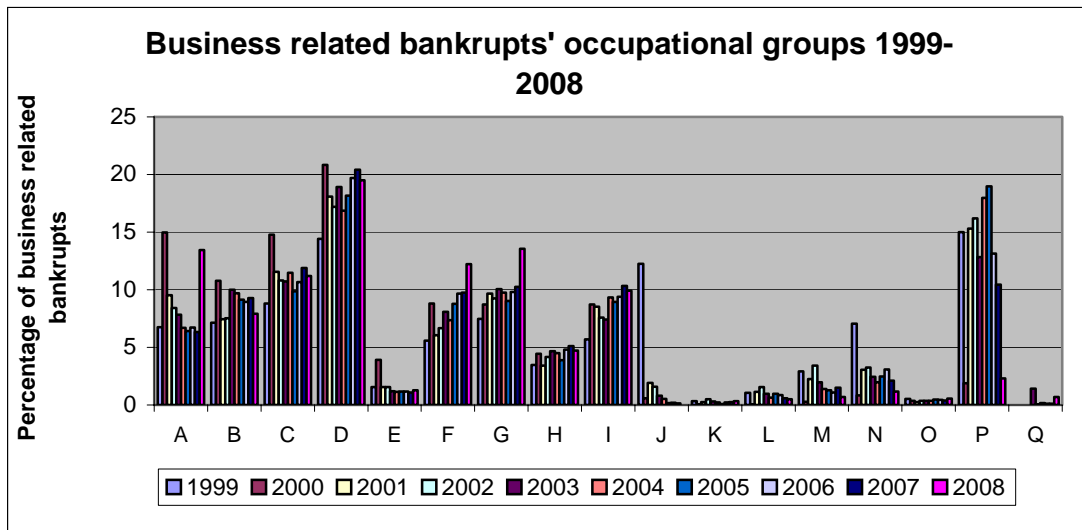
We observe a significant decrease in the proportion of several occupational groups. In 1999, 26.78% of bankrupts were unemployed, compared to 4.57% in 2008. We note the significant decrease in the proportion of unemployed bankrupts occurred largely between 2007 and 2008. In 2007, 22.36% of bankrupts were unemployed, compared to 5.06% in 2008. In 1999, 7.17% of bankrupts were other pensioners, compared to 3.18% in 2008. A more significant decrease took place in the category of housewives/househusbands. In 1999, 9.25% of bankrupts were housewives/househusbands, compared to 2.24% in 2008.

We note that the proportion of bankrupts who were students remained low between 1999 and 2008. In 1999, 0.84% of bankrupts were students, compared to 0.51% in 2008.

We comment that the most significant aspect of Figure 74 is that it reveals bankrupts are spread across a wide spectrum of occupational groups.

Figure 75 illustrates changes in the proportion of bankrupts from business related bankruptcies in each of the occupational groups between 1999 and 2008. We recall that in 2008, 17.67% of bankruptcies were business related.

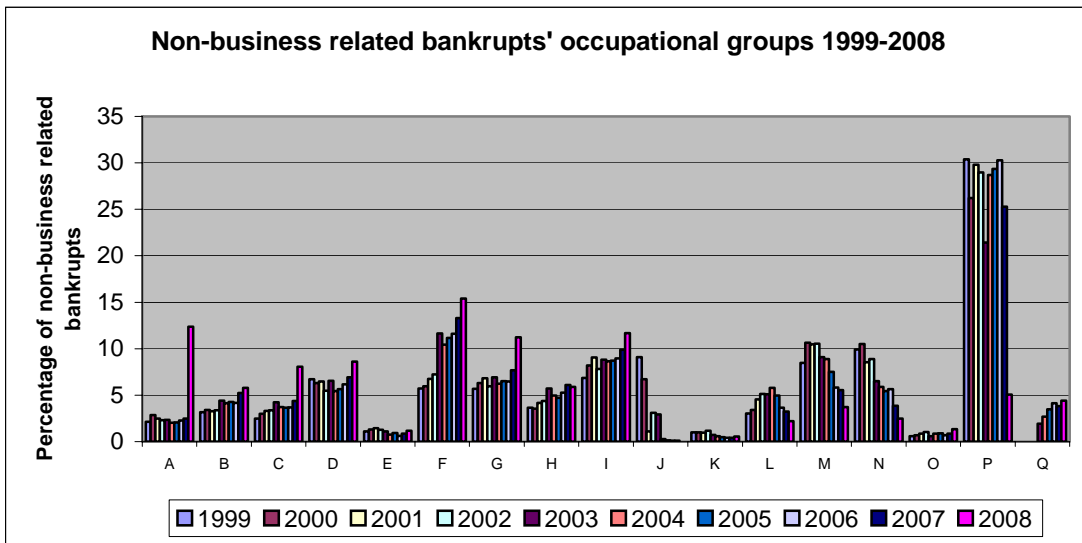
FIGURE 75



We note the higher proportions of business related bankrupts from occupational groups more readily associated with business. In 2008, 19.51% of business related bankrupts were tradespersons and related workers; 13.57% were intermediate production and transport workers; 13.44% were managers and administrators; 12.21% were intermediate clerical, sales and service workers; 11.20% were associate professionals; 9.93% were labourers and related workers; 7.93% were professionals; 4.72% were elementary clerical sales and service workers; 2.30% were unemployed; 1.27% were advanced clerical and service workers; 1.16% were housewives and househusbands; 0.69% were from other miscellaneous categories; 0.69% were other pensioners; 0.56% were retired; 0.50% were invalid pensioners; and 0.32% were students.

Figure 76 illustrates changes in the proportion of bankrupts from non-business related bankruptcies in each of the occupational groups between 1999 and 2008. We recall that in 2008, 82.34% of bankruptcies were non-business related. In 2008, 15.40% of non-business related bankrupts were intermediate clerical, sales and service workers; 12.35% were managers and administrators; 11.68% were labourers and related workers; 11.24% were intermediate production and transport workers; 8.60% were tradespersons and related workers; 8.07% were associate professionals; 5.88% were elementary clerical sales and service workers; 5.80% were professionals; 5.06% were unemployed; 4.42% were from other miscellaneous categories; 3.71% were other pensioners; 2.48% were housewives/househusbands; 2.21% were invalid pensioners; 1.36% were retired; 1.16% were advanced clerical and service workers; 0.55% were students; and 0.01% were uncodable.

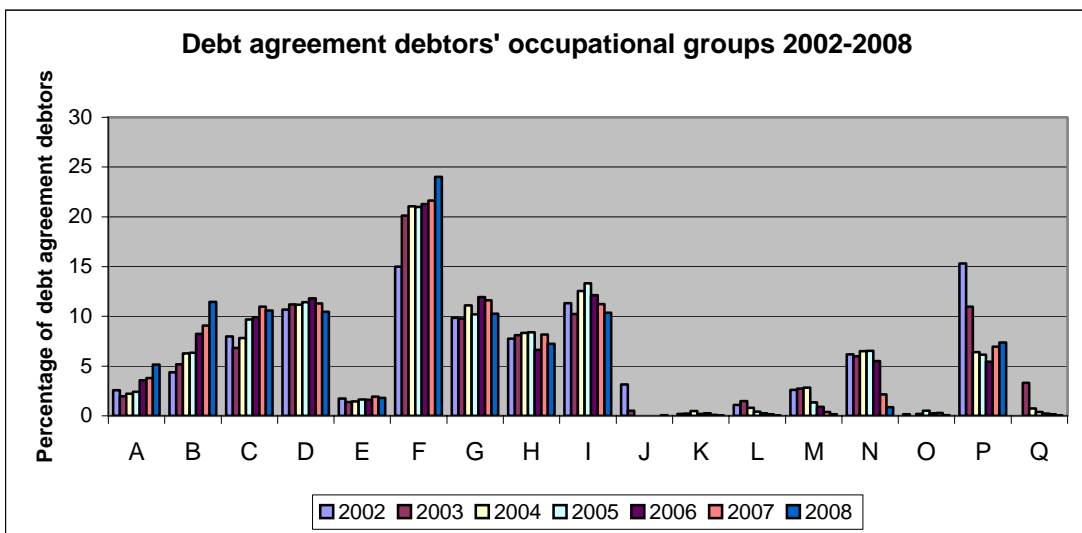
FIGURE 76



8.4.2 Debt agreement debtors

In 2008, 24.02% of debt agreement debtors were intermediate clerical, sales and service workers; 11.45% were professionals; 10.59% were associate professionals; 10.45% were tradespersons and related workers; 10.36% were labourers and related workers; 10.26% were intermediate production and transport workers; 7.37% were unemployed; 7.25% were elementary clerical sales and service workers; 5.15% were managers and administrators; 1.81% were advanced clerical and service workers; 0.88% were housewives/househusbands; 0.15% were other pensioners; 0.08% were retired; 0.06% were uncodable; 0.05% were students; 0.05% were invalid pensioners; and 0.03% were from other miscellaneous categories. Figure 77 illustrates changes in the proportion of debt agreement debtors in each of the occupational groups between 2002 and 2008.

FIGURE 77



We observe significant increases between 2002 and 2008 in the proportion of debt agreement debtors from four occupational groups. In 2002, 2.56% of debt agreement debtors were managers and administrators, compared to 5.15% in 2008. In 2002, 4.39% of debt agreement debtors were professionals, compared to 11.45% in 2008. In 2002, 7.99% of debt agreement debtors were associate professionals, compared to 10.59% in 2008. In 2002, 14.99% of debt agreement debtors were intermediate clerical, sales and service workers, compared to 24.02% in 2008.

We observe significant decreases between 2002 and 2008 in the proportion of debt agreement debtors from two occupational groups. In 2002, 6.19% of debt agreement debtors were housewives/househusbands, compared to 0.88% in 2008. In 2002, 15.34% of debt agreement debtors were unemployed, compared to 7.37% in 2008.

We recall the eligibility criteria for debt agreements and the limitations placed on expected future after tax income, unsecured debt levels, and divisible property.¹³³ Given these limitations, we comment that it is unsurprising that the largest proportion of debt agreement debtors between 2002 and 2008 were intermediate clerical, sales and service workers. However, we note the increase in the proportion of debt agreement debtors who were managers and administrators, professionals, and associate professionals, and note that some insolvents from these occupational groups fall within the eligibility criteria for debt agreements, despite the limitation on after tax income.

Figure 78 illustrates changes in the proportion of debt agreement debtors from business related debt agreements in each of the occupational groups between 2002 and 2008. Figure 79 illustrates changes in the proportion of debt agreement debtors from non-business related debt agreements in each of the occupational groups between 2002 and 2008. We recall that in 2008, 3.29% of debt agreements were business related and 96.71% of debt agreements were non-business related.

¹³³ See above section 3.2.

FIGURE 78

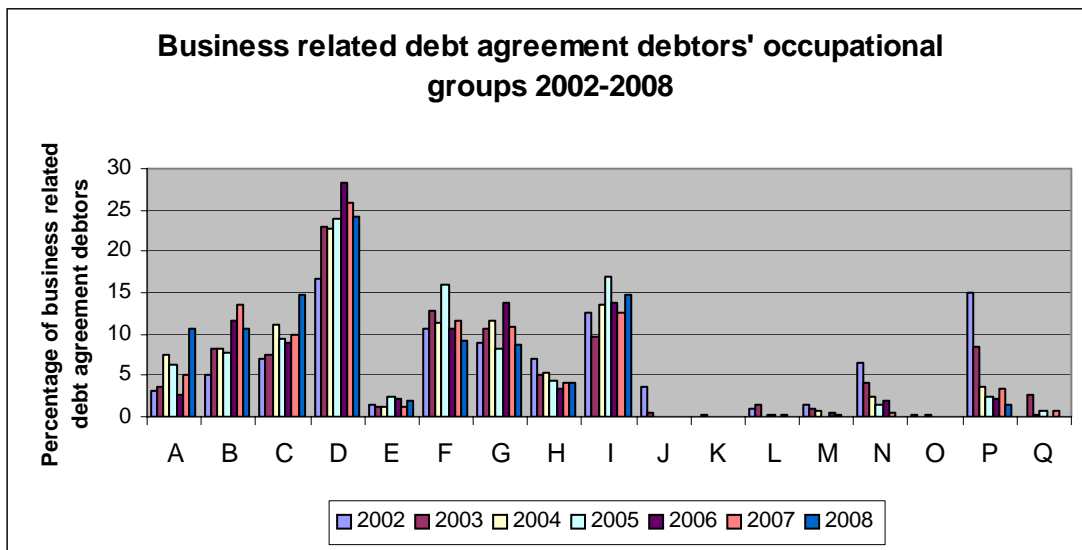
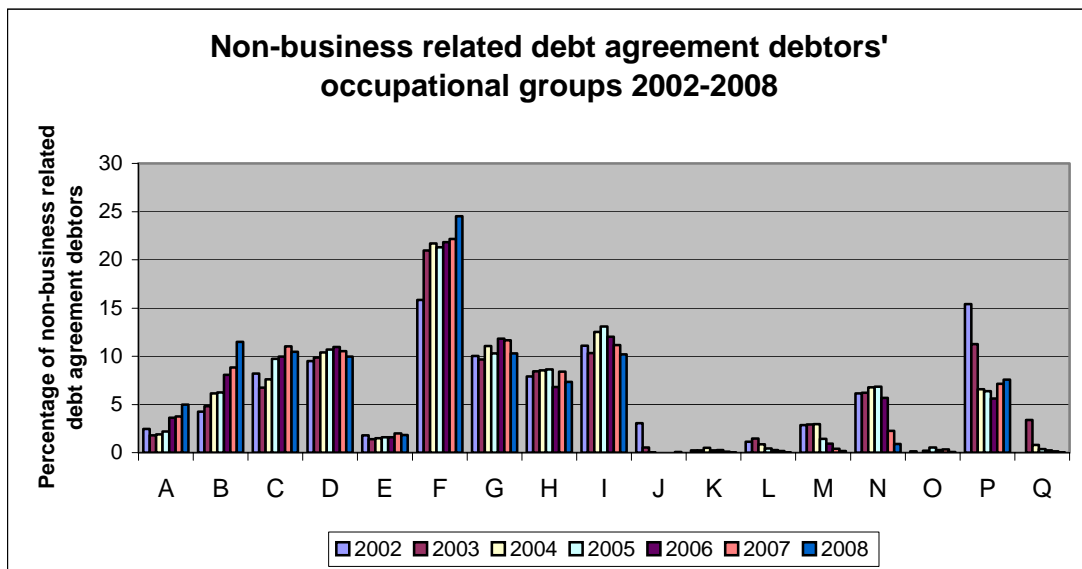


FIGURE 79



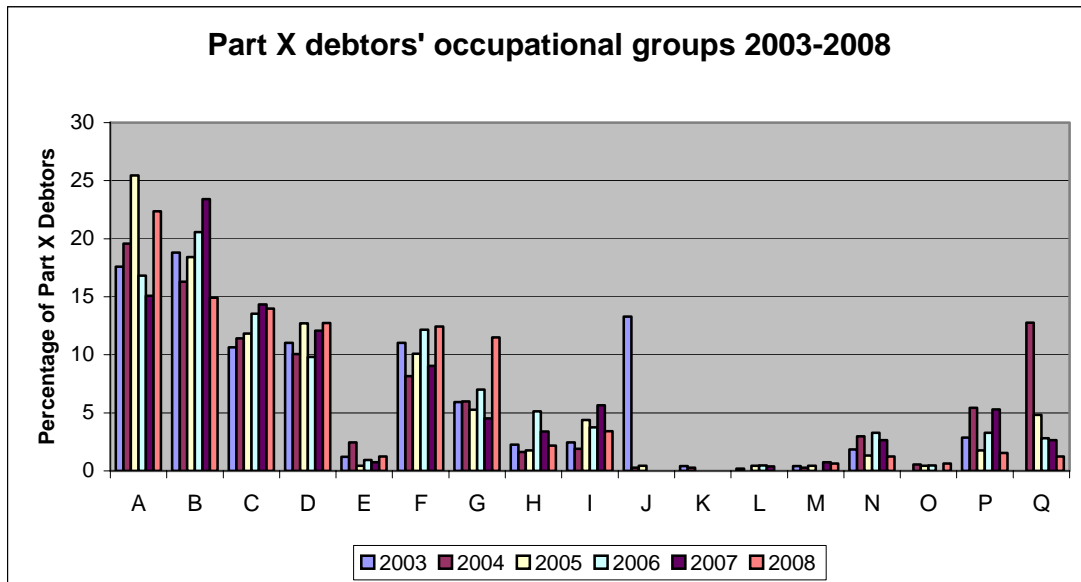
We note major differences between the proportions of debt agreement debtors from business and non-business related debt agreements in two occupational groups. In 2008, 24.31% of business related debt agreement debtors were tradespersons and related workers, compared to 9.98% of non-business related debt agreement debtors. In 2008, 24.52% of non-business related debt agreement debtors were intermediate clerical, sales and service workers, compared to 9.17% of business related debt agreement debtors.

8.4.3 Part X Debtors

In 2008, 22.36% of Part X debtors were managers and administrators; 14.91% were professionals; 13.98% were associate professionals; 12.73% were tradespersons and related workers; 12.42% were intermediate clerical, sales and service workers; 11.49% were intermediate production and

transport workers; 3.42% were labourers and related workers; 2.17% were elementary clerical sales and service workers; 1.55% were unemployed; 1.24% were advanced clerical and service workers; 1.24% were other miscellaneous categories; 1.24% were housewives/househusbands; 0.62% were other pensioners; and 0.62% were retired. Figure 80 illustrates changes in the proportion of Part X debtors in each of the occupational groups between 2003 and 2008.

FIGURE 80



We note that the proportions of Part X debtors between 2003 and 2008 who were managers and administrators, professionals, and associate professionals, were higher than those proportions for both bankrupts and debt agreement debtors. In 2008, 51.24% of Part X debtors were managers and administrators, professionals, or associate professionals, compared to 27.34% of bankrupts and 27.19% of debt agreement debtors.

Figure 81 illustrates changes in the proportion of Part X debtors from business related Part X arrangements in each of the occupational groups between 2003 and 2008. Figure 82 illustrates changes in the proportion of Part X debtors from non-business related Part X arrangements in each of the occupational groups between 2003 and 2008. We recall the small number of Part X arrangements. In 2008, there were only 277 X Part X arrangements, of which 45.13% were business related and 54.87% were non-business related. Therefore we note that the following two figures are of limited utility.

FIGURE 81

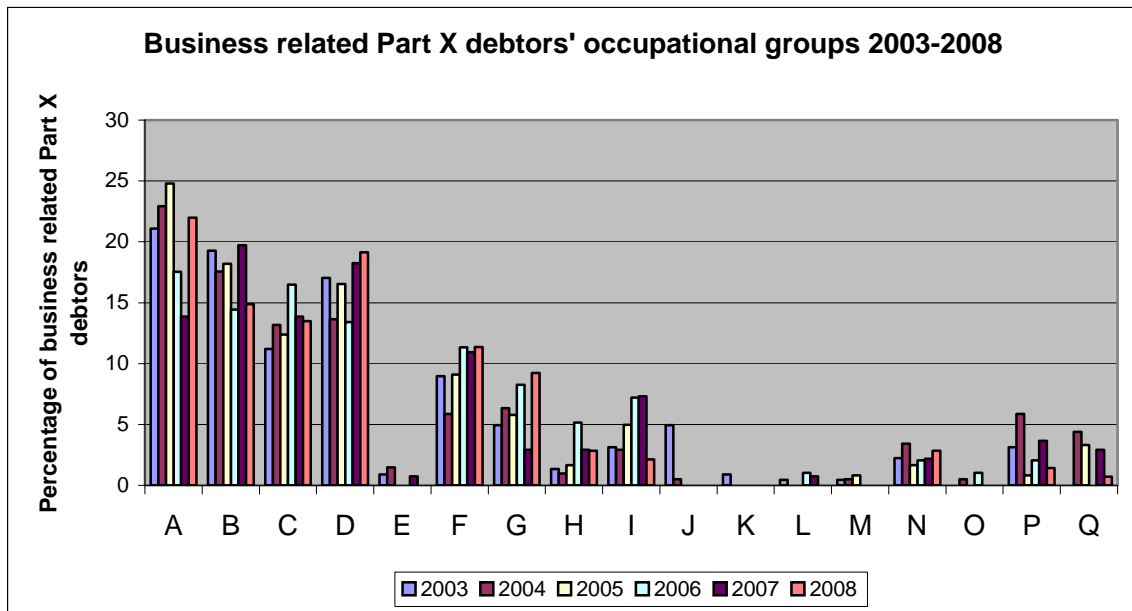
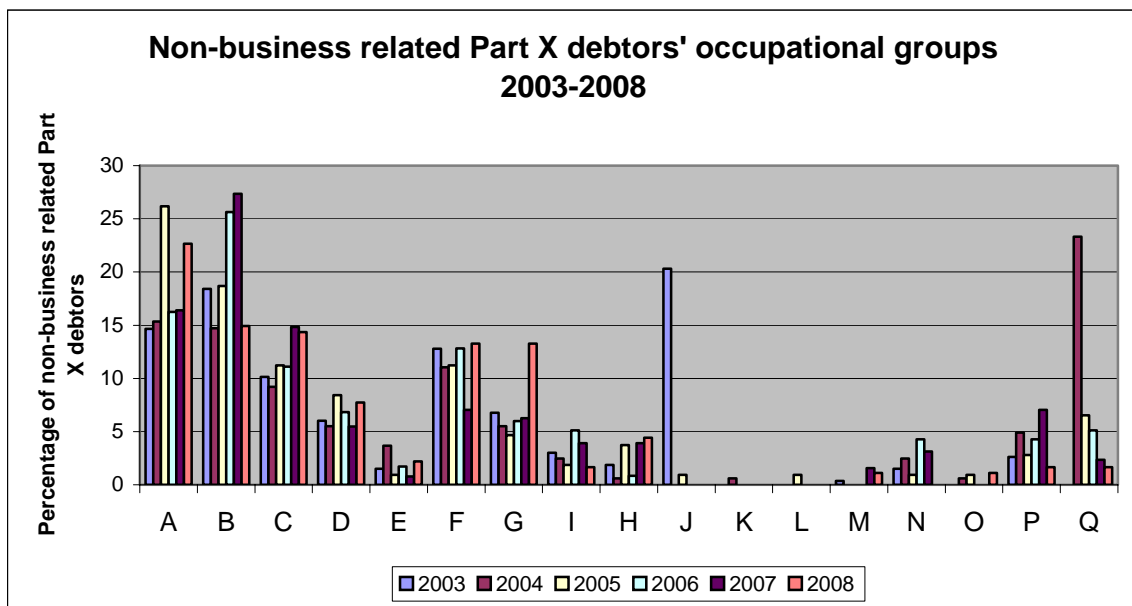


FIGURE 82



8.5 EMPLOYMENT STATUS

We observe changes in the employment rates of insolvents based on data from the Profiles and the ABS. Employment status is declared by insolvents in their Statements of Affairs. We note that no guidance is given to insolvents as to how many hours of work per week constitute employment. For our purposes we assume that answers given by insolvents are truthful and do not conceal employment.

We note that the unemployment rate in Australia fell between 1997 and 2007. In December 1997, the unemployment rate is estimated to have been 8.1%; in

December 2002, 6.1%; in December 2003, 5.6%; in December 2005, 5.1%; and in December 2007, 4.2%. However, these figures are not necessarily reconcilable with the figures of unemployed insolvents, given that employment status is defined by the insolvents themselves. Nevertheless, it should be observed that between 1997 and 2007 there was a fall in the level of unemployment in Australia of around 3.9%.

8.5.1 Bankrupts

In 2007, 56% of bankrupts were employed. Figure 83 illustrates the employment status of bankrupts in 1997, 2002, 2003, 2005 and 2007.

FIGURE 83

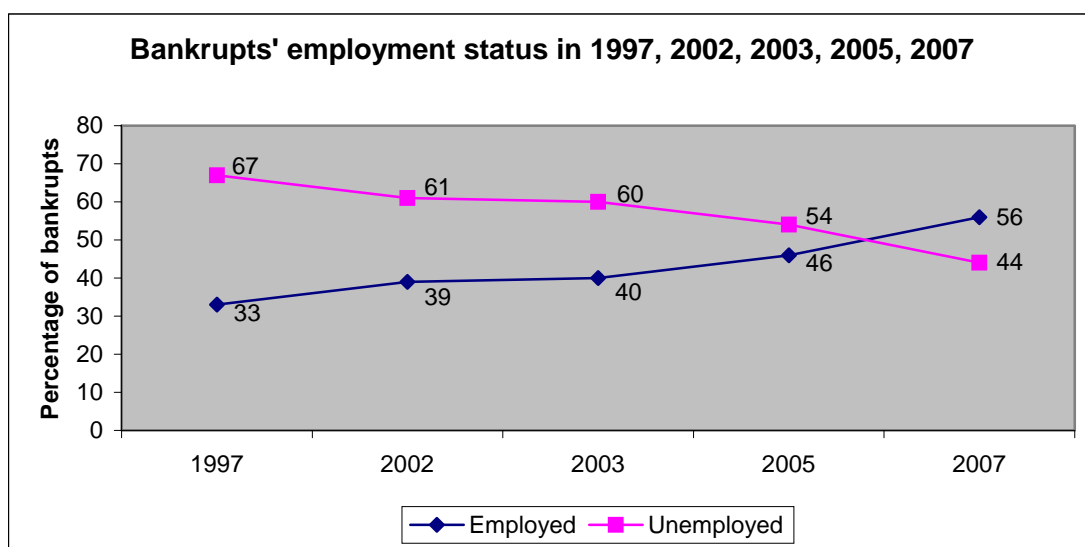
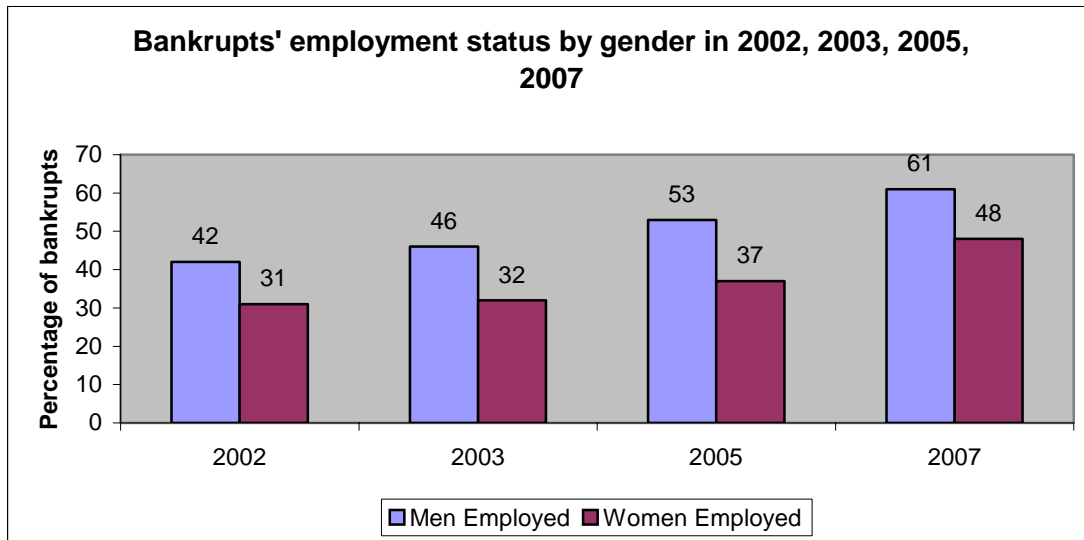


Figure 83 illustrates a significant increase in the employment rate of bankrupts between 1997 and 2007. Whilst the Australian unemployment rate fell around 3.9% during this period, we observe that the unemployment rate of bankrupts decreased significantly more rapidly. In 2007, 56% of bankrupts were employed, compared to 33% in 1997. We speculate that income from employment is becoming less sufficient at ameliorating the financial difficulties of some Australians who previously would not have resorted to bankruptcy. However, we note that the unemployment rate of bankrupts has remained far higher than the Australian average, although we recall that employment status is defined by the bankrupts themselves and is therefore not necessarily reconcilable with the Australian unemployment rate.

Figure 84 shows the gender of employed and unemployed bankrupts in 2002, 2003, 2005 and 2007. This data is not based on a gender breakdown of those employed as a total. Instead, the data shows the proportion of male bankrupts in employment, and the proportion of female bankrupts in employment. In 2007, 61% of male bankrupts were employed, and 48% of female bankrupts were employed. Despite increases in bankrupts' employment levels between 2002 and 2007, there remained a greater proportion of employed male bankrupts than employed female bankrupts. We speculate that this

discrepancy might be explained in part by the lower participation rates of women in the workforce. In November 2008, the estimated rate of participation in the workforce for males was 72.2%, whereas for females it was 58.3%.

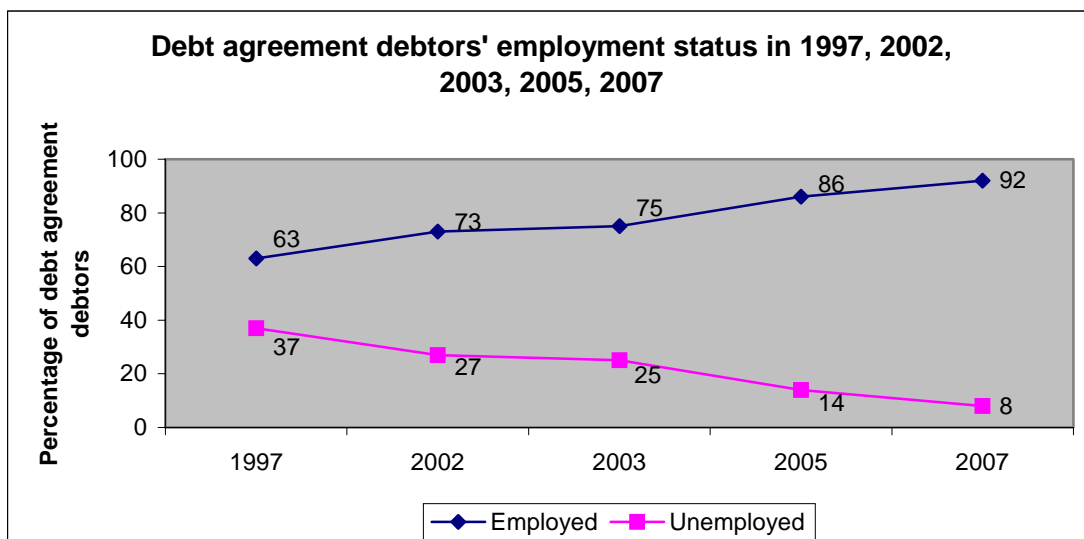
FIGURE 84



8.5.2 Debt agreement debtors

In 2007, 92% of debt agreement debtors were employed. Figure 85 illustrates the employment status of debt agreement debtors in 1997, 2002, 2003, 2005 and 2007.

FIGURE 85



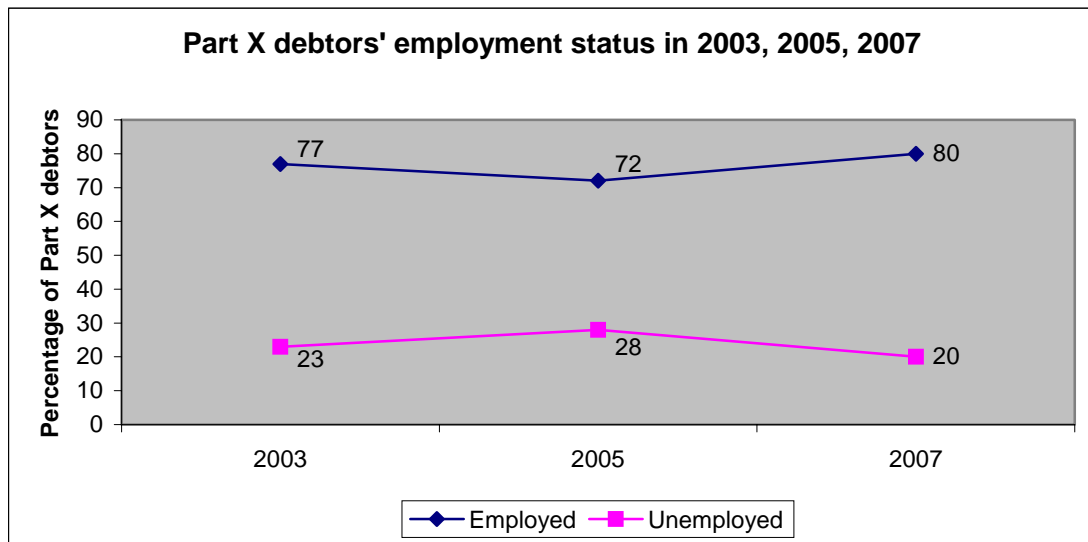
In 1997, 63% of debt agreement debtors were employed, compared to 92% in 2007. We observe a 46% increase in the proportion of employed debt agreement debtors between 1997 and 2007. We find that debt agreement debtors have higher levels of employment than both bankrupts and Part X

debtors. We speculate that debt agreement debtors are more likely to be employed because creditors would be less likely to accept a debt agreement from an unemployed debtor. We also speculate that this high employment rate illustrates that income from employment is becoming less sufficient at ameliorating the financial difficulties of some Australians.

8.5.3 Part X debtors

In 2007, 80% of Part X debtors were employed. Figure 86 shows the employment status of Part X debtors in 2003, 2005 and 2007.

FIGURE 86



We observe relatively stable levels of employment among Part X debtors between 2003 and 2007. We speculate that Part X debtors' employment levels have remained comparatively high because creditors would be less likely to accept a Part X arrangement from an unemployed debtor.

8.6 PERSONAL INCOME

We observe changes in the personal gross income levels of insolvents based on data from the Profiles and the ABS. For our purposes we assume that answers given by insolvents are truthful and do not conceal income.

In 1997, Australian real net disposable income per person was \$29,400, compared to \$39,000 in 2007.

8.6.1 Bankrupts

In 2007, 4% of bankrupts had zero personal income in the 12 months prior to bankruptcy; 11% had between \$1 and \$9,999; 47% had between \$10,000 and

\$29,999; 25% had between \$30,000 and \$49,999; 9% had between \$50,000 and \$69,999; and 4% had \$70,000 or more in personal income.

Figure 87 shows the various levels of bankrupts' personal income in 1997, 2002, 2003, 2005 and 2007.

Figure 88 only includes data from 2005 and 2007, which enables us to observe further changes in levels of bankrupts' personal income less than \$10,000 and also \$30,000 or more.

FIGURE 87

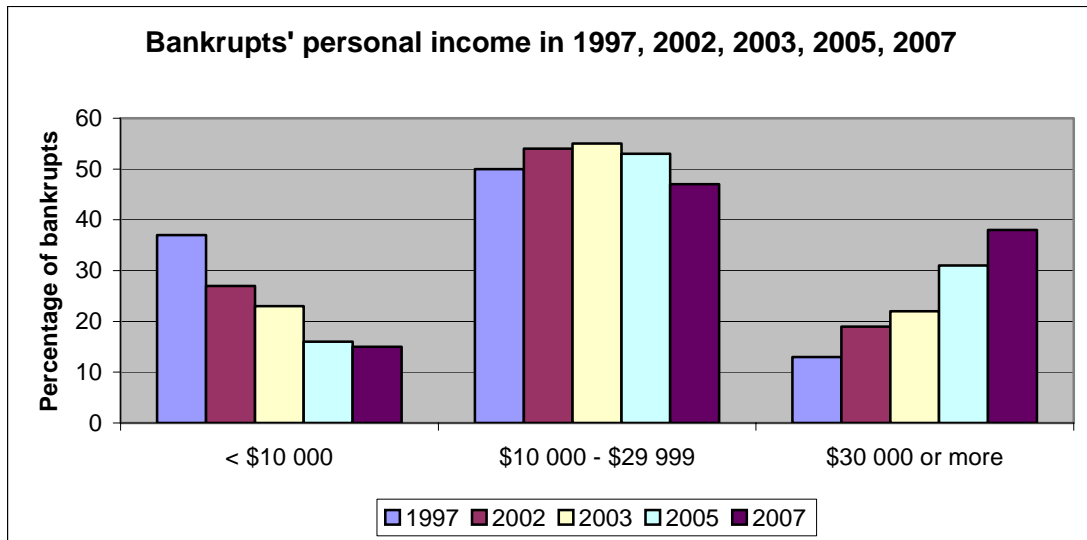
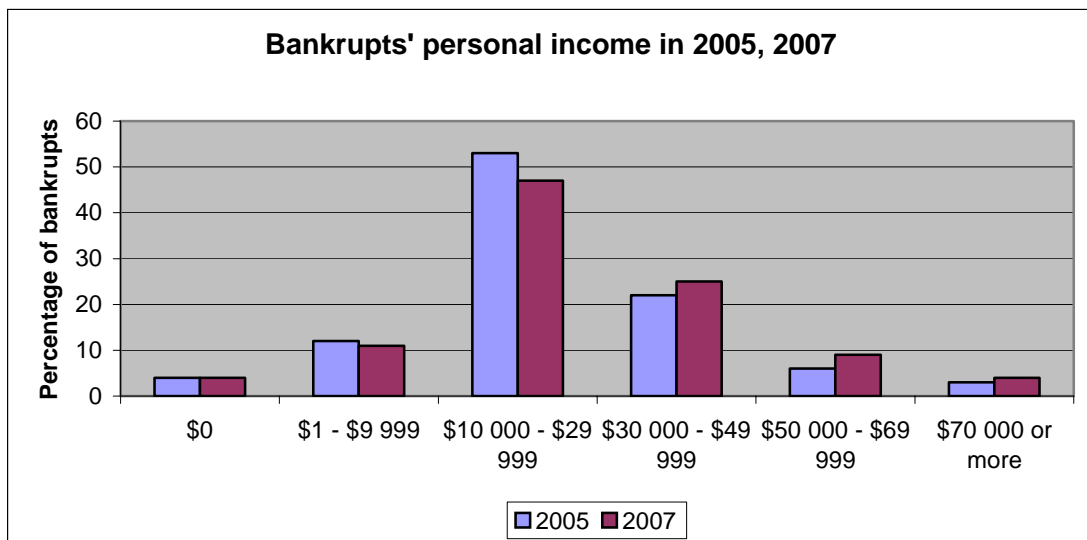


FIGURE 88



We observe that between 1997 and 2007 the level of bankrupts' personal income increased. We note a decrease in the proportion of bankrupts with less than \$10,000 personal income and an increase in the proportion of bankrupts with personal income of \$30,000 or more between 1997 and 2007. In 1997, 37% of bankrupts had personal income less than \$10,000, and 13% had personal income of \$30,000 or more. In 2007, these proportions were

almost inverted: 15% had personal income less than \$10,000, and 38% had personal income of \$30,000 or more.

We observe from Figure 88 that 4% of bankrupts had personal income of \$70,000 or more in 2007, compared to 3% in 2005. In 2007, 9% of bankrupts had personal income between \$50,000 and \$69,999, compared to 6% in 2005. In 2007, 25% of bankrupts had personal income between \$30,000 and \$49,999, compared to 22% in 2005. We note also that in both 2005 and 2007, only 4% of bankrupts had zero personal income.

8.6.2 Debt agreement debtors

In 1997, 2002, 2003, and 2005, the levels of debt agreement debtors' personal income were based on personal income for the previous 12 months. In 2007, personal income levels of debt agreement debtors were based on expected personal income in the next 12 months. Despite this caveat, we refer to debt agreement debtors' personal income for 1997, 2002, 2003, 2005, and 2007 as "personal income".

In 2007, 2% of debt agreement debtors had personal income between \$1 and \$9,999; 29% had between \$10,000 and \$29,999; 52% had between \$30,000 and \$49,999; and 17% had \$50,000 or more.

Figure 89 shows the various levels of debt agreement debtors' personal income in 1997, 2002, 2003, 2005 and 2007.

Figure 90 only includes data from 2005 and 2007, which enables us to observe further changes in levels of debt agreement debtors' personal income less than \$10,000 and also \$30,000 or more.

FIGURE 89

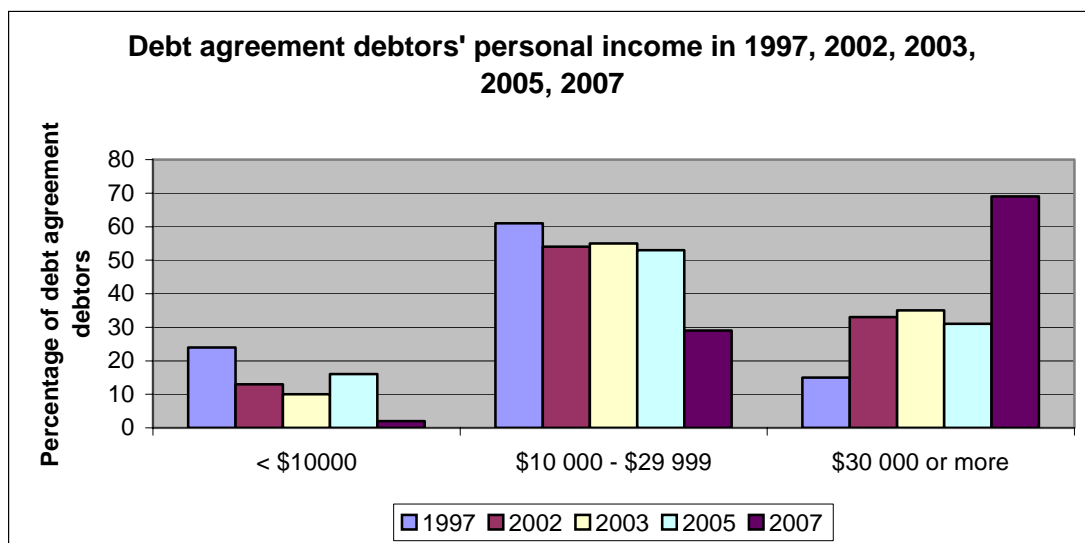
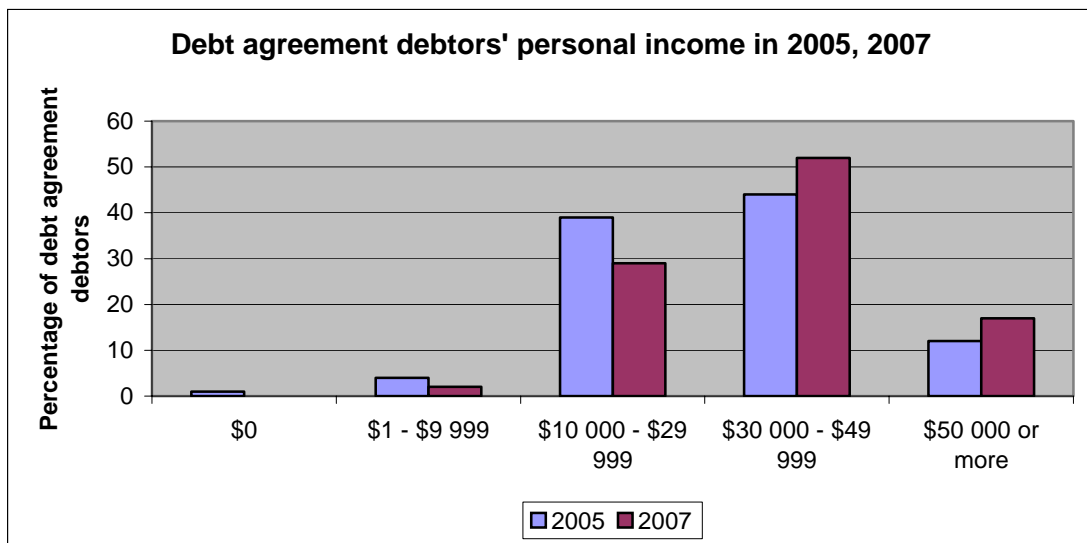


FIGURE 90



We recall that one criterion for eligibility to enter into a debt agreement is to have a future expected after tax income falling under prescribed limitations (in September 2008 this threshold amount was a future expected after tax income of less than \$61,875.45). This explains why the highest category of personal income in Figure 90 is \$50,000 or more.

We observe that between 1997 and 2007 the level of debt agreement debtors' personal income increased. We note a decrease in the proportion of debt agreement debtors with personal income less than \$30,000. In 1997, 85% of debt agreement debtors had personal income less than \$30,000, compared to 31% in 2007. In 1997, 15% of debt agreement had personal income of \$30,000 or more, compared to 69% in 2007.

We observe from Figure 90 that in 2007, 17% of debt agreement debtors had personal income of \$50,000 or more, compared to 12% in 2005. In 2007, 52% of debt agreement debtors had personal income between \$30,000 and \$49,999, compared to 44% in 2005. In 2007, 0% of debt agreement debtors had zero personal income, compared to 1% in 2005.

8.6.3 Part X debtors

In 2007, 6% of Part X debtors had zero personal income in the 12 months prior to entering into a Part X arrangement; 6% had between \$1 and \$9,999; 23% had between \$10,000 and \$29,999; 24% had between \$30,000 and \$49,999; 15% had between \$50,000 and \$69,999; and 25% had personal income of \$70,000 or more.

Figure 91 shows the various levels of Part X debtors' personal income in 2003, 2005 and 2007.

Figure 92 only includes data from 2005 and 2007, which enables us to observe further changes in levels of Part X debtors' personal income less than \$10,000 and also \$30,000 or more.

FIGURE 91

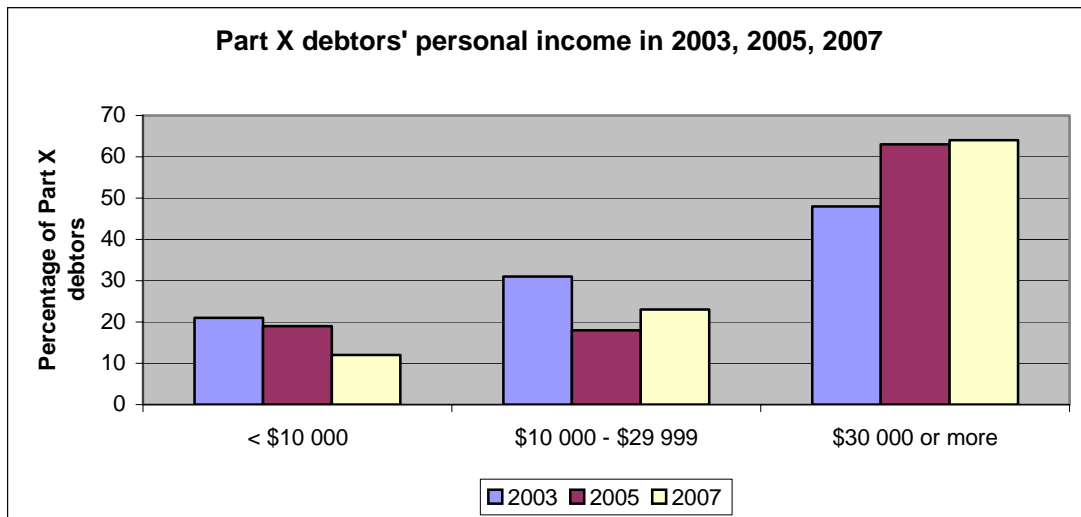
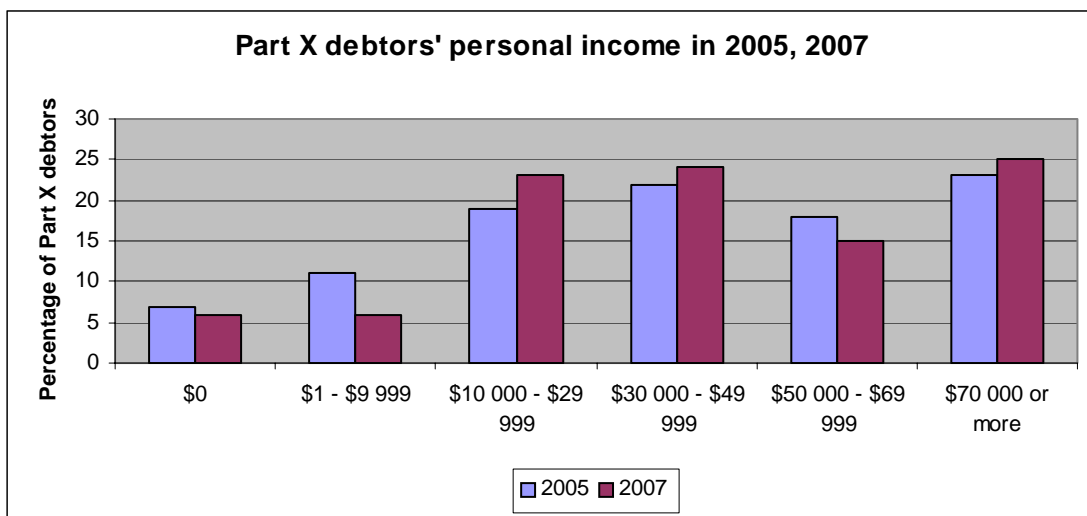


FIGURE 92



We observe that between 2003 and 2007 the level of Part X debtors' personal income increased. We note a decrease in the proportion of Part X debtors with personal income less than \$30,000. In 2003, 52% of Part X debtors had personal income less than \$30,000, compared to 35% in 2007. In 2003, 48% of Part X debtors had personal income of \$30,000 or more, compared to 64% in 2007.

We note that the personal income of Part X debtors was notably higher than the personal income of bankrupts and debt agreement debtors. In 2007, 40% of Part X debtors had personal income of \$50,000 or more, compared to 13% of bankrupts and 17% of debt agreement debtors. In 2005, 41% of Part X debtors had personal income of \$50,000 or more, compared to 9% of bankrupts and 12% of debt agreement debtors.

8.7 HOUSEHOLD INCOME

We observe changes in the gross household income levels of insolvents based on data from the Profiles. For our purposes we assume that answers given by insolvents are truthful and do not conceal household income.

8.7.1 Bankrupts

In 2007, 3% of bankrupts had zero household income in the 12 months prior to bankruptcy; 7% had between \$1 and \$9,999; 23% had between \$10,000 and \$19,999; 18% had between \$20,000 and \$29,999; 25% had between \$30,000 and \$49,999; 13% had between \$50,000 and \$69,999; and 11% had \$70,000 or more in household income.

Figure 93 shows the various levels of bankrupts' household income in 2002, 2003, 2005 and 2007.

Figure 94 only includes data from 2005 and 2007, which enables us to observe further changes in levels of bankrupts' household income less than \$10,000 and also \$50,000 or more.

FIGURE 93

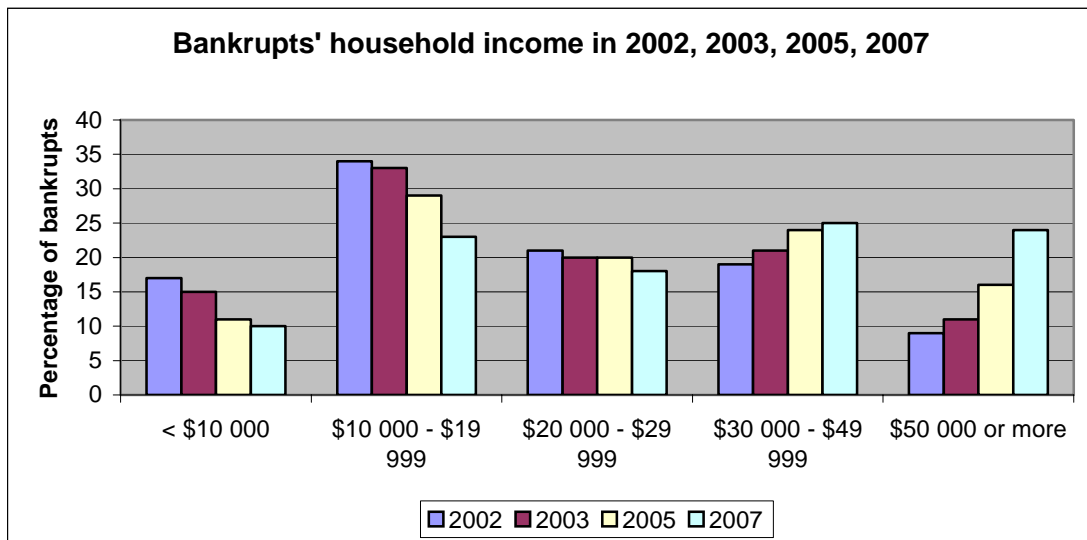
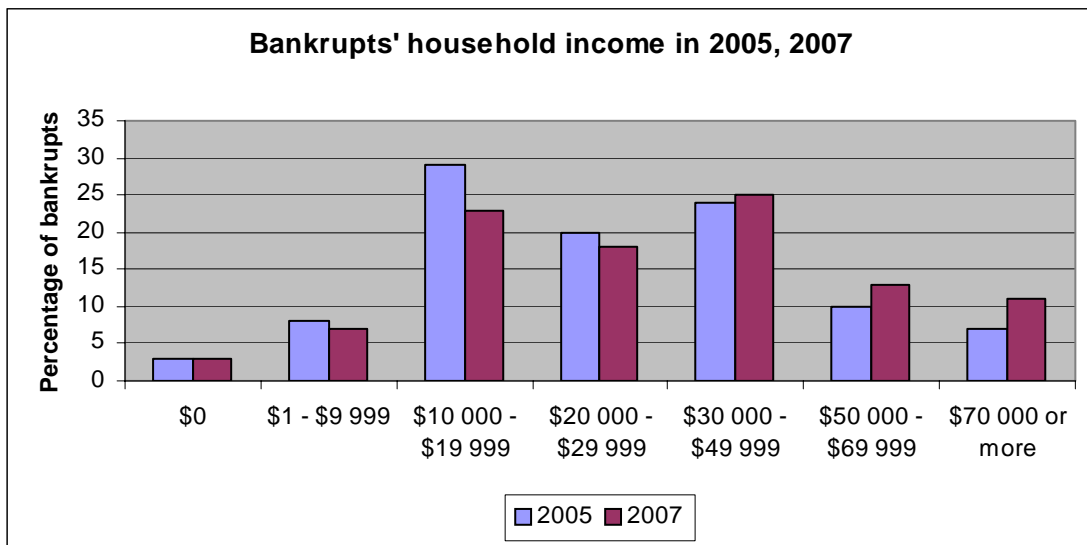


FIGURE 94



We observe an increase in the level of bankrupts' household income between 2002 and 2007. In 2002, 28% of bankrupts had household income of \$30,000 or more, compared to 49% in 2007. In 2002, 51% of bankrupts had household income less than \$20,000, and 28% had household income of \$30,000 or more. In 2007, 33% of bankrupts had household income less than \$20,000, and 49% had household income of \$30,000 or more.

We observe from Figure 94 that 11% of bankrupts had household income of \$70,000 or more in 2007, compared to 7% in 2005. In 2007, 13% of bankrupts had household income between \$50,000 and \$69,999, compared to 10% in 2005. We note also that in both 2005 and 2007, only 3% of bankrupts had zero household income.

8.7.2 Debt agreement debtors

In 1997, 2002, 2003, and 2005, the levels of debt agreement debtors' income were based on household income for the previous 12 months. In 2007, household income levels of debt agreement debtors were based on expected household income in the next 12 months. Despite this caveat, we refer to debt agreement debtors' household income for 1997, 2002, 2003, 2005, and 2007 as "household income".

In 2007, 1% of debt agreement debtors had between \$1 and \$9,999 in household income; 7% had between \$10,000 and \$19,999; 18% had between \$20,000 and \$29,999; 37% had between \$30,000 and \$49,999; 21% had between \$50,000 and \$69,999; and 15% had \$70,000 or more in household income.

Figure 95 shows the various levels of debt agreement debtors' household income in 2002, 2003, 2005 and 2007.

Figure 96 only includes data from 2005 and 2007, which enables us to observe further changes in levels of debt agreement debtors' household income less than \$10,000 and also \$50,000 or more.

FIGURE 95

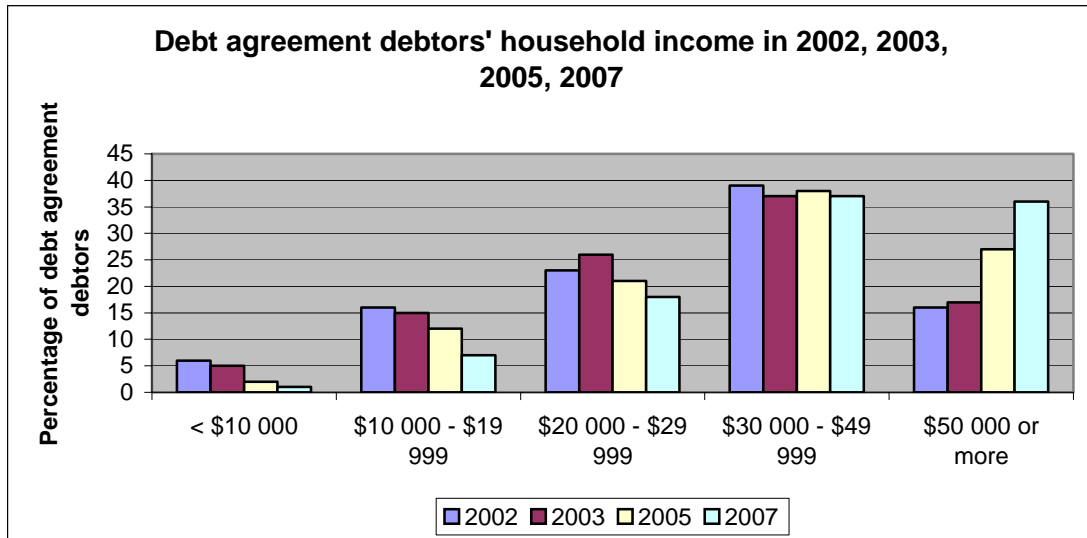
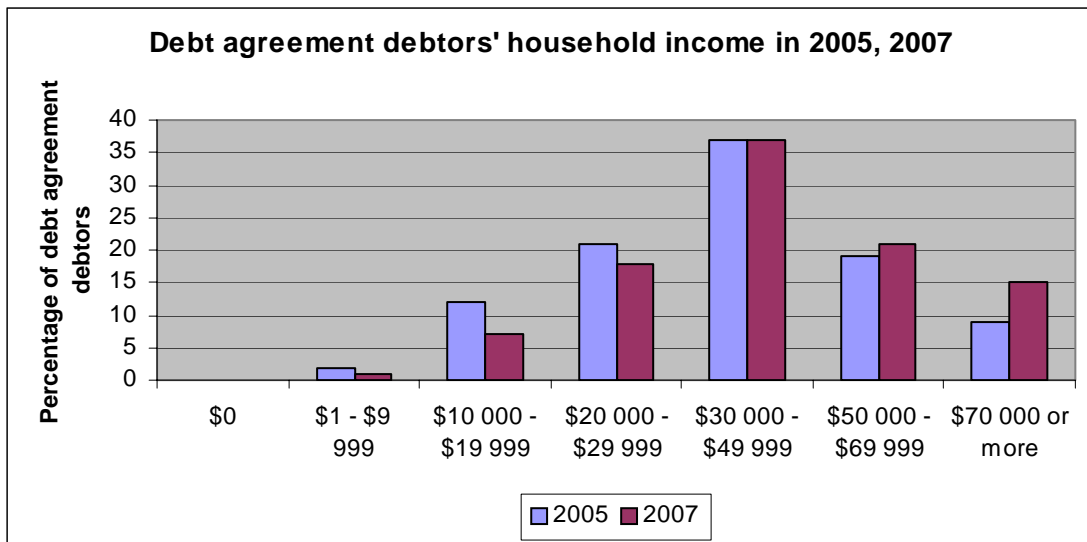


FIGURE 96



We observe an increase in the level of debt agreement debtors' household income between 2002 and 2007. In 2002, 55% of debt agreement debtors had household income of \$30,000 or more, compared to 73% in 2007. In 2002, 22% of debt agreement debtors had household income less than \$20,000, compared to 8% in 2007.

Figure 96 reveals that 15% of debt agreement debtors had household income of \$70,000 or more in 2007, compared to 9% in 2005. In 2007, 21% of debt agreement debtors had household income between \$50,000 and \$69,999, compared to 19% in 2005. We note that in both 2005 and 2007, 0% of debt agreement debtors had zero household income.

8.7.3 Part X debtors

In 2007, 4% of Part X debtors had zero household income; 1% had between \$1 and \$9,999; 7% had between \$10,000 and \$19,999; 10% had between \$20,000 and \$29,999; 15% had between \$30,000 and \$49,999; 18% had between \$50,000 and \$69,999; and 45% had \$70,000 or more in household income.

Figure 97 shows the various levels of Part X debtors' household income in 2003, 2005 and 2007.

Figure 98 only includes data from 2005 and 2007, which enables us to observe further changes in levels of Part X debtors' household income less than \$10,000 and also \$50,000 or more.

FIGURE 97

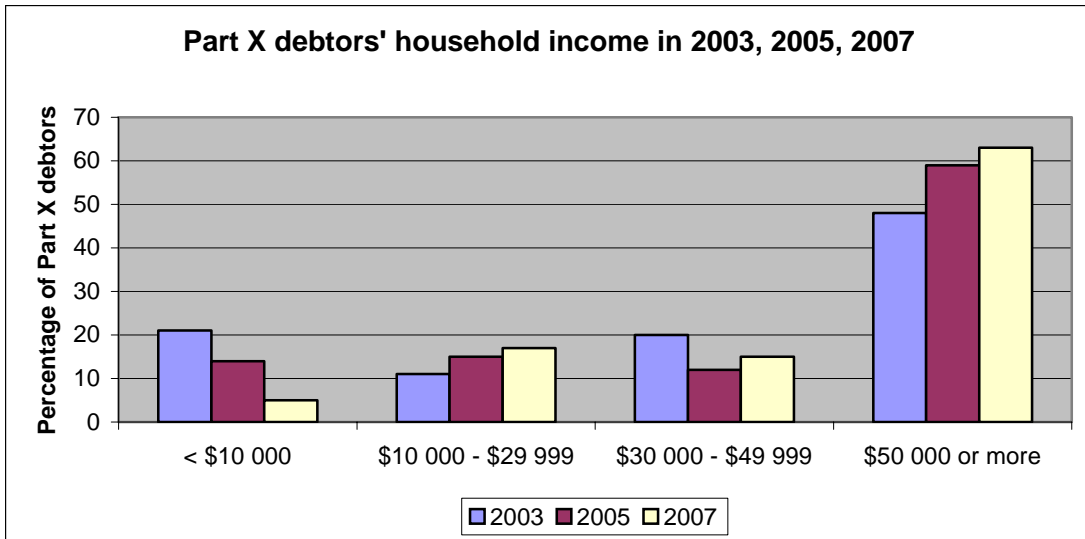
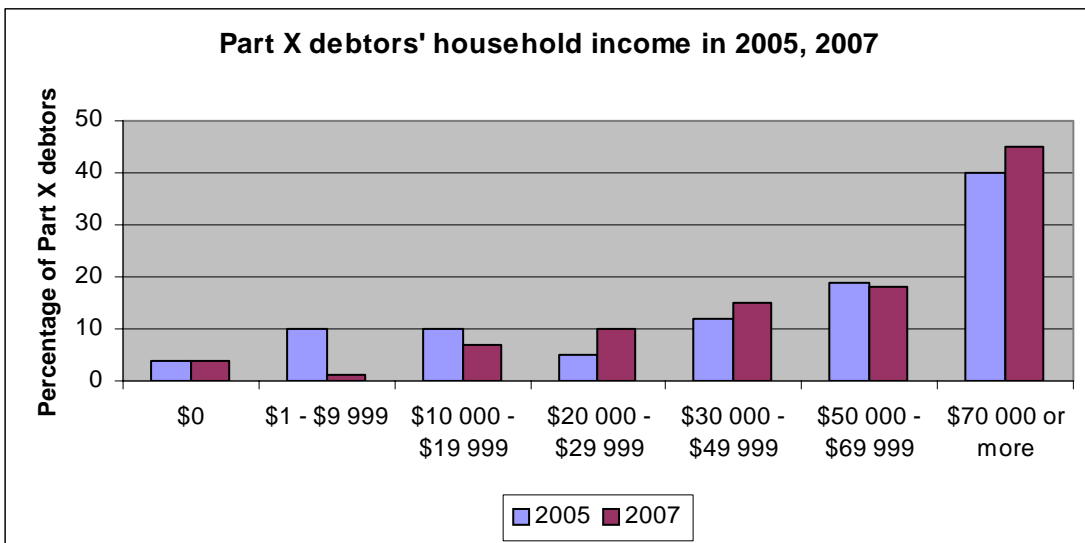


FIGURE 98



We observe an increase in the level of Part X debtors' household income between 2003 and 2007. In 2003, 48% of Part X debtors had household income of \$50,000 or more, compared to 63% in 2007. In 2003, 21% of Part X debtors had household income less than \$10,000, compared to 5% in 2007.

We note that Part X debtors' levels of household income remained higher than the household income of bankrupts and debt agreement debtors. In 2007, 78% of Part X debtors had \$30,000 or more in household income, compared to 49% of bankrupts and 73% of debt agreement debtors.

8.8 DEBT LEVELS

We observe changes in the unsecured debt levels of insolvents based on data from the Profiles. Debt levels are declared by insolvents in their Statements of Affairs. For our purposes we assume that answers given by insolvents are truthful and do not conceal any unsecured debts.

8.8.1 Bankrupts

In 2007, 5% of bankrupts had less than \$2,000 in unsecured debt; 3% had between \$2,000 and \$4,999; 8% had between \$5,000 and \$9,999; 17% had between \$10,000 and \$19,999; 32% had between \$20,000 and \$49,999; 19% had between \$50,000 and \$99,999; 14% had between \$100,000 and \$499,999; and 2% had \$500,000 or more in unsecured debt.

Figure 99 illustrates bankrupts' unsecured debt levels in 1997, 2002, 2003, 2005 and 2007. We observe increases in the levels of bankrupts' unsecured debt between 1997 and 2007. In 1997, 62% of bankrupts had unsecured debt less than \$20,000, compared to 33% in 2007.

Figure 100 excludes the 1997 data on bankrupts' unsecured debt levels, which enables us to observe changes in different levels of unsecured debt less than \$20,000.

FIGURE 99

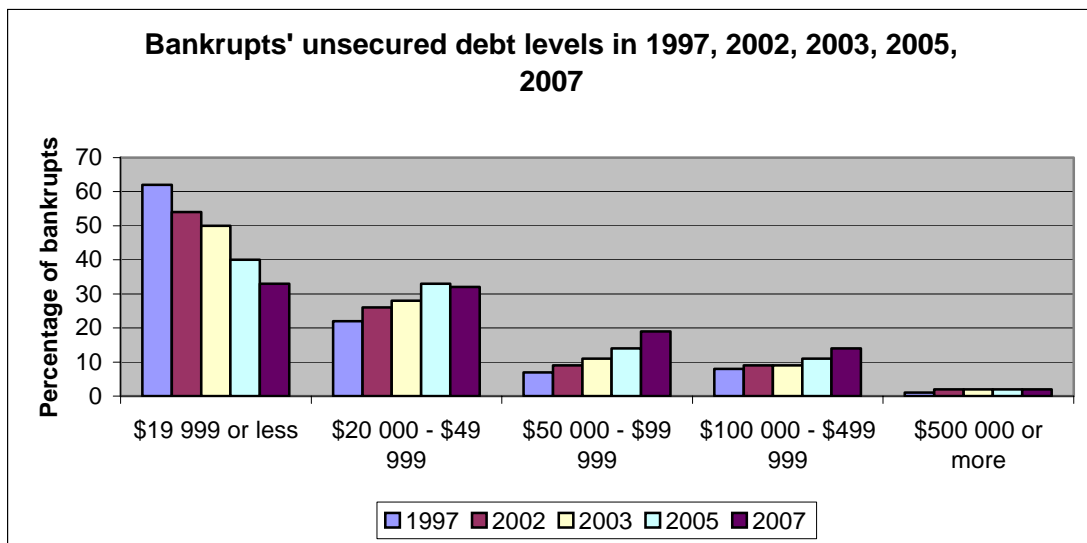
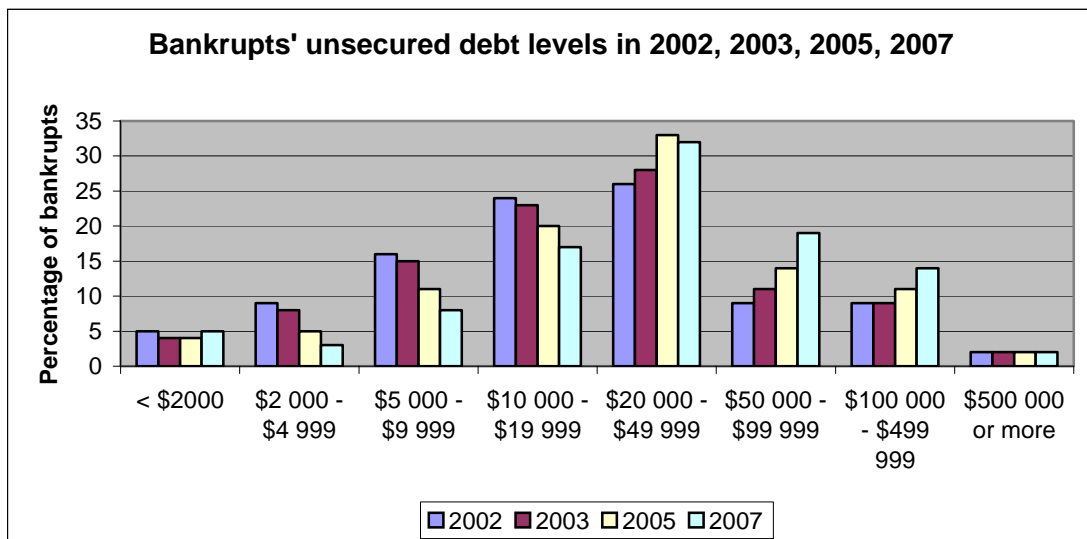


FIGURE 100



We observe that even modest levels of unsecured debt can result in bankruptcy. In 2002 and 2007, 5% of bankrupts had unsecured debt less than \$2,000, compared to 4% in both 2003 and 2005.

However, the proportion of bankrupts with unsecured debt levels greater than \$2,000 but less than \$20,000 decreased between 2002 and 2007. In 2002, 49% of bankrupts had more than \$2,000 but less than \$20,000 in unsecured debt, compared to 28% of bankrupts in 2007. The proportion of bankrupts with unsecured debt between \$20,000 but less than \$500,000 increased between 1997 and 2007. In 2002, 44% of bankrupts had unsecured debt between \$20,000 but less than \$500,000, compared to 65% in 2007. We note that only 1% of bankrupts had unsecured debt of \$500,000 or more in 1997, compared to 2% in 2002, 2003, 2005 and 2007.

8.8.2 Debt agreement debtors

In 2007, 1% of debt agreement debtors had less than \$4,999 in unsecured debt; 7% had between \$5,000 and \$9,999; 27% had between \$10,000 and \$19,999; 51% had between \$20,000 and \$49,999; and 14% had \$50,000 or more in unsecured debt.

Figure 101 illustrates debt agreement debtors' unsecured debt levels in 1997, 2002, 2003, 2005 and 2007. We observe increases in the levels of debt agreement debtors' unsecured debt between 1997 and 2007. In 1997, 55% of debt agreement debtors had unsecured debt less than \$20,000, compared to 35% in 2007.

Figure 102 excludes the 1997 data on bankrupts' unsecured debt levels, which enables us to observe changes in different levels of unsecured debt of \$20,000 or more.

FIGURE 101

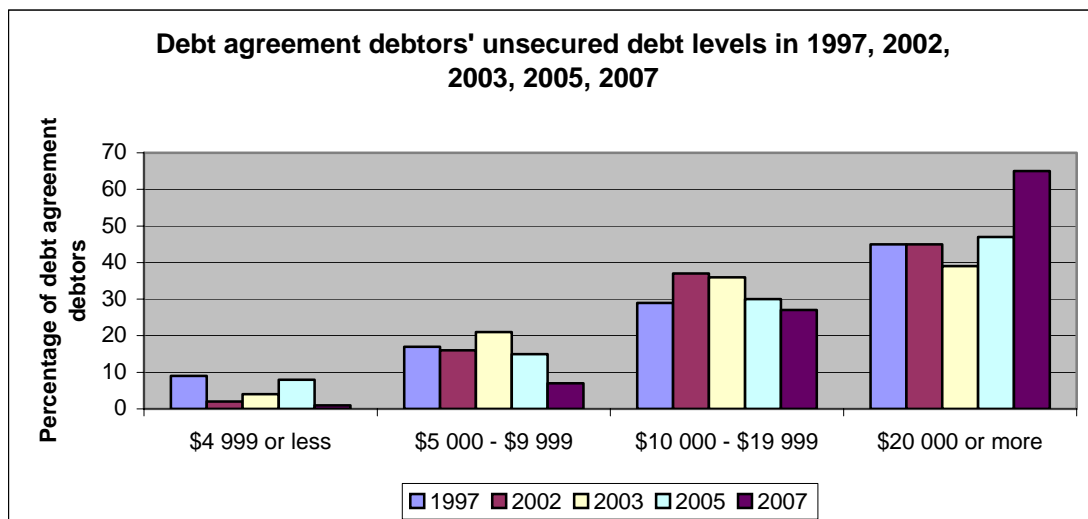
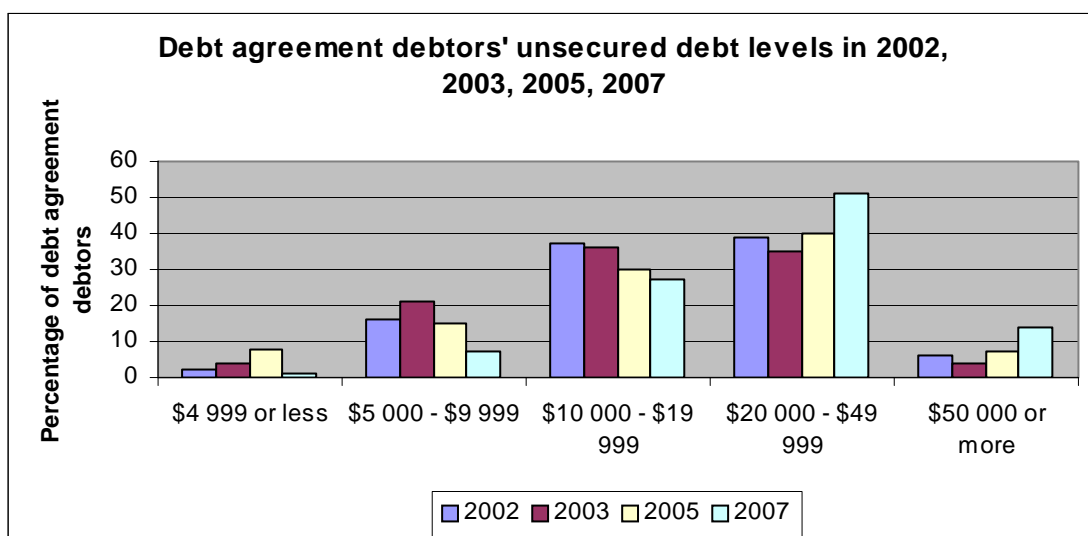


FIGURE 102



We recall that one criterion to be eligible to enter into a debt agreement is to have unsecured debts falling under prescribed limitations (in September 2008 this threshold amount was \$82,500). This explains why the highest category of unsecured debt in Figure 102 is \$50,000 or more.

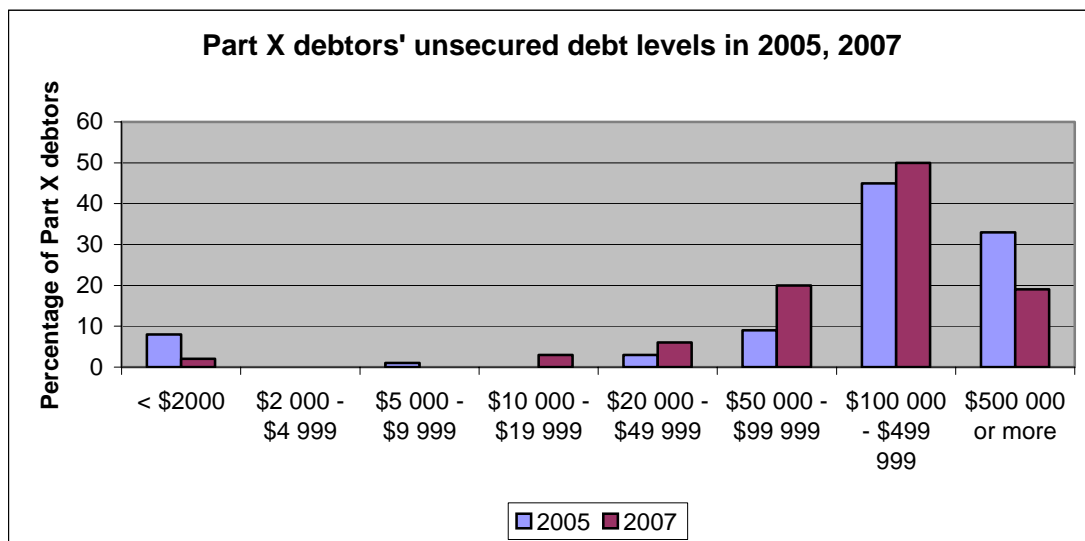
The proportion of debt agreement debtors with unsecured debt less than \$9,999 decreased from 18% in 2002 to 8% in 2007. The proportion of those with unsecured debt between \$10,000 and \$19,999 also decreased, from 37% in 2002 to 27% in 2007. The proportion of those with unsecured debt between \$20,000 and \$49,999 increased from 39% in 2002 to 51% in 2007. Similarly, debt agreement debtors with unsecured debt between \$50,000 and the threshold amount increased from 6% in 2002 to 14% in 2007. We note that the most significant increase in the level of debtors' unsecured debt occurred between 2005 and 2007. In 2005, there were 4738 debt agreements, and 47% of debt agreement debtors had unsecured debts of \$20,000 or more. In 2007, there were 6516 debt agreements, and 65% of debt agreement debtors had unsecured debts of \$20,000 or more.

We note that a smaller proportion of debt agreement debtors had modest levels of unsecured debts in comparison with bankrupts. In 2007, 8% of bankrupts had less than \$5,000 in unsecured debt, compared to 1% of debt agreement debtors.

8.8.3 Part X debtors

In 2007, 2% of Part X debtors had less than \$2,000 in unsecured debt; 3% had between \$10,000 and \$19,999; 6% had between \$20,000 and \$49,999; 20% had between \$50,000 and \$99,999; 50% had between \$100,000 and \$499,999; and 19% had \$500,000 or more in unsecured debt. Figure 103 illustrates Part X debtors' unsecured debt levels in 2005 and 2007.

FIGURE 103



We observe that only a small proportion of Part X debtors had unsecured debt less than \$50,000. In 2005, 12% of Part X debtors had unsecured debt less than \$50,000, compared to 11% in 2007. The proportion of Part X debtors with \$50,000 or more in unsecured debt increased from 87% in 2005 to 89% in 2007.

We observe that Part X debtors had significantly higher levels of unsecured debt than both bankrupts and debt agreement debtors. We recall that Part X arrangements are expensive to administer, which might help explain these higher levels of unsecured debt. In 2007, 89% of Part X debtors had \$50,000 or more in unsecured debt, compared to 35% of bankrupts and 14% of debt agreement debtors. However, the proportion of Part X debtors with the highest levels of unsecured debt decreased between 2005 and 2007. In 2005, 78% of Part X debtors had \$100,000 or more in unsecured debt, compared to 69% in 2007. In 2005, 33% of Part X debtors had \$500,000 or more in unsecured debt, compared to 19% in 2007.

8.9 ASSETS

We observe changes in the realisable asset levels of insolvents based on data from the Profiles. Asset levels are declared by insolvents in their Statements of Affairs. For our purposes we assume that answers given by insolvents are truthful and do not conceal realisable assets.

8.9.1 Bankrupts

In 2007, 78% of bankrupts had \$0 in realisable assets; 1% had \$1 - \$999; 7% had \$1,000 - \$4,999; 5% had \$5,000 - \$19,999; 3% had \$20,000 - \$49,999; 4% had \$50,000 - \$199,999; and 3% had \$200,000 or more in realisable assets. Table One illustrates the value of bankrupts' realisable assets in 2003, 2005 and 2007.

TABLE ONE: Bankrupts' realisable assets in 2003, 2005, 2007

	2003	2005	2007
\$0	87%	86%	78%
\$1 - \$999	2%	2%	1%
\$1,000 - \$4,999	3%	4%	7%
\$5,000 - \$19,999	3%	3%	5%
\$20,000 - \$49,999	2%	2%	3%
\$50,000 - \$199,999	2%	2%	4%
\$200,000 or more	1%	1%	3%

Table One highlights that the majority of bankrupts declare to have either no or very modest levels of realisable assets. Those with realisable assets of \$20,000 or more represented only 5% of bankrupts in 2003 and 2005. However, this proportion increased to 10% in 2007. Whilst realisable asset

levels remained low, we observe that these levels increased between 2003 and 2007.

8.9.2 Debt agreement debtors

In 2007, 85% of debt agreement debtors had \$0 in realisable assets; 1% had \$1 - \$999; 1% had \$1,000 - \$4,999; 4% had \$5,000 - \$19,999; 5% had \$20,000 - \$49,999; and 4% had \$50,000 or more in realisable assets. Table Two illustrates the value of debt agreement debtors' realisable assets in 2003, 2005 and 2007.

TABLE TWO: Debt agreement debtors' realisable assets in 2003, 2005, 2007

	2003	2005	2007
\$0	83%	83%	85%
\$1 - \$999	2%	2%	1%
\$1,000 - \$4,999	6%	5%	1%
\$5,000 - \$19,999	5%	4%	4%
\$20,000 - \$49,999	3%	3%	5%
\$50,000 or more	2%	3%	4%

Table Two highlights that the majority of debt agreement debtors declare to have either no or very modest levels of realisable assets. We observe that these non-existent or modest levels of realisable assets are similar to those levels observed for bankrupts. We recall that one eligibility criterion for a debt agreement is to have divisible property falling under a prescribed limitation (in September 2008 this threshold amount was \$82,500.70). This might explain why there are less debt agreement debtors with realisable assets of \$50,000 or more in comparison to bankrupts.

We also note that whilst realisable asset levels remained low, the proportion of debt agreement debtors with higher levels of realisable assets increased between 2003 and 2007. In 2003, 5% of debt agreement debtors had \$20,000 or more in realisable assets, compared to 9% in 2005. This is similar to the increase observed in the proportion of bankrupts with higher levels of realisable assets.

8.9.3 Part X debtors

In 2007, 28% of Part X debtors had \$0 in realisable assets; 8% had \$1,000 - \$4,999; 12% had \$5,000 - \$19,999; 10% had \$20,000 - \$49,999; 19% had \$50,000 - \$199,999; and 23% had \$200,000 or more in realisable assets. Table Three illustrates the value of Part X debtors' realisable assets in 2003, 2005 and 2007.

TABLE THREE: Part X debtors' realisable assets in 2003, 2005, 2007

	2003	2005	2007
\$0	64%	49%	28%
\$1 - \$999	2%	2%	0%
\$1,000 - \$4,999	3%	5%	8%
\$5,000 - \$19,999	6%	8%	12%
\$20,000 - \$49,999	5%	8%	10%
\$50,000 - \$199,999	12%	17%	19%
\$200,000 or more	8%	11%	23%

Table Three reveals that Part X debtors generally have higher levels of realisable assets than bankrupts and debt agreement debtors. The proportion of Part X debtors with \$0 or \$1 - \$999 in realisable assets decreased from 66% in 2003 to 28% in 2007. The proportion of Part X debtors with realisable assets of \$20,000 or more increased from 25% in 2003 to 52% in 2007. We observe, as we did for bankrupts and debt agreement debtors, that Part X debtors' levels of realisable assets increased between 2003 and 2007.

We speculate that one reason for Part X debtors' higher levels of realisable assets compared to bankrupts and debt agreement debtors is that it is unlikely that creditors would accept a Part X arrangement from debtors with no or modest levels of realisable assets. We also note that Part X debtors' higher levels of realisable assets are consistent with Part X debtors' higher levels of both personal and household income.

8.10 PROPERTY OWNERSHIP

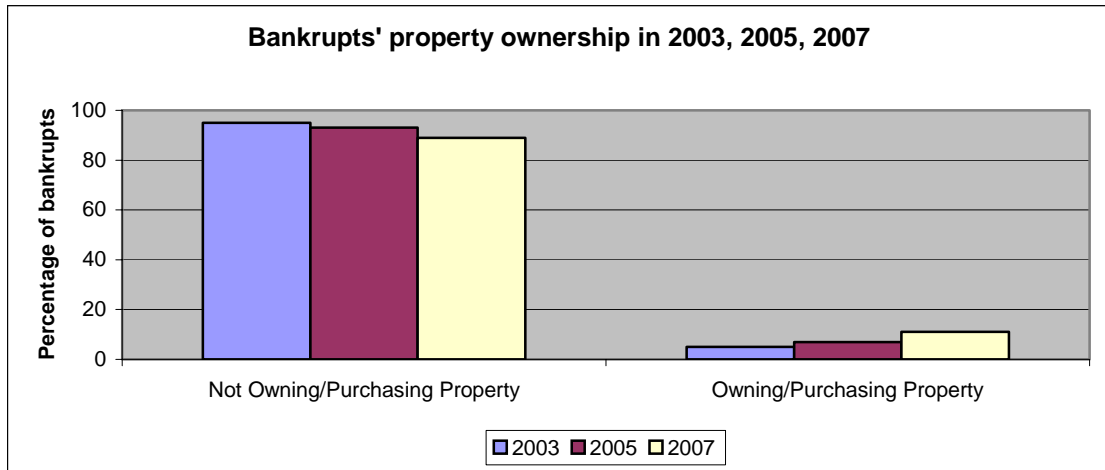
We observe changes in property ownership levels of insolvents based on data from the Profiles. Property ownership is declared by insolvents in their Statements of Affairs. Insolvents must state whether they own or are purchasing any land or buildings in Australia or overseas, which includes any interest in vacant land, houses, units, or commercial properties (we refer to these interests collectively as "property ownership"). For our purposes we assume that answers given by insolvents are truthful and do not conceal any interests in property. However, we acknowledge that some insolvents may transfer title to property into the names of others and may fail to declare their equitable interest in that property on their Statement of Affairs. Further, as little guidance is provided to insolvents in completing their Statement of Affairs, some insolvents may be unaware of the existence of their equitable interests in property. We accept that this may affect the accuracy of our observations on property ownership.

8.10.1 Bankrupts

Figure 104 illustrates bankrupts' property ownership in 2003, 2005 and 2007. In 2007, 11% of bankrupts declared property ownership, compared to 5% in 2003. This represents a 120% increase in bankrupts' property ownership over a period of four years. In 2007, there were 25238 bankruptcies, compared to

22637 bankruptcies in 2003. We speculate that this increase in the number of bankruptcies is explicable in part by an increase in the proportion of bankrupts with property ownership.

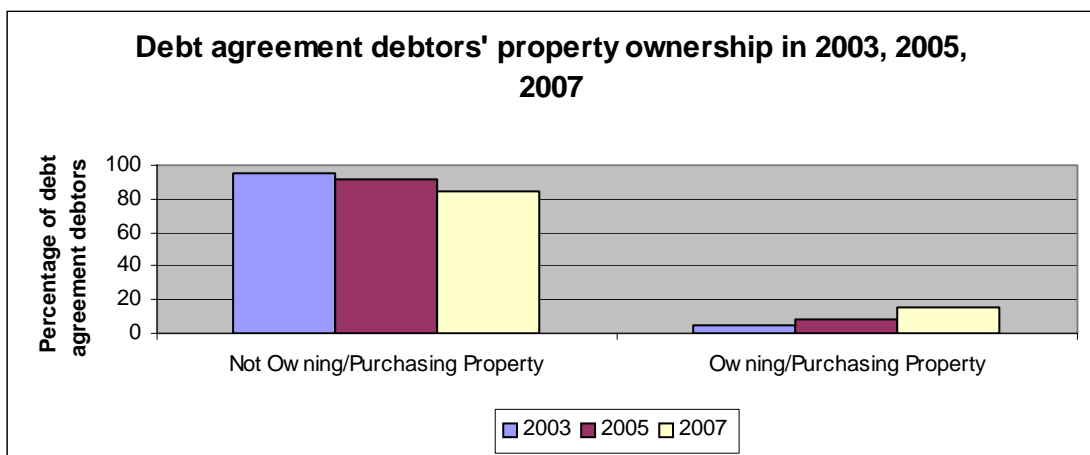
FIGURE 104



8.10.2 Debt agreement debtors

Figure 105 illustrates debt agreement debtors' property ownership in 2003, 2005 and 2007. In 2007, 15% of debtors declared property ownership, compared to 5% in 2003. This represents a 200% increase in debt agreement debtors' property ownership over a period of four years. We recall that one eligibility criterion for a debt agreement is to have divisible property falling under prescribed limitations (in September 2008 this threshold amount was \$82,500.60). This might explain in part why there are low levels of declaration of property ownership among debt agreement debtors. However, we note that debt agreement debtors' low levels of declaration of property ownership are similar to the low levels we observed for bankrupts.

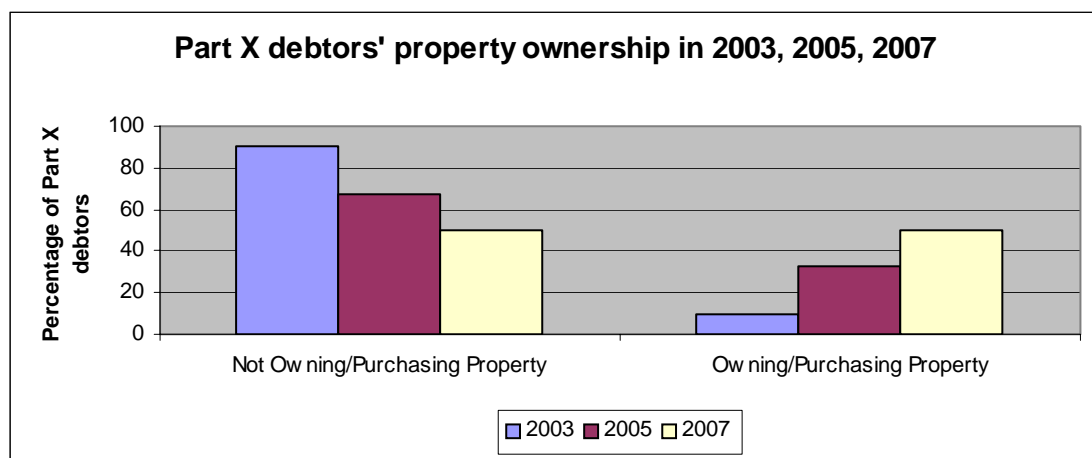
FIGURE 105



8.10.3 Part X debtors

Figure 106 illustrates Part X debtors' property ownership in 2003, 2005 and 2007. In 2007, 50% of Part X debtors declared property ownership, compared to 10% in 2003. This represents a 400% increase over a period of four years. We recall that amendments to Part X of the Act came into effect on 1 December 2004 and that this was followed by a decrease in the number of Part X arrangements. We speculate that this decrease might have contributed to the increase in Part X debtors' declarations of property ownership. We note that significantly more Part X debtors declared property ownership in 2005 and 2007 than both bankrupts and debt agreement debtors. In 2007, 50% of Part X debtors declared property ownership, compared to 11% of bankrupts and 15% of debt agreement debtors.

FIGURE 106



8.11 CREDITORS OF PERSONAL INSOLVENTS

We observe changes in the creditors of insolvents based on data from the Profiles. We observe changes in the categories of creditors; changes in creditor subtypes; and changes in the amount of liability owed to certain creditors.

8.11.1 Bankrupts

In 2007, the categories of bankrupts' creditors were as follows: other 34%; bank 29%; finance company 22%; utilities 10%; tax 4%; and credit unions 1%. Creditors identified as 'other' might include trade creditors, store accounts, professional fees, medical bills, school fees, and family loans. Therefore in 2007, 52% or more of bankrupts' creditors were finance organisations, compared to 64% in 2005 and 49% in 2002. Figure 107 illustrates changes in the categories of bankrupts' creditors in 2002, 2005 and 2007.

FIGURE 107

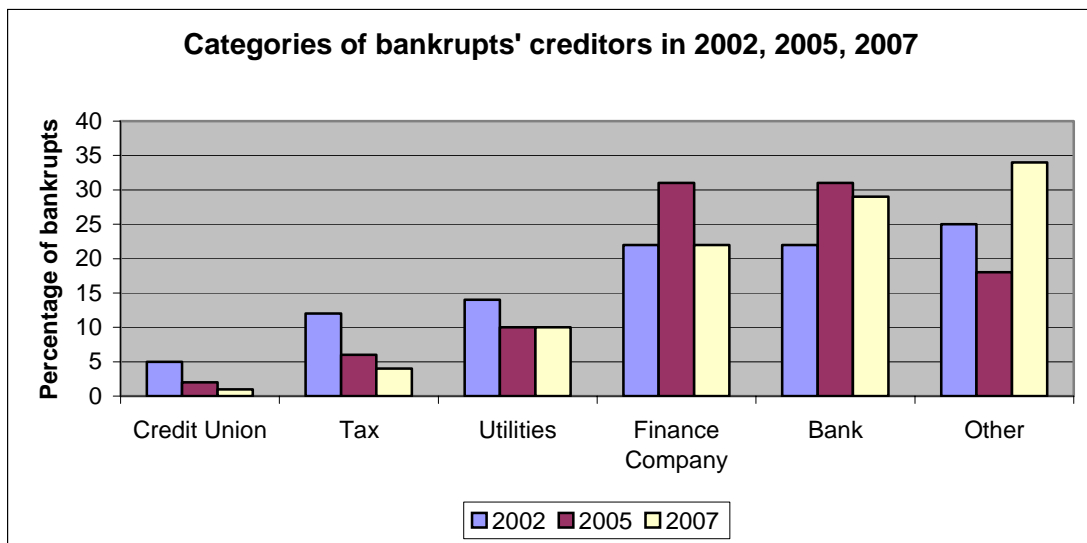
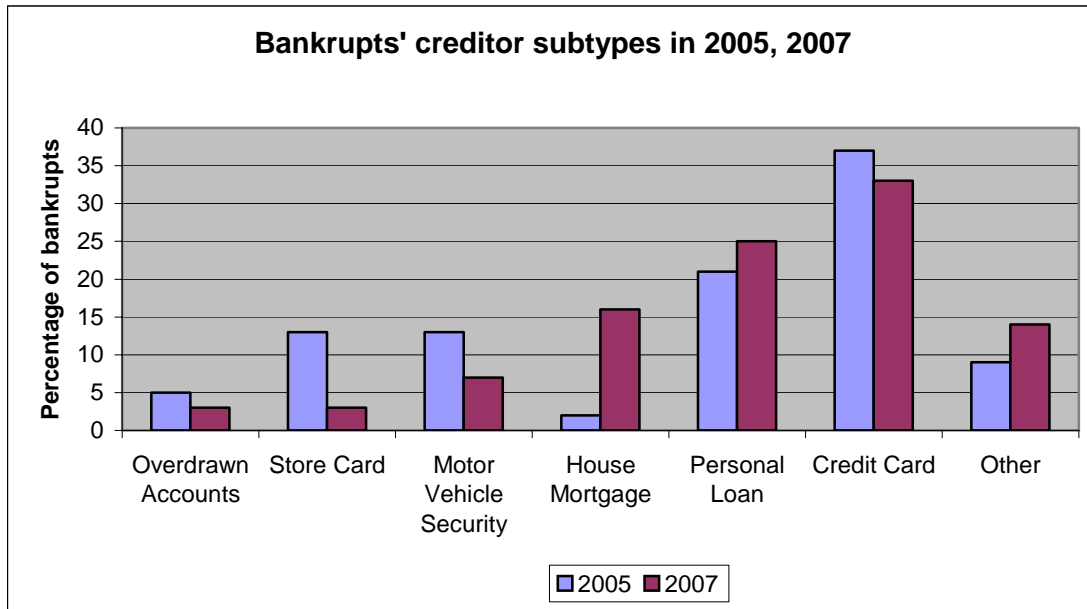


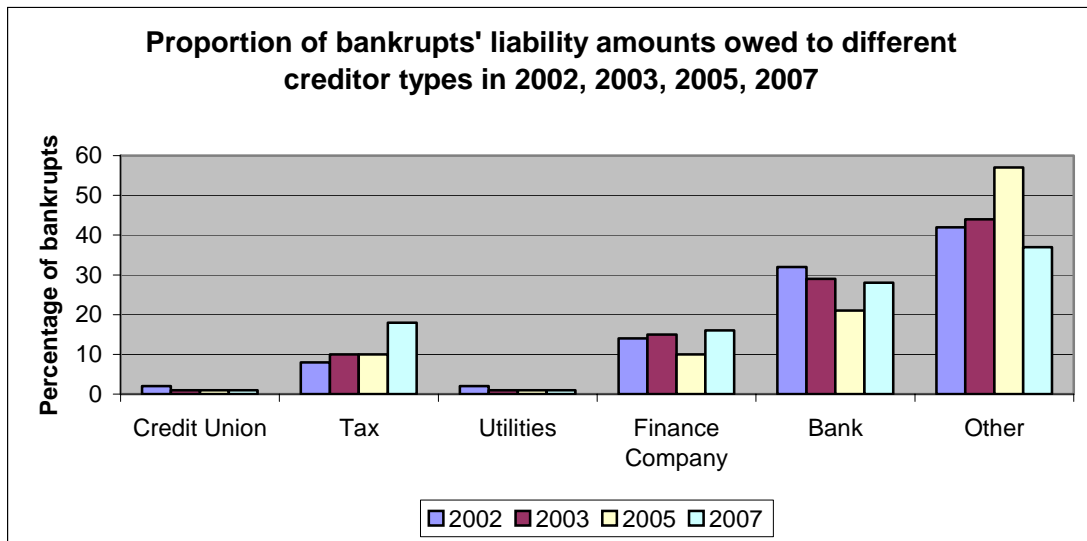
Figure 108 illustrates the categories of bankrupts' creditors among finance organisations (banks, building societies, credit unions, and finance companies) in 2005 and 2007. We note that the creditor subtypes of cards (i.e. store cards and credit cards) were high in both 2005 (50%) and 2007 (36%). We also note the significant increase in house mortgages from 2% in 2005 to 16% in 2007.

FIGURE 108



In 2007, the proportion of bankrupts' liability amounts owed to different creditor types was as follows: other 37%; bank 28%; tax 18%; finance company 16%; credit union 1%; and utilities 1%. The proportion of bankrupts' liability amounts owed to financial institutions was 48% or more in 2002, 45% or more in 2003, 32% or more in 2005, and 45% or more in 2007. Figure 109 illustrates the proportion of bankrupts' liability amounts owed to different creditor types in 2002, 2003, 2005 and 2007.

FIGURE 109



8.11.2 Debt agreement debtors

In 2007, the categories of debt agreement debtors' creditors were as follows: other 32%; finance company 30%; bank 29%; utilities 6%; credit union 2%; and tax 1%. Creditors identified as 'other' might include trade creditors, store accounts, professional fees, medical bills, school fees, and family loans. Therefore in 2007, 61% or more of debt agreement debtors' creditors were finance organisations, compared to 69% in 2005 and 63% in 2002. Figure 110 illustrates changes in the categories of debt agreement debtors' creditors in 2002, 2005 and 2007.

FIGURE 110

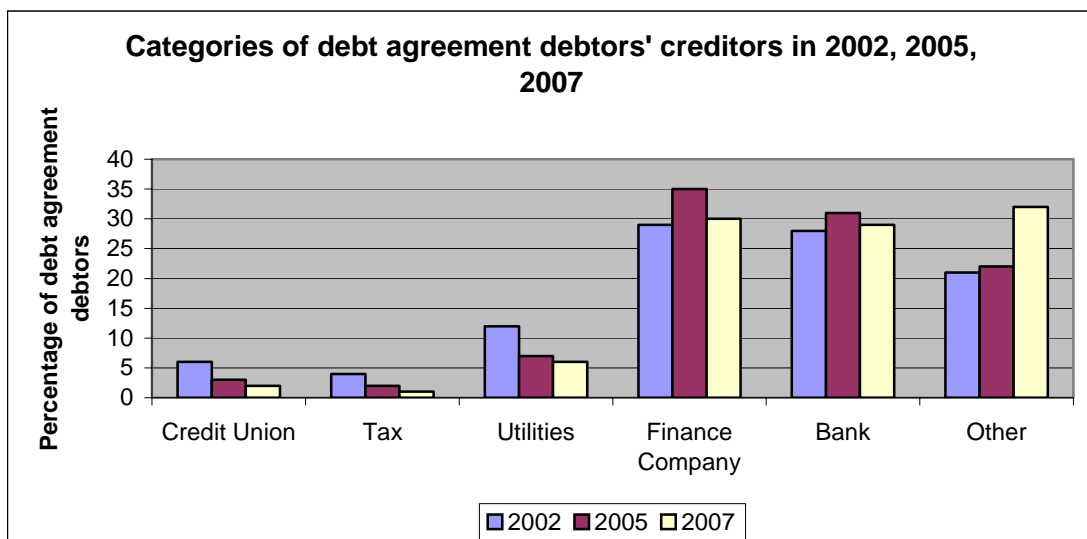
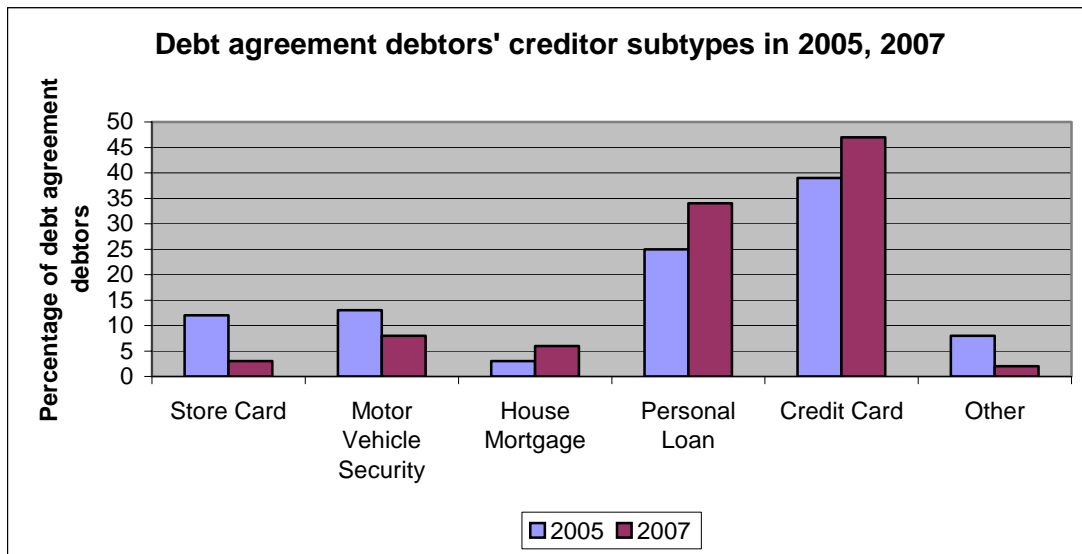


Figure 111 illustrates the categories of debt agreement debtors' creditors among finance organisations (banks, building societies, credit unions, and finance companies) in 2005 and 2007. We note that the creditor subtypes of cards (i.e. store cards and credit cards) were high in both 2005 (51%) and

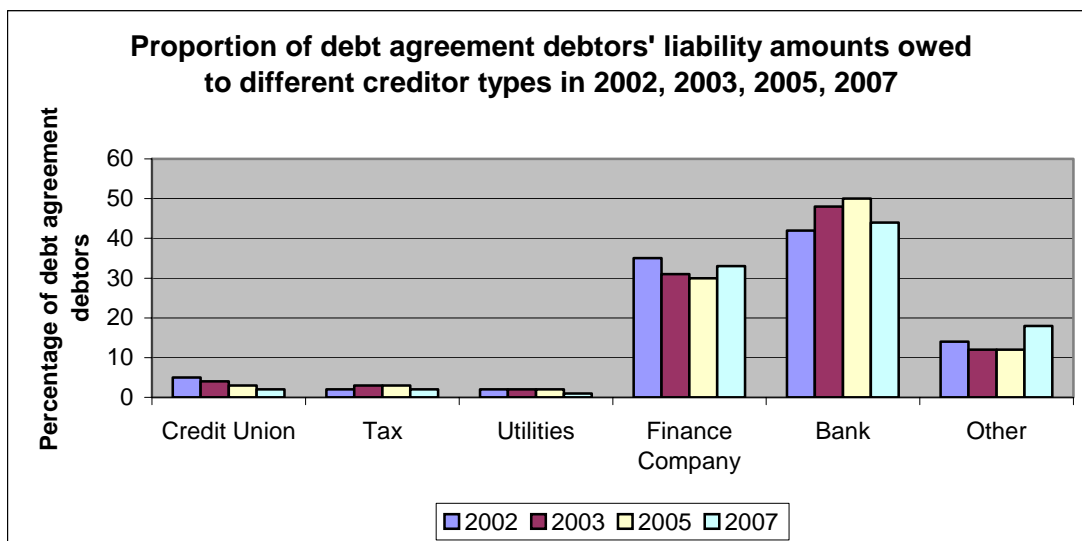
2007 (50%), similar to the high proportions for bankrupts (50% in 2005 and 36% in 2007).

FIGURE 111



In 2007, the proportion of debt agreement debtors' liability amounts owed to different creditor types was as follows: bank 44%; finance company 33%; other 18%; credit union 2%; tax 2%; and utilities 1%. The proportion of debt agreement debtors' liability amounts owed to financial institutions were 82% or more in 2002, 83% or more in both 2003 and 2005, and 79% or more in 2007. We note the higher proportion of debt agreement debtors' liability amounts owed to financial institutions compared to bankrupts. Figure 112 illustrates the proportion of debt agreement debtors' liability amounts owed to different creditor types in 2002, 2003, 2005 and 2007.

FIGURE 112



8.11.3 Part X debtors

In 2007, the categories of Part X debtors' creditors were as follows: other 50%; bank 26%; finance company 16%; tax 4%; utilities 3%; and credit union 1%. Creditors identified as 'other' might include trade creditors, store accounts, professional fees, medical bills, school fees, and family loans. Therefore in 2007, 43% or more of Part X debtors' creditors were finance organisations, compared to 52% of bankrupts and 61% of debt agreement debtors. Figure 113 illustrates the categories of Part X debtors' creditors in 2005 and 2007.

FIGURE 113

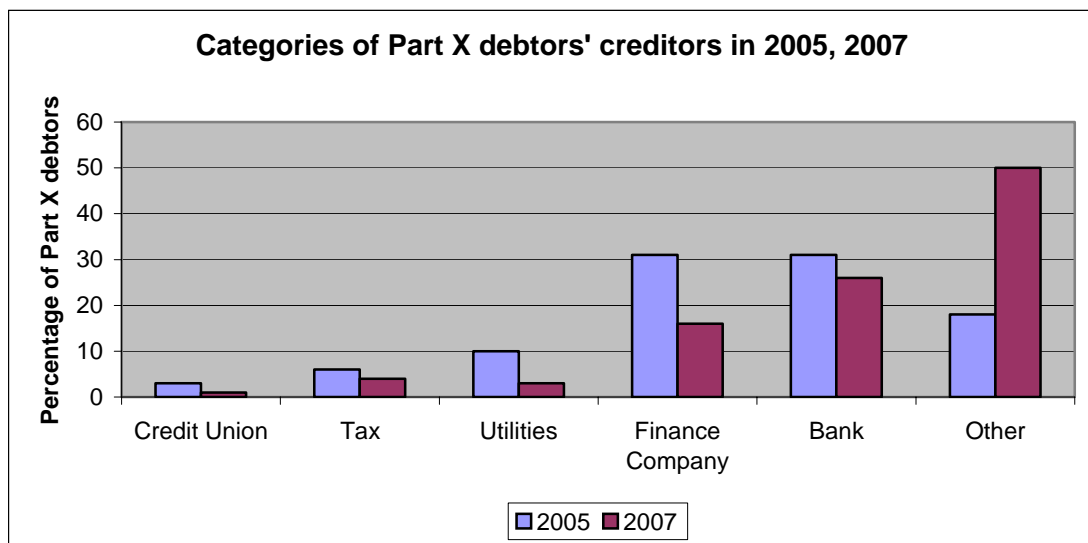
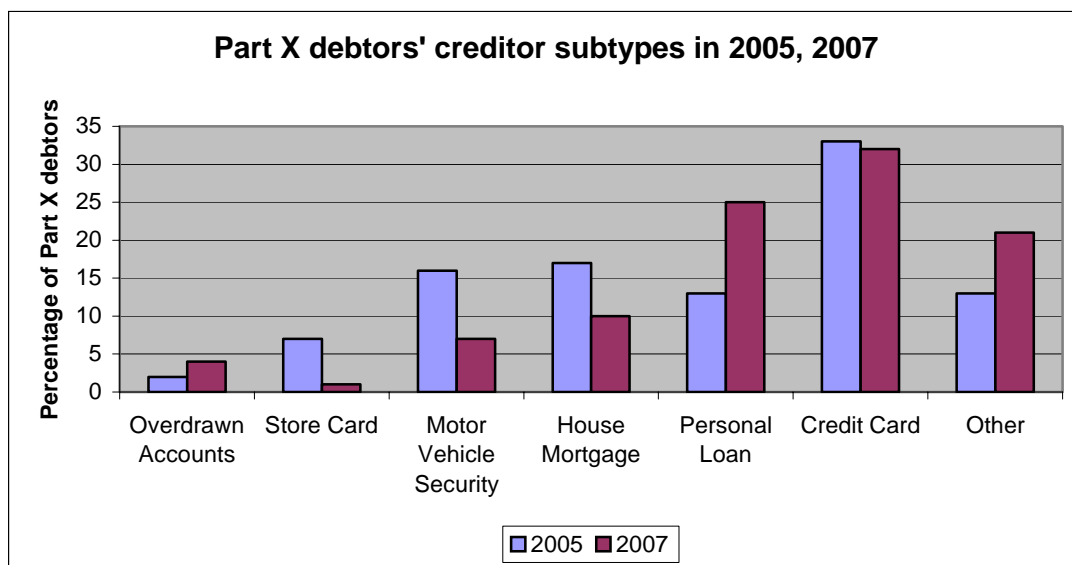


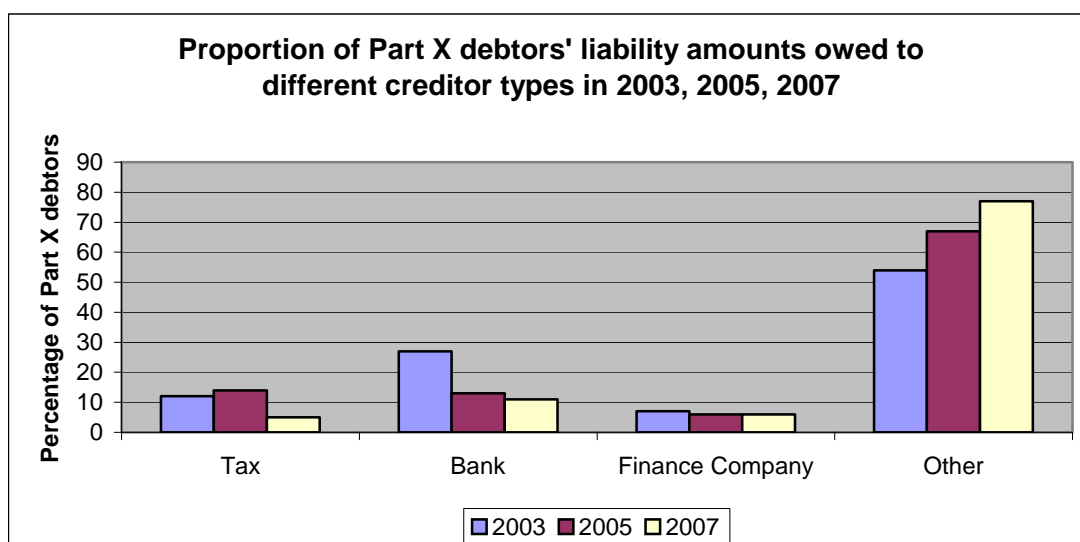
Figure 114 illustrates the categories of Part X debtors' creditors among finance organisations (banks, building societies, credit unions, and finance companies) in 2005 and 2007. We note that the combined creditor subtypes of cards (i.e. store cards and credit cards) formed the greatest proportion in both 2005 (40%) and 2007 (33%), but less than those proportions for bankrupts (50% in 2005 and 36% in 2007) and debt agreement debtors (51% in 2005 and 50% in 2007).

FIGURE 114



In 2007, the proportion of Part X debtors' liability amounts owed to different creditor types was as follows: other 77%; bank 11%; finance company 6%; and tax 5%. We note the low proportion of Part X debtors' liability amounts owed to financial institutions in 2007 (17%), compared to higher proportions for bankrupts (45%) and debt agreement debtors (79%). The proportion of Part X debtors' liability amounts owed to financial institutions were 34% or more in 2003, 19% or more in 2005, and 17% or more in 2007. Figure 115 illustrates the proportion of Part X debtors' liability amounts owed to different creditor types in 2003, 2005 and 2007.

FIGURE 115



9 GENERAL OBSERVATIONS

In this section we make three general observations from the findings of our report. Firstly, we speculate on reasons for the significant increase in the number of personal insolvencies. Secondly, we comment on stigma and personal insolvency. Finally, we suggest that our findings reveal that personal insolvency is becoming an increasingly middle class phenomenon.

9.1 INCREASE IN NUMBER OF PERSONAL INSOLVENCIES

We observed a 261% increase in the number of personal insolvencies in Australia between 1990 and 2008 (see section 4). In 1990, there were 9113 personal insolvencies, which consisted of 8552 bankruptcies and 561 Part X arrangements. In 1997, there were 22385 personal insolvencies, which consisted of 21830 bankruptcies, 48 debt agreements, and 507 Part X arrangements. In 2008, there were 32865 personal insolvencies, which consisted of 25970 bankruptcies, 6618 debt agreements, and 277 Part X arrangements.

These figures reveal over the last two decades in Australia growth in personal insolvency activity averaged almost 6.5% per annum.¹³⁴ The 261% increase in the number of personal insolvencies between 1990 and 2008 was significantly greater than the 24% increase in the Australian population during that period. In 2008, 0.15% of the Australian population was in personal insolvency, compared to 0.13% in 2000 and 0.05% in 1990. That the rise took place over periods including economic expansion and low interests rates (as well as the converse) indicates that the rise in personal insolvencies is not attributable solely to prevailing economic conditions in the relevant period.

We recall from Figure 3 that between 1990 and 2008 the number of bankruptcies reached a high of 26376 in 1999. The number of bankruptcies then declined to a low of 20496 in 2004. We recall from Figure 4 that the number of debt agreements increased from 507 in 1999 to 5487 in 2004. Between 2005 and 2008 the number of bankruptcies again increased each year, reaching 25970 bankruptcies in 2008 — approaching the high of 26376 bankruptcies in 1999. We recall from Figure 6 that since 2005, the proportions of the three forms of personal insolvency have remained relatively stable (in 2008, 79.02% were bankruptcies, 20.14% were debt agreements, and 0.84% were Part X arrangements). This relative stability occurred during a time in which the total number of personal insolvencies increased from 25446 in 2005 to 32865 in 2008, which represents a 29% increase in three years. Finally, we recall from Figure 8 and Figure 9 that the proportion of bankrupts who had been previously bankrupt remained stable between 1997 and 2007, and that the proportion of bankrupts who have had three or more bankruptcies is low. Therefore, the increase in the number of personal insolvencies is not solely

¹³⁴ Insolvency and Trustee Service Australia, *Annual Report by the Inspector-General in Bankruptcy on the operation of the Bankruptcy Act 2007-2008*, 7.

explicable on the basis that the bankruptcy system is subject to abuse by the same individuals who are becoming bankrupt on multiple occasions.

We speculate that the initial decrease in the number of bankruptcies is explicable in part on the basis that those who might otherwise have become bankrupt were instead able to enter into a debt agreement and avoid the consequences of bankruptcy. We recall that debt agreements came into operation on 16 December 1996. However, between 2005 and 2008, we speculate that debt agreements were not as well positioned to absorb as many potential bankrupts as they had been in the first years following their introduction. This may be due to the limitations on expected after tax income, unsecured debts, and divisible property for debtors who enter into debt agreements. Therefore, whilst one aspect of the story behind rising personal insolvency number since 1997 is the significant increase in the number of debt agreements, other factors must have contributed to the rise.

We speculate on the basis of our findings in sections 5, 6, 7, and 8, that there are several possible explanations for the significant increase in the number of personal insolvencies in Australia. Given that our data on the characteristics of personal insolvents spans 1997-2008, we instead focus on this period, but consider the increase between 1990-2008 where possible. Whilst we do not discount the impact of prevailing economic conditions on increases in the number of personal insolvencies during particular periods, we suggest that there are several other factors which have contributed to the rise. We suggest that some of the most significant factors were the following:

- Increase in the number of non-business related bankruptcies and debt agreements.
- Increase in the number of bankruptcies in NSW between 1997 and 2008.
- Increase in the number of non-business related bankruptcies and debt agreements caused by excessive use of credit, ill health, or gambling or speculation.
- Increase in the number of bankrupts aged 45 or older.
- Increase in the number of bankrupts with dependants.
- Increase in the level of insolvents' unsecured debt.
- Decrease in the level of stigma attached to personal insolvency.
- Growth in personal insolvency as a middle class phenomenon.
 - Increase in the number of insolvents who are managers and administrators, professionals, and associate professionals.
 - Increase in the number of employed insolvents.
 - Increase in the number of insolvents with higher levels of personal income and household income.
 - Increase in insolvents' realisable asset and property ownership levels.

We now consider each of these factors in further detail.

9.1.1 Non-business related bankruptcies and debt agreements

We suggest that one significant factor in the rise in personal insolvencies is the increase in the number of non-business related insolvencies.

The number of business related bankruptcies did not increase significantly between 1991 and 2008, in contrast to the significant increase in the number of non-business related bankruptcies. In 1991, 4203 bankruptcies were business related (32.11%), and 8888 bankruptcies were non-business related (67.89%). In 2008, 4590 bankruptcies were business related (17.67%), and 21380 bankruptcies were non-business related (82.34%). There were 387 more business related bankruptcies in 2008 than in 1991, compared to 12492 more non-business related bankruptcies in 2008 than in 1991. Therefore, the rise in the number of bankruptcies is substantially attributable to an increase in the number of non-business related bankruptcies.

Debt agreements have also contributed to the increase in non-business related insolvencies. In 2008, only 3.29% of debt agreements were business related, compared to 10.53% in 2003.

One possible reason why the number of business related bankruptcies has remained stable is that more people are choosing to conduct business via a company. In other words, rather than conduct business as a sole trader or as a partnership, a company is established and the business person becomes a shareholder in the company. One of the reasons for registering a company is that shareholders in the company have the benefit of limited liability and can protect their personal assets from creditors in the event of failure of the company. There has been a significant increase in company registrations. Between 1990 and 2008, registrations of companies in Australia grew from 837,595 to 1,645,805 (an increase of 96.5%).¹³⁵

However, it is possible to conduct business via a company and for failure of the company to result in bankruptcy of the shareholder. This would occur when the shareholder has given a personal guarantee to a creditor of the company (such as a bank) to guarantee the obligations of the company. If the company fails and cannot pay its debts, the creditor can then be expected to call on the guarantee and if the shareholder cannot perform the obligations under the guarantee, the result might be bankruptcy for the shareholder.

9.1.2 Increase in bankruptcies in NSW

There was a 49% increase in the proportion of bankruptcies in NSW between 1997 and 2008. In 1997, NSW contained 33.90% of the population and 25.71% of bankruptcies. In 2008, NSW contained 32.60% of the population and 38.25% of bankruptcies. The increase in the proportion of bankruptcies in NSW occurred largely between 2003 and 2008. In 2003, 27.74% of

¹³⁵ HAJ Ford, RP Austin and IM Ramsay, *Ford's Principles of Corporations Law*, loose leaf edition, [5.072].

bankruptcies were located in NSW, compared to 30.48% in 2005 and 38.25% in 2008. We recall the high proportion of non-business related bankruptcies in NSW (87.30% in 2008) compared to other states and territories (e.g. Victoria, where 75.51% of bankruptcies in 2008 were non-business related).

This increase in the proportion of bankruptcies in NSW is better understood when referenced to the increases in the number of bankruptcies between 2003 and 2008. In 2003, there were 22637 bankruptcies in Australia, of which 6280 were located in NSW. In 2008, there were 25970 bankruptcies in Australia, of which 9934 were located in NSW. There were 3333 more bankruptcies in Australia in 2008 than in 2003, yet in NSW there were 3654 more bankruptcies in 2008 than in 2003. Therefore we suggest that the increase in the proportion of bankruptcies in NSW was one factor behind the increase in the number of bankruptcies in Australia between 1997 and 2008. We suggest that the significance of this factor is augmented when we consider the decreases in the proportion of bankruptcies in all states and territories between 1997 and 2008 excluding Victoria, where the increase was less significant given that Victoria still remained underrepresented in bankruptcies in 2008 (see section 6.1).

9.1.3 Increasing frequency of excessive use of credit, ill health, gambling and speculation as causes of personal insolvency

We suggest that increases in the frequency of non-business related bankruptcies and debt agreements caused by excessive use of credit, ill health, and gambling or speculation contributed to the rise in personal insolvency numbers between 1997 and 2008.

Firstly, we suggest an increase in excessive use of credit as a cause of non-business related bankruptcies and debt agreements contributed to the rise in the number of personal insolvencies between 1997 and 2008. In 1997, excessive use of credit caused 13.36% of non-business related bankruptcies, compared to 27.55% in 2008. In 2002, excessive use of credit caused 32.84% of non-business related debt agreements, compared to 39.41% in 2008.

Secondly, we suggest an increase in ill health as a cause of non-business related bankruptcies and debt agreements contributed to the rise in the number of personal insolvencies between 1997 and 2008. In 1997, ill health caused 7.43% of non-business related bankruptcies, compared to 11.78% in 2008. In 2002, ill health caused 4.27% of non-business related debt agreements, compared to 7.51% in 2008.

Thirdly, we suggest an increase in gambling or speculation as a cause of non-business related bankruptcies and debt agreements contributed to the rise in the number of personal insolvencies between 1997 and 2008. In 1997, gambling or speculation caused 1.30% of non-business related bankruptcies, compared to 4.28% in 2008. In 2002, gambling or speculation caused 0.83% of non-business related debt agreements, compared to 1.42% in 2008.

9.1.4 Age

We suggest that another factor in the increase in personal insolvency numbers is the increase in the number of bankrupts aged 45 or older.

The average age of bankrupts increased between 1997 and 2008. In 1997, there were 22691 bankrupts, of which 5957 bankrupts were aged 45 or older (26.25%). In 2008, there were 26137 bankrupts, of which 11759 were aged 45 or older (44.99%). In 2008, there were 3446 more bankrupts than in 1997, and there were 5802 more bankrupts aged 45 or older than in 1997. Therefore, it may be that the increase in the number of bankrupts aged 45 or older explains in part the rise in the number of bankruptcies between 1997 and 2008.

We note that the number of bankrupts aged 34 or less decreased from 10547 bankrupts in 1997 to 7192 bankrupts in 2008. We speculate that this decrease is not explicable on the basis that younger people are experiencing less financial difficulty, but rather that younger debtors who might otherwise have become bankrupt were instead eligible for and entered into debt agreements. We recall Figure 46, which revealed the younger age of debt agreement debtors compared to bankrupts (e.g. in 2008, 51.98% of debtors were aged less than 35, compared to 27.52% of bankrupts).

We suggest three possible causes for the increase in the number of bankrupts aged 45 or older. Firstly, excessive use of credit is bringing increasing numbers of debtors into insolvency. In 1997, excessive use of credit caused 21.83% of non-business related bankruptcies for those aged 45 or older, compared to 55.91% in 2008. Secondly, ill health is bringing increasing numbers of debtors into insolvency. In 1997, ill health caused 23.40% of non-business related bankruptcies for those aged 45 or older, compared to 31.76% in 2008. Thirdly, gambling or speculation is bringing increasing numbers of debtors into insolvency. In 1997, gambling or speculation caused 2.81% of non-business related bankruptcies for those aged 45 or older, compared to 8.69% in 2008.

9.1.5 Family situation

We suggest that another factor in the more recent increase in personal insolvency numbers is the increase in the number of bankrupts with dependants. In 2005, 35% of bankrupts had dependants, compared to 49% in 2007. Therefore it may be that the increase in the number of bankrupts with dependants explains in part the increase in the number of bankruptcies between 2005 and 2007.

9.1.6 Debt levels

We suggest that another factor in the increase in personal insolvency numbers is an increase in insolvents' unsecured debt levels.

In 1997, 62% of bankrupts had unsecured debt less than \$20,000, compared to 33% in 2007. In 1997, 16% of bankrupts had unsecured debt of \$50,000 or more, compared to 35% in 2007. Therefore it may be that an increase in levels of unsecured debt amongst bankrupts explains in part the increase in the number of bankruptcies between 1997 and 2007. We speculate that these increasing levels of unsecured debt caused greater financial distress, which increased the appeal of the protection bankruptcy affords, despite the consequences it entails. We speculate that increasingly unmanageable levels of unsecured debt amongst older Australians contributed to the rise in the average age of bankrupts. We recall that a large proportion of bankrupts' creditors were finance organisations (52% of all creditors in 2007); that of bankrupts' creditors among finance organisations the creditor subtype of cards (i.e. store cards and credit cards) was high (36% in 2007); that there was a rapid increase in the subtype of house mortgages (from 2% in 2005 to 16% in 2007); and that a large proportion of bankrupts' liability amounts were owed to financial organisations (45% in 2007).

In 1997, 55% of debt agreement debtors had unsecured debt less than \$20,000, compared to 35% in 2007. In 1997, 45% of debtors had unsecured debt of \$20,000 or more, compared to 65% in 2007. Whilst there are limitations on the amount of permissible unsecured debt to enter into a debt agreement, we suggest that, as for bankrupts, this increase in the level of unsecured debt amongst debt agreement debtors contributed to an increase in the number of debt agreements. We recall that a large proportion of debt agreement debtors' creditors were finance organisations (61% of all creditors in 2007); that of debt agreement debtors' creditors among finance organisations the creditor subtype of cards (i.e. store cards and credit cards) was high (50% in 2007); and that a large proportion of debt agreement debtors' liability amounts were owed to financial organisations (79% in 2007).

9.1.7 Stigma

We suggest that another possible explanation for the increase in personal insolvency numbers is that there is much less stigma attached to debt agreements than bankruptcies, which has contributed to the rapid rise in the number of debt agreements. We consider stigma as a factor in personal insolvency in section 9.2.

9.1.8 Growth in personal insolvency as a middle class phenomenon

We suggest that another factor in the increase in personal insolvency numbers is that personal insolvency is becoming an increasingly middle class phenomenon. In brief, we suggest that personal insolvents are increasingly coming from higher status occupations; have increasing levels of personal income and household income; and have increasing asset and property ownership levels. We explore further these suggestions in section 9.3.

9.2 STIGMA AS A FACTOR IN PERSONAL INSOLVENCY

We now consider whether declining stigma (i.e. a sense of shame or disgrace) associated with personal insolvency contributed to the 261% increase in the number of personal insolvencies between 1990 and 2008.

We consider there is stigma attached to bankruptcy, which would act as a deterrent to some insolvent debtors petitioning for bankruptcy. The central question is whether the increase in personal insolvency numbers is partly the result of declining stigma, or whether it is the result of increased financial pressures for an increasing number of Australians.¹³⁶

We dismiss any notion that only younger Australians attach less stigma to bankruptcy. We suggest that if stigma had in fact declined amongst younger Australians, then there would have been increasing numbers of younger insolvents petitioning for bankruptcy, although we do accept that debt agreements may have absorbed a large proportion of younger insolvents. We recall that the average age of bankrupts increased between 1997 and 2008. Whereas in 1997, 46.48% of bankrupts were aged 34 years or less and 26.25% were aged 45 years or more, the situation in 2008 was almost inverted: 27.52% of bankrupts were aged 34 or less, and 44.99% were aged 45 or more. In 2008, there were 3446 more bankrupts than in 1997, and there were 5802 more bankrupts in 2008 aged 45 or older than in 1997. A major explanation for rising personal insolvency numbers is that levels of financial distress have increased to such levels that an increasing number of Australians are willing to be associated with the stigma attached to bankruptcy in order to relieve themselves from the pressures associated with insolvency and rising levels of debt. Over time this may lead to a decreasing stigma associated with bankruptcy.

Debt agreements were introduced to allow those with low levels of debt, few assets, low incomes, and an inability to afford to enter into arrangements under Part X of the Act, to avoid the consequences of bankruptcy.¹³⁷ However, they were also introduced in the hope that debt agreement debtors would be able to avoid the stigma that bankruptcy entails.¹³⁸ We suggest that this hope, at least to some extent, has been fulfilled. We speculate that one explanation for the rapid increase in the number of debt agreements between their introduction on 16 December 1996 and 2008 is that there is less stigma attached to being a debt agreement debtor than a bankrupt. Whereas in 1997, bankruptcies accounted for 97.52% of all personal insolvencies, in 2008 they accounted for 79.02% of personal insolvencies. The decrease in this

¹³⁶ A study in the United States of America concluded that the stigma associated with bankruptcy increased between 1981 and 2001. See further Teresa A Sullivan, Elizabeth Warren, Jay Lawrence Westbrook, *Less Stigma or More Financial Distress: An Empirical Analysis of the Extraordinary Increase in Bankruptcy Filings* (May 2006).

¹³⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 26 June 1996, 2827-8 (Daryl Williams, Attorney-General and Minister for Justice).

¹³⁸ *Ibid.*

proportion is largely explicable on the basis that in 1997 debt agreements constituted 0.21% of personal insolvencies, compared to 20.14% in 2008.

We suggest there are substantive grounds which diminish stigma attached to debt agreements. The consequences of being a debt agreement debtor compared to a bankrupt are quite different. In contrast to bankrupts, debt agreement debtors are not restricted in overseas travel; are not precluded from managing a corporation; are not rendered ineligible to hold a parliamentary seat; are not precluded from holding a statutory office or membership of a statutory authority; and are not restricted in the continuation or commencement of legal proceedings. Whilst these are no doubt important considerations for those facing the prospect of bankruptcy but falling within the eligibility criteria for debt agreements, the fact that these different consequences exist might assist in assuaging any stigma attached to debt agreement debtors.

The rise in the number of debt agreements is not explicable on the basis that debt agreement debtors are unaware of the consequences of entering into debt agreements. A recent survey of debt agreement debtors who lodged debt agreement proposals between 1 November 2007 and 29 February 2008 found that 90.5% of debtors said they were informed that they would be placed on the National Personal Insolvency Index, and 94.3% said they were informed that their credit rating and ability to obtain further credit might be affected.¹³⁹ Furthermore, 91% of debtors felt that entering into a debt agreement helped them to manage their debts, and 86.7% said that entering into a debt agreement had made them better able to manage their household budget.¹⁴⁰ Whilst these findings do not bear directly on stigma attached to debt agreements, it suggests that some debtors have positive associations with them. We therefore consider that there is less stigma attached to debt agreements: despite these indications that the majority of debtors appear to be aware of their consequences, significantly increasing numbers of insolvents have entered into debt agreements since their inception.

We suggest there are other reasons why debt agreements might entail less stigma than bankruptcies. Connotations associated with words such as 'bankrupt' and 'bankruptcy' might be perceived as more powerful than connotations associated with words such as 'debtor' and 'debt agreement'.

Finally, we suggest that Part X arrangements have less stigma than bankruptcies, but perhaps more stigma than debt agreements. Again, the language used in Part X of the Act has less powerful connotations than bankruptcy, however we suggest it is stronger than the language used for debt agreements. The current Part X regime of personal *insolvency* agreements highlights that the debtor is an insolvent debtor, whereas debt agreement debtors might appear simply to be debtors. We suggest that insolvency has more pejorative connotations in the community than the word

¹³⁹ Insolvency and Trustee Service Australia, *Survey Research into the Experiences of Debtors who lodged their Debt Agreement Proposals with ITSA during the Period 1 November 2007 to 29 February 2008* (2008).

¹⁴⁰ *Ibid.*

debtor, but is not as injurious as connotations associated with bankruptcy. We note that the consequences of a personal insolvency agreement are less severe than bankruptcy. Part X debtors are not restricted in overseas travel; are not rendered ineligible to hold a parliamentary seat; are not precluded from holding a statutory office or membership of a statutory authority; and are not restricted in the continuation or commencement of legal proceedings. However, Part X debtors are disqualified from managing a corporation until such time as they comply with the terms of their personal insolvency agreement. This restriction determines that personal insolvency agreements are more onerous than debt agreements in terms of their consequences, which might contribute to greater stigma compared to debt agreements. However, we do not suggest that the decline in the number of Part X debtors is as a result of increasing stigma associated with personal insolvency agreements, but rather is a consequence of the high cost of administering a personal insolvency agreement, as well as the increasing popularity of debt agreements.

We conclude that one explanation for the increase in personal insolvency numbers is that there is much less stigma attached to debt agreements than bankruptcies, which has contributed to the rapid rise in the number of debt agreements. At the same time, the increase in the number of bankruptcies is less likely to be the result of lessening stigma amongst older and younger Australians alike, but more the result of increasingly distressing financial pressures and debt levels.

9.3 PERSONAL INSOLVENCY AS A GROWING MIDDLE CLASS PHENOMENON

We suggest our findings show there is strong evidence that personal insolvency in Australia is becoming more of a middle class phenomenon. Our findings on the characteristics of personal insolvents should have an impact on common perceptions surrounding personal insolvency and unpack many assumptions informing stereotypical images of personal insolvents.

9.3.1 Middle class and personal insolvency

We note that the concept of middle class is not readily quantifiable. Many factors might be considered in defining middle class, such as education; occupation; social status; income; wealth; cultural factors; and beliefs. One common perception of middle class might be based on which Australians perceive they are in the middle-income bracket (the middle 60%).¹⁴¹ We suggest that the majority of Australians would identify as middle class.¹⁴²

¹⁴¹ The Australia Institute, *The State of the Australian Middle Class*, Discussion Paper Number 98 (October 2007) 9.

¹⁴² A study in the year 2000 found that 93% of Australians believed they were in the middle-income bracket; 6.4% believed they were in the bottom 20% income bracket; and 0.7% believed they were in the top 20% income bracket. See P. Saunders, C. Thomson and C. Evans, *Social Change and Social Policy: Results From a National Survey of Public Opinion*,

In the United States of America, Professor Elizabeth Warren has argued that, in that country, bankruptcy is a middle class phenomenon.¹⁴³ Based on educational achievements, occupational status, and the ability to buy homes, those who file for bankruptcy were thought to be 'an overwhelmingly middle-class group, a cross-section of America that concentrates its numbers in the middle'.¹⁴⁴ Bankrupts in the United States were found to have educational achievements keeping pace with those of other Americans;¹⁴⁵ they were becoming more likely to be home owners;¹⁴⁶ but remained more concentrated in lower prestige jobs and underrepresented in higher prestige jobs.¹⁴⁷ The three indicia of middle class used by Professor Warren were, firstly, whether bankrupts were homeowners or former homeowners; secondly, whether bankrupts had college or graduate school education level; thirdly, whether bankrupts had occupational prestige in the upper 80%. The study found that 91.8% of those filing for bankruptcy fulfilled at least one of those three criteria; 66.6% met two or more criteria; and 27.4% met all three criteria.¹⁴⁸ For this reason, Professor Warren has argued that her studies on bankruptcy reveal that Americans in the worst financial trouble are not the 'usual suspects', and that having children is a significant contributing factor to becoming bankrupt. According to Professor Warren, Americans who encounter the greatest financial difficulties:

are not the very young, tempted by the freedom of their first credit cards. They are not the elderly, trapped by failing bodies and declining savings accounts. And they are not a random assortment of Americans who lack the self-control to keep their spending in check. Rather, the people who consistently rank in the worst financial trouble are united by one surprising characteristic. They are parents with children at home. Having a child is now the single best predictor that a household will end up in financial collapse.¹⁴⁹

In respect of this final comment, one study found that the mere presence of a child in an American household increased the likelihood that the household would be in bankruptcy by 302%.¹⁵⁰ Further, the study found that single parents were three times more likely to be bankrupt than any other group,¹⁵¹ with an increased risk for single mothers,¹⁵² and an increased risk for families with more children.¹⁵³ In 2001, single mothers comprised nearly 3.6% of all adults in the United States, but comprised 12% of all adults in bankruptcy.¹⁵⁴

Discussion Paper No. 106, Social Policy Research Centre (University of New South Wales, Sydney, 2000) 19.

¹⁴³ Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *The Fragile Middle Class: Americans in Debt* (London: Yale University Press, 2000) 27.

¹⁴⁴ Elizabeth Warren, 'Financial Collapse and Class Status: Who Goes Bankrupt?' (2003) 41 *Osgoode Hall Law Journal* 115, 118-9.

¹⁴⁵ *Ibid* 128.

¹⁴⁶ *Ibid* 137.

¹⁴⁷ *Ibid* 134.

¹⁴⁸ *Ibid* 143-4.

¹⁴⁹ Elizabeth Warren, 'The Growing Threat to Middle Class Families' (2003) 69 *Brooklyn Law Review* 401, 402.

¹⁵⁰ Elizabeth Warren, 'Bankrupt Children' (2002) 86 *Minnesota Law Review* 1003, 1013.

¹⁵¹ *Ibid* 1017.

¹⁵² *Ibid* 1017-8.

¹⁵³ *Ibid* 1018-20.

¹⁵⁴ *Ibid* 1017.

In 2001, in the United States the filing rates per thousand were as follows: 5.3 for unmarried men with no children in their homes; 6.1 for unmarried women with no children in their homes; 6.7 for childless married couples; 14 for married couples with children; and 27.2 for single mother households.¹⁵⁵

Whilst in depth studies by Professor Warren and others have been conducted for over three decades in the United States,¹⁵⁶ in stark contrast to a dearth of Australian research,¹⁵⁷ we suggest that our findings validate our conclusion that personal insolvency in Australia is becoming an increasingly middle class phenomenon. Personal insolvents are increasingly coming from higher status occupations; have increasing employment levels; have increasing levels of personal income and household income; and have increasing realisable asset and property ownership levels. We consider each of these indicators in further detail below.

9.3.2 Increase in employment levels

Between 1997 and 2007, there was a 70% increase in the employment rate of bankrupts and a 46% increase in the employment rate of debt agreement debtors. In 1997, 33% of bankrupts were employed, compared to 56% in 2007. In 1997, 63% of debt agreement debtors were employed, compared to 92% in 2007.

9.3.3 Occupation

Personal insolvents come from a broad range of occupational groups and are not concentrated among students, the unemployed, or pensioners; rather, they are spread among most of the main occupational groups.

We suggest that the increase in the proportion of insolvents who are from higher prestige occupational groups (managers and administrators, professionals, and associate professionals) reveals that personal insolvency is becoming an increasingly middle class phenomenon.

In 1999, there were 26045 bankrupts, of which 2937 came from these occupational groups (11.28%). In 2008, there were 26137 bankrupts, of which

¹⁵⁵ Ibid 1015-6.

¹⁵⁶ There have been three major studies on consumer bankruptcy in the United States: Consumer Bankruptcy Project I (1981); Consumer Bankruptcy Project II (1991); and Consumer Bankruptcy Project III (2001). See further Teresa A Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (New York: Oxford University Press, 1989); Teresa A Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *The Fragile Middle Class: Americans in Debt* (London: Yale University Press, 2000).

¹⁵⁷ Others have pointed out this lack of research. See, eg, Rosalind Mason, 'Consumer Bankruptcy: An Australian Perspective' (1999) 37 *Osgoode Hall Law Journal* 449, 458. We found one study including empirical research on consumer bankrupts in Melbourne between 1986 and 1987: see Martin Ryan, 'Consumer Bankrupts in Melbourne' (1993) 28 *Australian Journal of Social Issues* 34.

10747 came from these occupational groups (27.34%). There were only 92 more bankrupts in 2008 than in 1999, however there were 7810 more bankrupts from these occupational groups in 2008 than in 1999.

In 2002, there were 4056 debt agreement debtors, of which 606 came from these occupational groups (14.94%). In 2008, there were 6620 debt agreement debtors, of which 1459 came from these occupational groups (27.19%). There were 2564 more debt agreement debtors in 2008 than in 2002, however there were 853 more debt agreement debtors from these occupational groups in 2008 than in 2002.

9.3.4 Personal income and household income

Personal insolvents have increasing levels of personal income and household income and the majority are not located amongst the chronically poor. We suggest that these increasing levels of personal income and household income indicate that personal insolvency is becoming an increasingly middle class phenomenon.

In 1997, 37% of bankrupts had personal income of less than \$10,000, and 13% had personal income of \$30,000 or more. In 2007, 15% of bankrupts had personal income of less than \$10,000, and 38% had personal income of \$30,000 or more.

In 2002, 28% of bankrupts had household income of \$30,000 or more, compared to 49% in 2007.

In 1997, 85% of debt agreement debtors had personal income less than \$30,000, and 15% had personal income of \$30,000 or more. In 2007, 31% of debt agreement debtors expected personal income less than \$30,000, and 69% expected personal income of \$30,000 or more.

In 2002, 55% of debt agreement debtors had household income of \$30,000 or more, compared to 73% in 2007.

9.3.5 Increase in insolvents' realisable asset and property ownership levels

Finally, we suggest that increases in the levels of insolvents' realisable assets and property ownership highlight that personal insolvency is becoming an increasingly middle class phenomenon.

In 2007, 7% of bankrupts declared realisable assets of \$50,000 or more, compared to 3% in both 2003 and 2005. In 2007, 9% of debt agreement debtors declared realisable assets of \$20,000 or more, compared to 5% in 2003.

In 2003, 5% of bankrupts declared property ownership, compared to 11% in 2007. In 2003, 5% of debt agreement debtors declared property ownership, compared to 15% in 2007. Therefore between 2003 and 2007 there was a 120% increase in the proportion of bankrupts and a 200% increase in the proportion of debt agreement debtors who declared property ownership.

We suggest that increases in the levels of realisable assets and property ownership of bankrupts and debt agreement debtors indicates that these insolvents are coming from wealthier areas of the community than was previously the case.

10 APPENDIX

10.1 LIST OF FIGURES

FIGURE 1	Total personal insolvency numbers 1990-2008
FIGURE 2	Personal insolvency numbers by form 1990-2008
FIGURE 3	Total bankruptcies 1990-2008
FIGURE 4	Total debt agreements 1997-2008
FIGURE 5	Total Part X arrangements 1990-2008
FIGURE 6	Comparative proportions by form of personal insolvency in 1997, 2005 and 2008
FIGURE 7	Form of personal insolvency in 2008
FIGURE 8	Previously bankrupt 1997, 2002, 2003, 2005, 2007
FIGURE 9	Incidence of bankruptcy 2002, 2003, 2005, 2007
FIGURE 10	State/Territory proportions of bankruptcies 1997-2008
FIGURE 11	State/Territory breakdown of bankruptcies in 1997 and 2008
FIGURE 12	State/Territory proportions of debt agreements 1997-2008
FIGURE 13	State/Territory breakdown of debt agreements in 1998 and 2008
FIGURE 14	State/Territory proportions of Part X arrangements 1997-2008
FIGURE 15	State/Territory breakdown of Part X arrangements in 1997 and 2008
FIGURE 16	Business and non-business related bankruptcies 1991-2008
FIGURE 17	State/territory business related bankruptcies 1997-2008
FIGURE 18	State/territory non-business related bankruptcies 1997-2008
FIGURE 19	Business and non-business related debt agreements 2003-2008

FIGURE 20	Business and non-business related Part X arrangements 2003-2008
FIGURE 21	Causes of business related bankruptcies 2000-2008
FIGURE 22	Economic conditions as cause of business related bankruptcy 2000-2008
FIGURE 23	Personal reasons including ill health as cause of business related bankruptcy 2000-2008
FIGURE 24	Excessive drawings as cause of business related bankruptcy 2000-2008
FIGURE 25	Causes of business related debt agreements 2002-2008
FIGURE 26	Causes of business related Part X arrangements 2003-2008
FIGURE 27	Causes of non-business related bankruptcies 1997-2008
FIGURE 28	Unemployment as cause of non-business related bankruptcy 1997-2008
FIGURE 29	Excessive use of credit as cause of non-business related bankruptcy 1997-2008
FIGURE 30	Causes of non-business related debt agreements 2002-2008
FIGURE 31	Unemployment as cause of non-business related debt agreement 2002-2008
FIGURE 32	Excessive use of credit as cause of non-business related debt agreement 2002-2008
FIGURE 33	Causes of non-business related Part X arrangements 2003-2008
FIGURE 34	Gender of bankrupts in 1997, 2001-2008
FIGURE 35	State/territory breakdown of male bankrupts 2001-2008
FIGURE 36	State/territory breakdown of female bankrupts 2001-2008
FIGURE 37	Gender of debt agreement debtors in 1997, 2001-2008
FIGURE 38	State/territory breakdown of male debt agreement debtors 2001-2008

FIGURE 39	State/territory breakdown of female debt agreement debtors 2001-2008
FIGURE 40	Gender of Part X debtors 2001-2008
FIGURE 41	State/territory breakdown of male Part X debtors 2001-2008
FIGURE 42	State/territory breakdown of female Part X debtors 2001-2008
FIGURE 43	Age of bankrupts 1997-2008
FIGURE 44	Age of bankrupts from business related bankruptcies 1997-2008
FIGURE 45	Age of bankrupts from non-business related bankruptcies 1997-2008
FIGURE 46	Age of debt agreements debtors 2002-2008
FIGURE 47	Age of debtors from business related debt agreements 2002-2008
FIGURE 48	Age of debtors from non-business related debt agreements 2002-2008
FIGURE 49	Age of Part X debtors 2003-2008
FIGURE 50	Age of debtors from business related Part X arrangements 2003-2008
FIGURE 51	Age of debtors from non-business related Part X arrangements 2003-2008
FIGURE 52	Economic conditions as cause of business related bankruptcy by age group 2000-2008
FIGURE 53	Personal reasons including ill health as cause of business related bankruptcy by age group 2000-2008
FIGURE 54	Lack of business ability as cause of business related bankruptcy by age group 2000-2008
FIGURE 55	Excessive drawings as cause of business related bankruptcy by age group 2000-2008
FIGURE 56	Lack of capital as cause of business related bankruptcy by age group 2000-2008

- FIGURE 57** Excessive interest as cause of business related bankruptcy by age group 2000-2008
- FIGURE 58** Unemployment as cause of non-business related bankruptcy by age group 1997-2008
- FIGURE 59** Excessive use of credit as cause of non-business related bankruptcy by age group 1997-2008
- FIGURE 60** Domestic discord as cause of non-business related bankruptcy by age group 1997-2008
- FIGURE 61** Ill health as cause of non-business related bankruptcy by age group 1997-2008
- FIGURE 62** Adverse litigation as cause of non-business related bankruptcy by age group 1997-2008
- FIGURE 63** Gambling or speculation as cause of non-business related bankruptcy by age group 1997-2008
- FIGURE 64** Liabilities on guarantees as cause of non-business related bankruptcy by age group 1997-2008
- FIGURE 65** Other cause or cause not stated as cause of non-business related bankruptcy by age group 1997-2008
- FIGURE 66** Unemployment as cause of non-business related debt agreement by age group 2002-2008
- FIGURE 67** Excessive use of credit as cause of non-business related debt agreement by age group 2002-2008
- FIGURE 68** Family situation of bankrupts in 2002, 2003, 2005, 2007
- FIGURE 69** Bankrupts with and without dependants in 2002, 2003, 2005, 2007
- FIGURE 70** Family situation of debt agreement debtors in 2002, 2003, 2005, 2007
- FIGURE 71** Debt agreement debtors with and without dependants in 2002, 2003, 2005, 2007
- FIGURE 72** Family situation of Part X debtors in 2003, 2005, 2007
- FIGURE 73** Part X debtors with and without dependants in 2003, 2005, 2007
- FIGURE 74** Bankrupts' occupational groups 1999-2008

FIGURE 75	Business related bankrupts' occupational groups 1999-2008
FIGURE 76	Non-business related bankrupts' occupational groups 1999-2008
FIGURE 77	Debt agreement debtors' occupational groups 2002-2008
FIGURE 78	Business related debt agreement debtors' occupational groups 2002-2008
FIGURE 79	Non-business related debt agreement debtors' occupational groups 2002-2008
FIGURE 80	Part X debtors' occupational groups 2003-2008
FIGURE 81	Business related Part X debtors' occupational groups 2003-2008
FIGURE 82	Non-business related Part X debtors' occupational groups 2003-2008
FIGURE 83	Bankrupts' employment status in 1997, 2002, 2003, 2005, 2007
FIGURE 84	Bankrupts' employment status by gender in 2002, 2003, 2005, 2007
FIGURE 85	Debt agreement debtors' employment status in 1997, 2002, 2003, 2005, 2007
FIGURE 86	Part X debtors' employment status in 2003, 2005, 2007
FIGURE 87	Bankrupts' personal income in 1997, 2002, 2003, 2005, 2007
FIGURE 88	Bankrupts' personal income in 2005, 2007
FIGURE 89	Debt agreement debtors' personal income in 1997, 2002, 2003, 2005, 2007
FIGURE 90	Debt agreement debtors' personal income in 2005, 2007
FIGURE 91	Part X debtors' personal income in 2003, 2005, 2007
FIGURE 92	Part X debtors' personal income in 2005, 2007
FIGURE 93	Bankrupts' household income in 2002, 2003, 2005, 2007
FIGURE 94	Bankrupts' household income in 2005, 2007

FIGURE 95	Debt agreement debtors' household income in 2002, 2003, 2005, 2007
FIGURE 96	Debt agreement debtors' household income in 2005, 2007
FIGURE 97	Part X debtors' household income in 2003, 2005, 2007
FIGURE 98	Part X debtors' household income in 2005, 2007
FIGURE 99	Bankrupts' unsecured debt levels in 1997, 2002, 2003, 2005, 2007
FIGURE 100	Bankrupts' unsecured debt levels in 2002, 2003, 2005, 2007
FIGURE 101	Debt agreement debtors' unsecured debt levels in 1997, 2002, 2003, 2005, 2007
FIGURE 102	Debt agreement debtors' unsecured debt levels in 2002, 2003, 2005, 2007
FIGURE 103	Part X debtors' unsecured debt levels in 2005, 2007
FIGURE 104	Bankrupts' property ownership in 2003, 2005, 2007
FIGURE 105	Debt agreement debtors' property ownership in 2003, 2005, 2007
FIGURE 106	Part X debtors' property ownership in 2003, 2005, 2007
FIGURE 107	Categories of bankrupts' creditors in 2002, 2005, 2007
FIGURE 108	Bankrupts' creditor subtypes in 2005, 2007
FIGURE 109	Proportion of bankrupts' liability amounts owed to different creditor types in 2002, 2003, 2005, 2007
FIGURE 110	Categories of debt agreement debtors' creditors in 2002, 2005, 2007
FIGURE 111	Debt agreement debtors' creditor subtypes in 2005, 2007
FIGURE 112	Proportion of debt agreement debtors' liability amounts owed to different creditor types in 2002, 2003, 2005, 2007
FIGURE 113	Categories of Part X debtors' creditors in 2005, 2007
FIGURE 114	Part X debtors' creditor subtypes in 2005, 2007

FIGURE 115 Proportion of Part X debtors' liability amounts owed to different creditor types in 2003, 2005, 2007

10.2 LIST OF TABLES

TABLE ONE Bankrupts' realisable assets in 2003, 2005, 2007

TABLE TWO Debt agreement debtors' realisable assets in 2003, 2005, 2007

TABLE THREE Part X debtors' realisable assets in 2003, 2005, 2007