BANKRUPTCY AND DEBTOR REHABILITATION: AN AUSTRALIAN EMPIRICAL STUDY

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Bankruptcy is widely regarded as a means of rehabilitation for debtors in severe financial hardship. To date, however, there have been few attempts to study its long term impact on individuals' finances, health, social relationships and general quality of life. The authors address this gap in the literature, by reporting the results of a major survey of current and former Australian bankrupts and another survey of financial counsellors and consumer solicitors. These surveys demonstrate that, for many Australian debtors, bankruptcy results in genuine improvements to financial stability, health, relationships and general wellbeing. At the same time, they suggest that the outcomes of bankruptcy can vary significantly according to the underlying reasons for a debtor's financial hardship. In particular, they demonstrate that debtors whose problems relate to unemployment are less likely to achieve favourable outcomes, due to the fact that their post-bankruptcy incomes simply are not high enough to meet their basic needs. On this basis, the article concludes that while bankruptcy offers valuable assistance to many Australian debtors, it is not a comprehensive or fail-safe means of financial rehabilitation.

Contents

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I Introduction

Bankruptcy offers an important means of rehabilitation for debtors in severe financial hardship. To date, however, there have been few attempts to evaluate its impact on debtors' financial circumstances, health, relationships and general quality of life. Increasingly, Australians are turning to bankruptcy, along with other forms of personal insolvency,[1] when factors such as unem-

[1] Australian Financial Security Authority, 'Bankruptcies Rise 9% in the June Quarter 2015' (Media Release, 13 July 2015); Australian Financial Security Authority, 'Personal Insolvencies Rise 1.5% in the December Quarter 2015' (Media Release, 11 January 2016).

ployment, relationship breakdown or excessive credit use lead them to accumulate unmanageable debts.[2] In the financial year ending in 2016, over 17 000 Australians entered into bankruptcy,[3] and in total, almost 57 000 entered bankruptcy in the three preceding calendar years.[4] In addition to its direct impact upon these debtors and their families, the operation of the bankruptcy system has significant implications for the wider community. The creditors of those who go bankrupt include many small businesses. These creditors can in turn suffer hardship when they cannot recover the debts they are owed. The system imposes costs on the federal government, which funds the regulator, the Australian Financial Security Authority ('AFSA') (formerly known as the Insolvency and Trustee Service Australia ('ITSA')).[5] Given these substantial costs associated with the bankruptcy system, it is vital to gather empirical evidence regarding the system's effectiveness as a means of individual financial rehabilitation.

This article represents the first attempt to document and analyse the impact of bankruptcy on individual debtors in the Australian context. To date, there has been only one empirical study based upon interviews with individual debtors published in this country. Conducted in 1987 and 1988, and drawing on the experiences of 76 undischarged bankrupts, that study focussed on the early stages of bankruptcy, rather than its long term consequences.[6] In the absence of more recent Australian research, this article draws on United States ('US') scholarship, which suggests that bankruptcy frequent-

[2] Unemployment, the excessive use of credit and relationship breakdown are the three most common causes of non-business related personal insolvency in Australia, according to data published by AFSA, based upon the documents lodged by debtors: Australian Financial Security Authority, *Causes: Non-Business Related* (2016) <https://www.afsa.gov.au/statistics/causes-non-business-related>.

[3] Bankrupts constitute the largest group within the personal insolvency system. In the same period 12 150 people entered into debt agreements and 175 entered into personal insolvency agreements: Australian Financial Security Authority, *Annual Statistics* (2016) <https://www.afsa.gov.au/statistics/annual-statistics>.

[4] There were 17 202 bankruptcies in the financial year ending 30 June 2016: ibid. In total, there were 56 314 bankruptcies in the calendar years 2013, 2014 and 2015: Australian Financial Security Authority, *Bankrupts* (2016) <https://www.afsa.gov.au/statistics/bankrupts>.

[5] Australian Financial Security Authority, *Agency Overview* (2016) <https://www.afsa.gov.au/about-us/agency-overview>.

[6] Martin Ryan, *The Last Resort: A Study of Consumer Bankrupts* (Avebury, 1995). Ryan asked his participants several questions regarding the impact of bankruptcy upon various aspects of their lives, including their financial situation, health, family relationships and financial management skills. Most respondents said that these aspects of their lives had improved as a result of declaring bankruptcy: at 173–80, 281. See also Martin Ryan, 'Consumer Bankruptcy' (1993) 18 *Alternative Law Journal* 158, 159.

ly fails to provide debtors with a meaningful 'fresh start'.[7] In this context, it outlines the results of two major online surveys conducted by the authors: one of current and former bankrupts; and the other of financial counsellors and consumer solicitors. Based upon these surveys, the article contends that while bankruptcy offers valuable assistance to many Australian debtors, it is not a comprehensive or fail-safe means of financial rehabilitation. In particular, the study identifies a link between unemployment, reliance on social security payments and poorer prospects of rehabilitation. On this basis, the article outlines certain measures that could promote debtor rehabilitation, including better advice and support before, during and after bankruptcy. More fundamentally, however, it concludes that an adequate, reliable income is a vital prerequisite for rehabilitation; and that a modest increase in the unemployment benefit could be the most effective means of improving debtors' outcomes after bankruptcy.

II Background to the Study

A *Bankruptcy and the Goal of Debtor Rehabilitation*

While the rehabilitation of delinquent debtors is a fundamental goal of bankruptcy law,[8] the precise nature of its rehabilitative role is open to debate.[9] On one analysis, the law's rehabilitative function is limited to debt discharge. This narrow definition assumes that when an individual is freed from 'future liability for … existing debts' by means of a bankruptcy, he or she will be able

[7] Katherine Porter and Deborah Thorne, 'The Failure of Bankruptcy's Fresh Start' (2006) 92 *Cornell Law Review* 67; Deborah Thorne, 'Personal Bankruptcy and the Credit Report: Conflicting Mechanisms of Social Mobility' (2007) 11 *Journal of Poverty* 23; Jay L Zagorsky and Lois R Lupicka, 'A Study of Consumers' Post-Discharge Finances: Struggle, Stasis or Fresh-Start?' (2008) 16 *American Bankruptcy Institute Law Review* 283; Song Han and Geng Li, 'Household Borrowing after Personal Bankruptcy' (Finance and Economics Discussion Series Staff Working Paper, Divisions of Research and Statistics and Monetary Affairs, Federal Reserve Board, 26 March 2009); Katherine Porter, 'The Pretend Solution: An Empirical Study of Bankruptcy Outcomes' (2011) 90 *Texas Law Review* 103; Michelle Maroto, 'The Scarring Effects of Bankruptcy: Cumulative Disadvantage across Credit and Labor Markets' (2012) 91 *Social Forces* 99. See also Katherine Porter, 'Life after Debt: Understanding the Credit Restraint of Bankruptcy Debtors' (2010) 18 *American Bankruptcy Institute Law Review* 1.

[8] For a recent analysis of the role of the 'fresh start goal' in Australian bankruptcy law, see Nicola Howell, 'The Fresh Start Goal of the *Bankruptcy Act*: Giving a Temporary Reprieve or Facilitating Debtor Rehabilitation?' (2014) 14(3) *Queensland University of Technology Law Review* 29.

[9] Margaret Howard, 'A Theory of Discharge in Consumer Bankruptcy' (1987) 48 *Ohio State Law Journal* 1047.

to 'start afresh'.[10] Other commentators argue that debtor rehabilitation requires a broader set of measures, aimed at effecting a permanent, positive transformation of the debtor's finances. Proponents of this view contend that merely removing a debtor's liabilities will not provide a meaningful 'fresh start', or 'new opportunity', without additional measures designed to address the underlying causes of indebtedness.[11] In recent decades, several jurisdictions have altered their bankruptcy regimes to reflect a growing consensus that debt discharge is not, on its own, sufficient to ensure debtor rehabilitation. In the US and Canada, debtors are now required to participate in financial counselling programmes, which include information about how to construct a budget and avoid unnecessary expenditure.[12] These programmes frame debtor rehabilitation in highly individualised terms, as a process of changing one's attitudes and consumption habits.[13] The United Kingdom ('UK') has adopted a very different approach. In 2002, it introduced radical changes to the bankruptcy regime, reducing the duration of bankruptcy and introducing the 'Bankruptcy Restriction Order' for bankrupts regarded as culpable or dishonest.[14] With these reforms, UK legislators sought to reduce the stigma attaching to 'honest but unlucky' bankrupts, and to improve these bankrupts' access to credit after discharge.[15] In marked contrast to the US and

[10] *Re McMaster; Ex parte McMaster* (1991) 33 FCR 70, 73 (Hill J) ('*Re McMaster*'), quoted in Howell, above n 8, 40.

[11] Porter and Thorne, 'The Failure of Bankruptcy's Fresh Start', above n 7, 68, 71, 124. See also Howell, above n 8, 33–4.

[12] For discussions of the Canadian regime, see, eg, Carol Ann Curnock, 'Insolvency Counselling — Innovation Based on the Fourteenth Century' (1999) 37 *Osgoode Hall Law Journal* 387; Iain Ramsay, 'Mandatory Bankruptcy Counseling: The Canadian Experience' (2002) 7 *Fordham Journal of Corporate and Financial Law* 525. For discussions of the US system, see, eg, Karen Gross and Susan Block-Lieb, 'Empty Mandate or Opportunity for Innovation? Pre-Petition Credit Counselling and Post-Petition Financial Management Education' (2005) 13 *American Bankruptcy Institute Law Review* 549; Deanne Loonin, John Rao and Mallory SoRelle, 'New Burdens but Few Benefits: An Examination of the Bankruptcy Counseling and Education Requirements in Massachusetts' (Research Report, National Consumer Law Center, June 2007); Michael D Sousa, 'Just Punch My Bankruptcy Ticket: A Qualitative Study of Mandatory Debtor Financial Education' (2013) 97 *Marquette Law Review* 391. For a comparative analysis of North American and European approaches to mandatory counselling, see Saul Schwartz, 'Counselling the Overindebted: A Comparative Perspective' (Research Report, School of Public Policy and Administration, Carleton University, December 2005).

[13] See, eg, Ramsay, above n 12, 528–30; Sousa, above n 12, 407–9.

[14] *Insolvency Act 1986* (UK) c 45, s 281A, sch 4A, as inserted by *Enterprise Act 2002* (UK) c 40, s 257, schs 20, 21.

[15] Insolvency Service (UK), *Bankruptcy: A Fresh Start* (2000) <http://webarchive.nationalarchives.gov.uk/20140311023846/http://www.insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/con_doc_register/con_doc_archive/consultation/

Canadian approach, these reforms recognised that institutional lending practices play a significant part in debtors' financial rehabilitation. While both approaches have attracted criticism,[16] they illustrate the increasing centrality of debtor rehabilitation as an explicit objective of bankruptcy law.

Australian bankruptcy law also recognises the importance of debtor rehabilitation,[17] but it does not set out what this should mean in practice. The *Bankruptcy Act 1966* (Cth) ('*Bankruptcy Act*') makes no reference to debtor rehabilitation or the 'fresh start' goal of bankruptcy.[18] On its face, the Act suggests a very narrow definition of rehabilitation, simply stating that the debtor will be 'discharged at the end of the period of 3 years from the date on which the bankrupt filed his or her statement of affairs', provided that the bankruptcy trustee makes no objection.[19] While the *Bankruptcy Act* confers many benefits upon debtors,[20] it does not frame these measures in terms of rehabilitation or even debtor welfare.[21] The most recent comprehensive

freshstart/foreword.htm>. See also Adrian Walters, 'Personal Insolvency Law after the *Enterprise Act*: An Appraisal' (2005) 5 *Journal of Corporate Law Studies* 65, 82; Katharina Möser, 'Restrictions after Personal Insolvency' [2013] *Journal of Business Law* 679.

16 For a trenchant critique of the North American model of compulsory counselling, see Curnock, above n 12; Sousa, above n 12. For critiques of the UK reforms, see Walters, above n 15; Möser, above n 15.

17 Howell, above n 8.

18 Ibid 35.

19 *Bankruptcy Act* ss 149, 149A. See also Christopher Symes and John Duns, *Australian Insolvency Law* (LexisNexis Butterworths, 2nd ed, 2012) 81.

20 Howell points out that by preventing creditors from seeking to recover debts during bankruptcy, the *Bankruptcy Act* shields debtors from unreasonable harassment and stress, thus promoting their physical and mental health. She also observes that the provisions regarding debtor contributions to the bankrupt estate promote rehabilitation, in the sense that they aim to ensure that debtors maintain 'basic living standards' during bankruptcy. In these respects, she argues, the Act 'may … contribute to a rehabilitation-focused fresh start' in practice, even if its general focus is on debt discharge: Howell, above n 8, 36, 38.

21 The sections prohibiting creditors from seeking to recover debts are found under the heading, 'Effect of Bankruptcy on Property and Proceedings' (*Bankruptcy Act* pt IV div 4); see especially at ss 58(3)(a), 60. These provisions appear in pt IV of the *Bankruptcy Act*, a part dealing with procedural and technical matters such as the actions constituting 'acts of bankruptcy' (at s 40) and the matters to be disclosed in a valid bankruptcy notice (at s 41). This suggests that their main purpose is to ensure the orderly and equitable division of assets among creditors. The sections that protect bankrupts' incomes are found under the heading, 'Contribution by Bankrupt and Recovery of Property' (at pt VI div 4B). Far from framing these measures in terms of debtor welfare, the Act explicitly states the 'objects' of this division as being: '(a) to require a bankrupt who derives income during the bankruptcy to pay contributions towards the bankrupt's estate; and (b) to enable the recovery of certain money and property for the benefit of the bankrupt's estate': at s 139J.

review[22] of the bankruptcy system was equally opaque on the question of rehabilitation. In an important review widely known as the *Harmer Report*,[23] the Law Reform Commission[24] confirmed that rehabilitation is '[o]ne purpose of discharge'.[25] It described discharge as having three principal components: the end of 'the indebtedness which led to the bankruptcy'; the 'restor[ation]' of the debtor's 'legal capacity'; and restoration of the debtor's 'absolute entitlement to acquire and retain property without fear of its being taken for distribution among creditors.'[26] Beyond this, the *Harmer Report* had nothing to say about debtor rehabilitation or the long term impact of bankruptcy upon debtors. The case law offers little more by way of assistance. While the leading authorities confirm the importance of debt discharge, as a means by which indigent debtors can 'start afresh',[27] they do not elaborate on the relationship between discharge and debtors' long term prospects. While they frequently recognise the impact of debt upon an individual's health, wellbeing and social standing, they do not suggest that addressing these problems is, or should be, a central objective of bankruptcy law.[28]

B *Prior Research*

Empirical research can play an important role in bankruptcy policy and law reform, by providing concrete evidence of the extent to which bankruptcy improves, or fails to improve, the lives of debtors. The US has a strong tradition of empirical bankruptcy research, notably the Consumer Bankrupt-

22 This does not include short-term reviews and consultations regarding discrete aspects of the bankruptcy regime. The Commonwealth government has recently conducted a short-term consultation, with a view to reducing the period of bankruptcy from three years to one: see Treasury (Cth), 'Improving Bankruptcy and Insolvency Laws' (Proposals Paper, National Innovation and Science Agenda, April 2016) <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2016/Improving-bankruptcy-and-insolvency-laws>.

23 Law Reform Commission, *General Insolvency Inquiry*, Report No 45 (1988) ('*Harmer Report*').

24 The Law Reform Commission has since been renamed the Australian Law Reform Commission ('ALRC').

25 The report identifies the penalisation of dishonest debtors as the second, equally important goal of discharge: *Harmer Report*, above n 23, 226.

26 Ibid.

27 *Re McMaster* (1991) 33 FCR 70, 73 (Hill J), quoted in Howell, above n 8, 40.

28 Howell notes that judicial discussions of bankruptcy law generally focus on debt discharge and that a broader judicial definition of rehabilitation is 'not widespread': Howell, above n 8, 41–2.

cy Project ('CBP'), which since 1981 has produced four detailed studies of the US bankruptcy system.[29] Among many topics, this research explores the financial and social characteristics of bankrupt debtors (including debt-to-asset ratios, occupations, divorce and home ownership rates),[30] regional variation in debtors' behaviour[31] and the experiences of particular groups within the bankruptcy system, including single mothers,[32] African-Americans[33] and former university students with large student loans.[34] These studies have contributed significantly to scholars' understanding of the causes of bankruptcy[35] and the demographic profile of those who go bankrupt.[36] Yet despite the impressive range and depth of this scholarship, relatively little published research has addressed the long term impact of bankruptcy on the lives of debtors. In large part, this is due to the practical challenges involved in studying people who are no longer inside the bankruptcy system. The CBP and other empirical studies rely heavily upon court records, which include a great deal of publicly available data about bankrupt debtors.[37] Since there is no

[29] These studies were produced in 1981, 1991, 2001 and 2007. For details of the 1981 study, see Teresa A Sullivan, Elizabeth Warren and Jay Lawrence Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (Oxford University Press, 1989). For details of the 1991 study, see Teresa A Sullivan, Elizabeth Warren and Jay Lawrence Westbrook, *The Fragile Middle Class: Americans in Debt* (Yale University Press, 2000). The 2001 study is described in Elizabeth Warren and Amelia Warren Tyagi, *The Two-Income Trap: Why Middle-Class Parents Are Going Broke* (Basic Books, 2003). For a discussion of the 2007 study, see Katherine Porter, 'Appendix: Methodology of the 2007 Consumer Bankruptcy Project' in Katherine Porter (ed), *Broke: How Debt Bankrupts the Middle Class* (Stanford University Press, 2012) 235, 235–44.

[30] See especially Sullivan, Warren and Westbrook, *As We Forgive*, above n 29; Sullivan, Warren and Westbrook, *Fragile*, above n 29.

[31] See, eg, Teresa A Sullivan, Elizabeth Warren and Jay Lawrence Westbrook, 'The Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts' (1994) 17 *Harvard Journal of Law and Public Policy* 801; Katherine Porter, 'Going Broke the Hard Way: The Economics of Rural Failure' [2005] *Wisconsin Law Review* 969.

[32] Warren and Tyagi, above n 29.

[33] Dov Cohen and Robert M Lawless, 'Less Forgiven: Race and Chapter 13 Bankruptcy' in Katherine Porter (ed), *Broke: How Debt Bankrupts the Middle Class* (Stanford University Press, 2012) 175.

[34] Katherine Porter, 'College Lessons: The Financial Risks of Dropping Out' in Katherine Porter (ed), *Broke: How Debt Bankrupts the Middle Class* (Stanford University Press, 2012) 85.

[35] See, eg, Porter and Thorne, 'The Failure of Bankruptcy's Fresh Start', above n 7, 70–1.

[36] See, eg, Sullivan, Warren and Westbrook, *Fragile*, above n 29.

[37] US bankruptcy court records include details about debtors' income, assets and debts, their family situation, employment status and even the kind of car they own: see Sullivan, Warren and Westbrook, *As We Forgive*, above n 29, 17–18.

requirement that debtors continue to report this information after discharge,[38] there is no comparable pre-existing source of data regarding the long term consequences of bankruptcy. Collecting fresh data through questionnaires and interviews also presents significant practical challenges. In the US, discharged bankrupts are a highly mobile population, meaning that many cannot be contacted at the addresses listed on their court documents, even a relatively short time after their discharge.[39] Those who can be contacted are often reluctant to discuss their experiences of bankruptcy, while some deny that they have ever been bankrupt at all. Compounding these problems is the likelihood that many former debtors may have distorted or inaccurate memories of their experiences, particularly if they are interviewed or surveyed several years after discharge.[40] For these reasons, most researchers studying the impact of bankruptcy have focussed on debtors' success in obtaining a discharge, without enquiring further as to how this discharge affects them in the longer term.[41]

Despite these challenges, some scholars have conducted valuable longitudinal studies of the impact of bankruptcy. In 2006, Katherine Porter and Deborah Thorne conducted a multi-dimensional study of debtors' post-bankruptcy finances, using data from the third iteration of the CBP studies.[42] The CBP data included individual interviews with 930 debtors, one year after they filed for bankruptcy. Respondents were asked whether or not they were experiencing financial difficulty at the time of the interview.[43] They were also asked whether their finances had 'improved, stayed about the same, or worsened' since declaring bankruptcy.[44] One quarter (25 per cent) admitted to ongoing financial problems, and 35 per cent said that their overall circumstances were either 'unchanged' or 'worse'. This led Porter and Thorne to conclude that 'postbankruptcy life did not fulfil the optimistic promise of the fresh start' for 'a substantial minority' of debtors.[45] Porter and Thorne examined respondents' income levels,[46] employment rates, health and other

38 William C Whitford, 'Small Ball' (2011) 90 *Texas Law Review* 9, 9.

39 Sullivan, Warren and Westbrook, *As We Forgive*, above n 29, 42–3 n 13.

40 Porter, 'The Pretend Solution', above n 7, 123.

41 Porter, 'Life after Debt', above n 7, 3.

42 This refers to the CBP data gathered in 2001. Porter and Thorne refer to this as 'Phase III' of the CBP: Porter and Thorne, 'The Failure of Bankruptcy's Fresh Start', above n 7, 80–1.

43 Ibid 83.

44 Ibid 86.

45 Ibid 88.

46 Ibid 94.

circumstances in an attempt to understand the causes of their post-bankruptcy problems.[47] They found that 'worse-off families' were far more likely to have suffered a decline in income after bankruptcy, while 'better-off families' were much more likely to have increased their income.[48] They also discovered that the factors leading many debtors into bankruptcy often persisted after discharge, undermining their efforts to re-establish themselves financially. In particular, they singled out 'job problems'[49] and 'medical problems' as sources of ongoing financial difficulty for many households.[50] On the basis of these findings, Porter and Thorne concluded that bankruptcy offers an 'authentic fresh start' only to those who manage to increase their incomes after discharge.[51] While bankruptcy might offer a 'temporary refuge'[52] from extreme financial crisis, only a '[s]table and sufficient income' enables meaningful debtor rehabilitation.[53]

These findings correlate with other recent empirical studies, which have found that many debtors continue to struggle financially after bankruptcy. A 2009 report by US Federal Reserve Board analysts examined the financial situations of former bankrupts aged 25 to 65 (described as 'filers'), comparing them with people in the same age group who had never been bankrupt ('nonfilers').[54] They found that filers' overall 'financial health' was much lower than that of nonfilers, according to measures such as access to credit, debt balances, assets and the loan-to-value ratios of their mortgages.[55] Finding evidence of 'persistent financial stress and slow wealth accumulation' after bankruptcy, they concluded that 'for many filers, bankruptcy filing fails to generate an effective fresh start.'[56] Similarly, in 2012, Michelle Maroto

[47] Ibid 94, 99–100, 104–5. Porter and Thorne also identified 'age' as a third important and interrelated 'trigger' for post-bankruptcy financial problems: at 109–16.

[48] Ibid 95.

[49] Of those respondents who cited 'job problems', 18 per cent cited '[o]nly [p]ostbankruptcy [j]ob [p]roblems', 25 per cent cited '[o]nly [p]rebankruptcy [j]ob [p]roblems' and 36 per cent cited *both* '[p]re- and [p]ostbankruptcy [j]ob [p]roblems'. These problems were not defined by the interviewers, but included unemployment, underemployment and declining salaries: ibid 100–1.

[50] Ibid 104–9.

[51] Ibid 99.

[52] Ibid 70.

[53] Ibid 124.

[54] Han and Li, above n 7, 1. This study drew on data gathered by the US Federal Reserve Board in its triennial Survey of Consumer Finances in 1998, 2001 and 2004: at 10–11.

[55] Han and Li, above n 7, 16–20.

[56] Ibid 26.

analysed employment disadvantage among former bankrupt debtors,[57] based on data from the US National Longitudinal Survey of Youth 1979 ('NLSY').[58] Maroto found that in the US, people who go bankrupt experience significant disadvantage in their subsequent attempts to gain employment.[59] She found that these individuals 'spend fewer weeks working' in a given year and 'have lower earnings than non-bankrupters'.[60] Importantly, her analysis revealed that these 'negative labor market effects' persist for many years after bankruptcy and 'may even become stronger over time.'[61] Sociological studies have provided further evidence that bankruptcy is only partially effective in providing debtors with a 'fresh start'. In 2007, Deborah Thorne drew on the 2001 CBP to discuss the role of credit scores[62] in limiting former bankrupts' access to housing, employment and even transport. Based on telephone interviews conducted with debtors between one and three years after bankruptcy, Thorne concluded that the widespread use of credit scores, by employers,[63] landlords and insurance agents in the US, 'negate[s] the upward social mobility that is assumed to result from bankruptcy.'[64]

Some US empirical studies have offered a more sanguine view of debtors' prospects of rehabilitation. Jay Zagorsky and Lois Lupicka[65] have used longitudinal financial data[66] to assess the long term fortunes of discharged

57 Maroto, above n 7.

58 This survey was conducted by the US Bureau of Labor Statistics: Bureau of Labor Statistics, *National Longitudinal Surveys* (30 January 2017) US Department of Labor <http://www.bls.gov/nls/nlsy79.htm>.

59 Maroto, above n 7, 110.

60 Ibid 100.

61 Ibid 122.

62 A credit score is a number assigned to an individual consumer by a credit reporting body or credit provider, denoting his or her creditworthiness. A low credit score indicates that a consumer is regarded as posing a high risk of default and makes it more difficult for that consumer to obtain credit: Australian Retail Credit Association, *What Is A Credit Score?* (2013) CreditSmart <http://creditsmart.org.au/case-studies-and-faqs#factsheets>.

63 Employers are permitted to access employees' (and prospective employees') credit scores under the *Fair Credit Reporting Act*, 15 USC §§ 1681–1681x (2012).

64 Thorne, 'Personal Bankruptcy and the Credit Report', above n 7, 40. See also Deborah Thorne and Leon Anderson, 'Managing the Stigma of Personal Bankruptcy' (2006) 39 *Sociological Focus* 77. This study is based upon interviews with 37 individuals who declared bankruptcy in 1999. Several of those interviewed reflect upon the impact that bankruptcy has had upon their finances, emotions and social lives, as well as their careers.

65 Zagorsky and Lupicka, above n 7.

66 This study drew on data from the NLSY: ibid 292.

bankrupts. Their analysis reveals 'large differences'[67] between former bankrupts and the general population, suggesting that the 'fresh start' objective of bankruptcy law appears to be failing in the 'short-term'.[68] At the same time, they find that the difference between former bankrupts and their non-bankrupt 'peers' decreases over time.[69] On this basis, Zagorsky and Lupicka conclude that bankruptcy offers a viable path to financial rehabilitation, albeit a difficult and protracted one.[70] Katherine Porter has also found some evidence supporting the effectiveness of bankruptcy's 'fresh start'. Porter has examined credit use by former bankrupts in order to gauge the extent to which bankruptcy has a lasting effect on individuals' financial behaviour.[71] She observes that former bankrupts gradually increase their use of credit in years after bankruptcy, but that they make far more 'modest' use of credit than other Americans with comparable incomes.[72] Porter concludes that 'former bankrupts retain a lasting resistance to even the most popular forms of consumer credit',[73] and suggests that bankruptcy 'act[s] as a reset button, changing future borrowing as well as erasing past debts.'[74] Taking lower rates of credit use as a sign of 'restraint' on the part of former bankrupts, she speculates that the 'pain and hardship that accompanies financial failure' may teach these individuals to manage their finances more 'conservatively' and, where possible, to eschew the 'high stakes game' of unsecured consumer credit.[75]

The international scholarship provides a useful starting point for this study by suggesting that certain types of debtors are more likely than others to achieve lasting benefits from declaring bankruptcy. As discussed above, Porter

67 The former bankrupts were much less likely to own a home, while those who had not been bankrupt were more likely to own their home outright, to have savings and to hold a credit card. '[N]on bankruptcy-filing respondents earned much more in wages … than their filing counterparts' and were more likely to work full time: ibid 296.

68 Ibid 314.

69 Ibid.

70 Ibid 312, 314.

71 Porter drew on Han and Li's analysis of data from the Survey of Consumer Finances, as well as interviews with debtors conducted by researchers associated with the 2001 CBP study. These interviews took place one and three years after the participants declared bankruptcy. Of the 359 households that completed an initial interview, 302 completed a subsequent interview: Porter, 'Life after Debt', above n 7, 7–8.

72 Ibid 11, 15.

73 Ibid 16.

74 Ibid 11.

75 Ibid 42.

and Thorne observe that a substantial minority of debtors experience ongoing financial distress after declaring bankruptcy. They point out that people who experience unemployment or ill health are especially likely to encounter ongoing hardship.[76] Identifying inadequate income as the common underlying cause of these ongoing difficulties, they conclude that access to a sufficient, reliable income is the most important factor in a debtor's long term financial recovery.[77] This phenomenon has been framed in slightly different terms by Canadian scholar Stephanie Ben-Ishai. Ben-Ishai points out that the bankruptcy system is based on the assumption that, after discharge, a debtor will earn sufficient income to achieve 'financial self-reliance'.[78] In this respect, Ben-Ishai maintains, the system 'functions as a form of social insurance for the middle-class.'[79] At the same time, it fails to offer meaningful assistance to 'persistently poor' debtors, such as single mothers, who cannot earn sufficient income due to systemic factors such as a lack of affordable child care.[80] Ben-Ishai contends that, in this way, bankruptcy law serves an 'ideological' or normative purpose, casting certain privileged debtors as 'deserving' or 'worthy of … protection', while constituting others as '*irredeemably dependent*'.[81] While such philosophical debates are beyond the scope of this article, Ben-Ishai's argument represents a useful reformulation of the conclusions reached by Porter and Thorne. Corroborating their view that bankruptcy distributes its benefits unevenly across the debtor population, Ben-Ishai goes further by providing a systemic account of the link between earning potential and rehabilitation. Pointing to the social factors that make some people vulnerable to persistent poverty, Ben-Ishai argues that such people are 'excluded' from the current model of debtor rehabilitation.[82] In light of their entrenched disadvantage, such people are likely to remain trapped in 'long term poverty' even after receiving a discharge of debt.[83]

[76] Porter and Thorne, 'The Failure of Bankruptcy's Fresh Start', above n 7, 93.

[77] Ibid 99, 124.

[78] Stephanie Ben-Ishai, 'The Gendered Dimensions of Social Insurance for the "Non-Poor" in Canada' (2005) 43 *Osgoode Hall Law Journal* 289, 316.

[79] Ibid 291.

[80] Ibid 295, 308.

[81] Ibid 296, 300, 315 (emphasis in original).

[82] Ibid 296.

[83] Ibid 291, 318–19.

C *Contribution of This Study*

The present study is the first Australian empirical investigation to focus on the impact of bankruptcy, drawing directly on the experiences of individual debtors.[84] Most empirical bankruptcy research originates in the US and has limited application to other legal systems, such as those of Australia and the UK. In these other jurisdictions, where bankruptcy has very different legal, economic and social ramifications,[85] there has so far been no published empirical study of debtors' prospects of rehabilitation.[86] In light of the significant individual and social costs associated with the bankruptcy system, there is an acute need for empirical research that examines the impact of bankruptcy in the Australian context.

III Aims and Methodology

A *Aims*

This study seeks to gauge the extent to which bankruptcy enables Australian debtors to rehabilitate themselves. It explores bankruptcy's impact on individuals' health, wellbeing, interpersonal relationships and career prospects, drawing on the experiences of current and former bankrupts, financial counsellors and consumer solicitors. It seeks to assist Australian policymakers by exploring the extent to which Australia's bankruptcy system serves, in a practical sense, to rehabilitate debtors by enabling them to 'start afresh'.[87] At the same time, it seeks to supplement the growing body of international

84 As noted above, the participants in Ryan's Australian study were all undischarged bankrupts. For this reason, Ryan's study focuses on the events leading up to bankruptcy and the experience of declaring bankruptcy. Ryan considers the 'effects of bankruptcy' as part of this wider discussion, noting that most participants reported an improvement in their lives as a result of declaring bankruptcy: Ryan, *The Last Resort*, above n 6, 173–80. With the exception of Ryan's study, the existing Australian empirical research draws upon data gathered by AFSA. See, eg, Jaynendra Kumar, Rosalind Mason and Deborah Ralston, 'Consumer Bankruptcies: Causes and Implications for the Credit Industry' (1998) 17(3) *Economic Papers* 18; Ian Ramsay and Cameron Sim, 'Personal Insolvency Trends in Australia 1990–2008' (2009) 17 *Insolvency Law Journal* 69; Ian Ramsay and Cameron Sim, 'Personal Insolvency in Australia: An Increasingly Middle Class Phenomenon' (2010) 38 *Federal Law Review* 283; Ian Ramsay and Cameron Sim, 'The Role and Use of Debt Agreements in Australian Personal Insolvency Law' (2011) 19 *Insolvency Law Journal* 168.

85 Nathalie Martin, 'Common-Law Bankruptcy Systems: Similarities and Differences' (2003) 11 *American Bankruptcy Institute Law Review* 367.

86 A search of journal articles using the LexisNexis and Westlaw UK databases yielded no academic empirical studies of the impact of bankruptcy conducted in the UK.

87 *Re McMaster* (1991) 33 FCR 70, 73 (Hill J), quoted in Howell above n 8, 40.

empirical bankruptcy research, and to contribute to wider debates over the effectiveness of one-off debt discharge as a remedy for financial distress.

B *Methodology*

1 *Personal Insolvency Survey*

The present study draws on a wide-ranging survey of current and former Australian personal insolvents, conducted in 2015. The survey was conducted online, with the assistance of a specialist research company, Pureprofile. This Sydney-based company draws its survey participants from a database of consumers located across Australia.[88] Conducting the survey using this method, the research team was able to reach people of various ages and backgrounds, in every state and territory in Australia. Importantly, this method enabled the research team to survey debtors whose bankruptcies had occurred some time ago, including many discharged or former bankrupts. The research team developed a survey containing 64 questions for current and former bankrupts,[89] regarding their age, gender, location and other characteristics; the causes of their financial problems; their understanding of bankruptcy; and their experience of the bankruptcy process.[90] It also included a series of questions regarding the impact of bankruptcy, including its impact on physical and mental health, relationships and family life, financial management, ability to meet day-to-day living expenses, careers, access to credit and general quality of life.[91] Respondents were also asked whether or not anyone had disapproved of them, or treated them differently, as a result of their bankruptcy. They were invited to provide further details in an open-ended

[88] Pureprofile pays these individuals for each survey completed. Payments are calculated according to the amount of time taken to complete a survey. Panellists were paid $1.50 to complete this survey.

[89] The survey included a separate set of questions for those respondents who were, or had previously been, party to a debt agreement governed by pt IX of the *Bankruptcy Act*.

[90] The questions drew on those asked in previous empirical research, including the CBP and Ryan's study published as *The Last Resort*. The questionnaire from the 2007 CBP is reproduced as an appendix to Robert M Lawless et al, 'Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors' (2008) 82 *American Bankruptcy Law Journal* 349, 399. Ryan's interview questions are included as an appendix to his monograph: Ryan, *The Last Resort*, above n 6, 265–83.

[91] The survey did not define 'ability to manage finances', 'ability to meet day-to-day expenses' or 'general quality of life'. Respondents were allowed to make their own interpretations of these phrases. In relation to each of these factors, respondents were asked to indicate whether bankruptcy had made things 'better' or 'worse'. Respondents were offered a third option: 'Neither — I haven't noticed any change'.

question at the end of the survey.[92] The survey was drafted and revised in consultation with a number of non-profit organisations and received ethics approval. It remained open for four weeks, and closed upon receipt of 400 complete responses.

A number of statistical tests were employed to analyse the survey data. Inferential statistical procedures were employed to test for differences between groups within the sample and to establish whether or not such differences were statistically significant.[93] Multiple regression techniques were employed to test the impact of a range of demographic characteristics (eg, age, income, gender, marital status and education level) on respondents' attitudes towards, and experiences of, bankruptcy.[94] Multi-dimensional analysis was employed to simplify the data. Primarily this took the form of factor analysis, whereby correlations between groups of variables were identified on the assumption that these were all influenced by a single 'latent' or hidden variable. It became clear, for example, that certain respondents experienced a combination or cluster of health-related issues at the time they decided to go bankrupt, including physical health problems, mental health problems, problems in their relationships and creditor harassment. Since these experiences tended to correlate in the data, it was inferred that a general 'health factor' was the latent driver of all four. This inference led to the creation of a scale, described as the 'Health Issues Scale'. This scale indicated the extent to which an individual experienced all four issues in combination, with a higher number indicating a higher incidence of physical and mental health issues, relationship issues and creditor harassment. This process also identified another cluster of experiences, typified by access to information or support, including access to legal advice and financial counselling, knowledge of the process for obtaining waiver of a debt, and the capacity to raise $2000 to cover emergency expenses. This scale was termed the 'Advice Issues Scale', with a higher number indicating greater access to legal advice and financial counselling, a greater capacity to raise money, and greater knowledge of alternatives to bankruptcy, such as

[92] This final question read: 'Please add any other information you would like to share regarding your experience of bankruptcy'.

[93] These groups included men and women; people living in metropolitan, rural and regional areas; people with and without children; and people who selected 'loss of my job', 'excessive use of credit' or 'relationship breakdown' among the 'top four' causes of their problems. These three causes were chosen for close analysis because they are the three causes most commonly cited by debtors filing for non-business related bankruptcy in Australia: AFSA, *Causes: Non-Business Related*, above n 2.

[94] Regression enabled the effect of explanatory variables of particular interest (such as age, gender and location) to be tested in the presence of all other possible explanatory variables.

waiver of debts. A further scale, the 'Responsibility Issues Scale', identified a correlation between respondents' belief that their bankruptcy was their own choice and their belief that they understood the consequences of this choice. A higher number on this scale indicated a greater sense that going bankrupt was a personal choice, informed by a clear understanding of the consequences.

2 *Survey of Financial Counsellors and Consumer Solicitors*

In 2015, the research team also conducted an online survey of consumer solicitors and financial counsellors, using the SurveyMonkey platform. Devised in consultation with non-profit organisations, this survey contained 15 questions and began by asking advocates to state their occupation and provide some basic demographic information about their clients. It asked the advocates to nominate the factors that most commonly led their clients to consider declaring bankruptcy. It asked about clients' attitudes regarding their financial problems and their knowledge of the options available to them to resolve these problems. The survey also asked advocates about the impact of bankruptcy and the circumstances in which they might recommend bankruptcy to their clients. The survey concluded by providing a space for advocates to record additional comments and reflections. After obtaining ethics approval, the research team circulated a Plain Language Statement and a link to the online survey to a number of Australian non-profit organisations, with a request that they forward both to their members and employees. These organisations sent the survey to 945 financial counsellors and 28 solicitors across Australia. The survey was open for approximately five weeks. It attracted 155 partial or complete responses, representing a response rate of approximately 16 per cent.

IV Personal Insolvency Survey

A *The Sample*

Of the 400 people who completed the personal insolvency survey, 167[95] were current or former bankrupts.[96] Of these 167 respondents, 95 (57 per cent)

[95] The remaining 233 indicated that they had been, or were, at the time of completing the survey, party to a debt agreement: see above n 89. These respondents have been excluded from the sample, for the purposes of this analysis, as they are the subject of a separate study by the authors.

[96] The survey was aimed at current bankrupts and people whose bankruptcies had occurred within the preceding five years. In practice, the sample included a small number of people

were female and 72 (43 per cent) were male. Since the Australian bankrupt population is disproportionately male,[97] this meant that the sample contained a higher proportion of female respondents than would have been expected. To address this, the sample was weighted to approximate the proportions of men and women in the Australian bankrupt population.[98] The data cited in this article is derived from this weighted sample. Respondents were spread across Australia. While 81 per cent resided in the three most populous States on the eastern seaboard, the sample also included a significant proportion (19 per cent) residing in the less populous States of Western Australia, South Australia and Tasmania. Measured according to the Australian Bureau of Statistics' ('ABS') Socio-Economic Indexes for Areas ('SEIFA'),[99] the respondents were predominantly of medium socio-economic status ('SES').[100] A substantial majority (69 per cent) of respondents resided in major cities, with 19 per cent residing in 'inner regional' areas, 10 per cent in 'outer regional' areas and only two per cent residing in 'remote' or 'very remote' areas.[101] Respondents were 45.6 years old, on average. Only two per cent were under

whose bankruptcies occurred more than five years prior to their completion of the survey. In their answers to the open-ended question at the end of the survey, some respondents indicated that their bankruptcies had taken place more than five years previously.

97 AFSA reports that men made up 57 per cent of bankrupts in 2011, 58 per cent in 2009 and 58 per cent in 2007: ITSA, 'Profiles of Debtors 2011' (Report, 2012) 8 <https://www.afsa.gov.au/statistics/profiles-debtors>. It also states that, '[s]ince 2008, at least 56% of all insolvent debtors [have been] male': AFSA, *All Debtors* (2016) <https://www.afsa.gov.au/statistics/all-debtors>.

98 The data was weighted so that 57 per cent of respondents in the sample were male and 43 per cent were female, approximating the gender composition of the Australian bankrupt population: see ITSA, 'Profiles of Debtors 2011', above n 97; AFSA, *All Debtors*, above n 97.

99 Detailed information about these indexes is available at Australian Bureau of Statistics, 'Census of Population and Housing: Socio-Economic Indexes for Areas (SEIFA)' (ABS Catalogue No 2033.0.55.001, 28 March 2013) <http://www.abs.gov.au/websitedbs/censushome.nsf/home/seifa>.

100 For the purposes of this study, 'medium' SES refers to the middle 50 percent — from percentile 26 to 75 — of the relevant SEIFA index. When measured according to the SEIFA Index of Advantage and Disadvantage, 51 per cent of those in the sample were of medium SES. Measured according to the SEIFA Index of Disadvantage, 52 per cent were of medium SES. Measured according to the SEIFA Index of Education and Occupation, 48 per cent were of medium SES. Measured according to the SEIFA Index of Economic Resources, 40 per cent were of medium SES.

101 These figures are based on respondents' postcodes, and are categorised according to the Australian Statistical Geography Standard Remoteness Structure, developed by the ABS: ABS, 'Australian Statistical Geography Standard (ASGS) Volume 5 — Remoteness Areas, July 2011' (ABS Catalogue No 1270.0.55.005, 31 January 2013) <http://www.abs.gov.au/websitedbs/d3310114.nsf/home/remoteness+structure#Anchor2a>.

30 years old, while 30 per cent were in their thirties, 32 per cent were in their forties, 24 per cent were in their fifties and 12 per cent were aged 60 or over.[102] When asked about their family situation, a significant minority (46 per cent) described themselves as being in a 'couple with children', while 17 per cent were in a 'couple without children', 15 per cent were 'single with children', and 22 per cent were 'single without children'.[103]

B *The Impact of Bankruptcy*

On the whole, respondents reported that bankruptcy coincided with distinct improvements in many aspects of their lives. A majority (55 per cent) said that since going bankrupt, their physical health had improved. Thirty-one per cent reported no change, while only 15 per cent reported that their physical health had deteriorated.[104] A larger majority (61 per cent) reported an improvement in their mental health since going bankrupt. Twenty-one per cent reported no change, while 18 per cent said their mental health had deteriorated. Similarly, 57 per cent of respondents said that their relationships and family life had improved since their bankruptcies. Even more striking were the reported improvements in debtors' financial situations. Seventy-seven per cent reported that their ability to manage their finances had improved, with 14 per cent reporting no change and only 9 per cent reporting that their financial management had worsened. Seventy-four per cent said that their ability to manage their day-to-day living expenses had improved, with 15 per cent reporting no change and 12 per cent reporting that their situations in this respect had worsened. Respondents were less positive about their post-bankruptcy careers. Only 39 per cent said that their careers had improved after bankruptcy. Forty per cent noticed no change, while 21 per

102 In the general population of Australian bankrupts, in 2014, 13 per cent of bankrupts were aged under 30, 22 per cent were aged 30 to 39, 29 per cent were aged 40 to 49, 19 per cent were aged 50 to 59 and 14 per cent were aged 60 and over: see AFSA, *Bankrupts Compared to the Population in 2014* (2016) <https://www.afsa.gov.au/statistics/bankrupts-0>.

103 In this respect, the sample group differed from the general population of Australian bankrupts, as described in ITSA, 'Profiles of Debtors', above n 97. According to this document, published in 2011, single people with no 'dependants' make up 40 per cent of the bankrupt population, while couples with dependants make up only 27 per cent: at 26. The two groups are not directly comparable, however, since the sample discussed in this study includes people at various stages in bankruptcy and many discharged bankrupts, while AFSA's data only captures the family status of debtors at the commencement of the bankruptcy period. It is likely that some of the younger debtors classified by AFSA as 'single' go on to establish families either during, or shortly after, their bankruptcies.

104 All percentages have been rounded to the nearest whole number.

cent said that their careers had declined since bankruptcy. Respondents were also less positive about the effect that bankruptcy had had on their access to credit. Forty-two per cent reported that their access to credit had worsened since bankruptcy, while 29 per cent reported no change. Only 29 per cent said that their access to credit had improved since declaring bankruptcy. Overall, however, a significant majority (70 per cent) reported that their 'general quality of life' had improved since declaring bankruptcy. Nineteen per cent reported no change and only 11 per cent reported that their general quality of life had worsened. Moreover, relatively few respondents reported experiencing stigma or discrimination as a result of their bankruptcies. When asked whether anyone had disapproved of them, or treated them differently, as a consequence of their bankruptcy, only 22 per cent answered in the affirmative.[105]

The open-ended question at the end of the survey elicited a more nuanced but still generally positive response.[106] Several respondents were emphatic in describing the beneficial impact of bankruptcy. 'I believe that bankruptcy saved my life,' stated one. Others stated: 'It was a god sen[d]'; 'I feel I have been given my life back'; 'It really helped me get out of a bad situation and improved my life'. One described bankruptcy as 'the best way to financial freedom and independence', while another called it 'life changing'. Many respondents said that the process of declaring bankruptcy compared favourably with their previous experiences of struggling with unsustainable debt. 'I found it easy and [it] has made my life so much better', one observed. Another said, '[a]fter all the stress regarding the decision to file for bankruptcy, the process was actually pain free, which enabled me to move on with my life.' 'It was a good process overall,' another stated. Some said that going bankrupt had prompted them to make permanent, positive changes in their financial lives. 'It was a good lesson for us on how to better manage our money,' one wrote. Another wrote that 'since becoming bankrupt I have not had or tried to get any store or credit cards. I am now … very careful with my money.' 'The pressure left,' one recounted, 'I could answer the phone again without breaking out in a sweat. I could start living my life again. Show my kids the right way to live and budget.'

105 Respondents were asked: 'Do you feel that anyone has disapproved of you, or treated you differently, because you have been bankrupt?' Seventy-eight per cent responded: 'no'; while 22 responded: 'yes'.

106 Seventy-two respondents (43 per cent) left additional comments. This figure does not include the 20 respondents who left responses such as 'no', 'no comment' or 'nothing to add'.

By contrast, some other respondents used the open-ended question to outline the negative impact that bankruptcy had had upon their lives. Many talked about the emotional distress they experienced upon declaring bankruptcy. One wrote, '[t]ry to avoid it if possible[;] it causes a lot of pain'. 'It really wrecked everything,' wrote one respondent, while another described bankruptcy as a 'degrading experience … embarrassing.' Several respondents described experiences of stigmatisation: 'My situation was completely out of my hands and yet I felt punished'; 'I felt that I was a lower class of life, creditors still rang and harassed me to pay, up to six months later.' One expressed the view that bankruptcy 'has a bit of a stigma attached to it' while another observed that 'it is not nice being labelled as a bankrupt'. Several respondents said that they had kept their bankruptcy a secret: 'I never told anyone about it, I was so humiliated,' one admitted. Another wrote that 'looking back … it was the best thing for us at the time but [I] have always felt horrible about it and embarrassed and have not really told anyone about this.' Some were highly specific about the immediate, negative effects that bankruptcy had upon their lives and the lives of their dependants. One wrote that after losing her home, she was forced to move with her young son 'into a boarding house then a share house with some druggies before finally finding a place to rent.' Others described bankruptcy as combining many forms of hardship: 'A tough time emotionally, financially and for family relationships', reflected one.

Some respondents were ambivalent about the impact bankruptcy had had upon their lives. 'It should be considered only the very last way out,' one said, 'because it does not solve all your problems.' One wrote that while it was 'very scary … I am better health-wise for it.' Another wrote:

> My experience since bankruptcy has been two-fold: one, I had to start a new and better life and survived thanks to Centrelink[107] and [the] kindness of people (not thanks to old friends and relatives), two, I've battled health and physical problems ever since …

Similarly, another respondent confessed, 'I felt disappointed in myself, shame for getting myself into that situation … not being able to see the end of the tunnel', but also noted that 'now because I did that I find I struggle a little but at least I can pay my bills and put food on my table.' Another wrote, 'I think I

[107] Centrelink is an agency of the Australian Commonwealth government. It is responsible for the administration of the social security system.

went through a depression after I am bankrupt but I slowly climb up and manage my finance much better [sic].'

Several respondents suggested that, at the time they made their decision, they did not understand the extent to which it would affect their lives in the long term. 'I should have gotten advice', one stated. 'Bankruptcy makes things better for you straight away', another wrote, 'but it makes things worse for the future.' Some emphasised the tangible and enduring impact that bankruptcy had had upon their finances and access to credit. One wrote, 'since I went bankrupt … I … have not really use[d] credit'. Others referred specifically to the impact of a previous bankruptcy on their efforts to purchase a home. 'I wish I would have thought … ahead, as now I'm trying to save to buy a house, and this will be on my record forever,' one stated. Another said that a former bankruptcy was making it impossible to buy a home. The 'mortgage supplier just would not do anything for us', this respondent wrote. Another said, 'I … feel that it is no longer possible for me to ever consider owning a property now with the inability to borrow sufficiently to obtain a property anywhere in Australia.' Others alluded to the lasting psychological and social effects of bankruptcy. One described how her family relationships were still being affected by a previous bankruptcy. 'Our daughter found out about this recently', she wrote, 'and I hated that she knew about it and felt it wasn't a good example and felt embarrassed.'

C *Cohorts within the Sample*

1 *Demographic Factors*

Statistical analysis[108] revealed a high degree of consistency in debtors' reported outcomes across demographic groups. Women were more likely than men to report an improvement in their mental health after declaring bankruptcy,[109] but in all other respects, there were no statistically significant differences in the impacts reported by male and female respondents. Similarly, there were relatively few differences between age groups. Compared with older respondents, those under 40 were less likely to report an improvement in their

[108] This analysis did not include the longer responses to the open-ended questions.

[109] Seventy-three per cent of women reported that their mental health was better after bankruptcy, compared with 53 per cent of men. This difference was statistically significant at the 0.01 level. Similarly, only 10 per cent of women said that their mental health had become 'worse', compared with 24 per cent of men. This difference was statistically significant at the 0.05 level. Henceforth, one asterisk (*) indicates significance at the 0.05 level, while two asterisks (**) indicate significance at the 0.01 level.

capacity to manage their finances, or meet their day-to-day living expenses, after bankruptcy.[110] In all other respects, however, there were no statistically significant differences between the impacts reported by younger and older respondents. A comparison of low SES and high SES respondents also showed no statistically significant differences in outcomes.[111] Comparisons based on geographic location revealed slightly more pronounced differences. Metropolitan respondents were more likely than their rural or regional counterparts to report that their careers, access to credit, relationships and family life had become worse after bankruptcy.[112] Statistical analysis also revealed some differences in impacts and outcomes, according to respondents' education levels. Compared with early school leavers,[113] those with tertiary degrees were more likely to report that their mental health, access to credit and general quality of life had worsened since declaring bankruptcy.[114] Overall, however, these groups were remarkably consistent in their responses to questions about life after bankruptcy. Comparisons of debtors according to family composition,[115] native language[116] and occupation[117] also revealed little variation in reported outcomes.

110 Sixty-one per cent of people under 40 reported that their ability to manage their finances was better after bankruptcy, compared with 88 per cent of people in their forties (**) and 82 per cent of people aged 50 and over (*). Fifty-eight per cent of people under 40 reported that their ability to meet their day-to-day living expenses improved after bankruptcy, compared with 88 per cent of people in their forties (**) and 74 per cent of people aged 50 and over (not statistically significant).

111 Respondents were deemed 'low SES' or 'high SES' based on their score on the SEIFA Index of Education and Occupation. For these purposes, 'low SES' includes those in the lowest quartile (ie, the lowest 25 percentiles), according to the Index, while 'high SES' includes those in the top quartile (the highest 25 percentiles).

112 Sixteen per cent of metropolitan respondents said that their relationships and family life were worse, compared with three per cent of rural and regional respondents (*). Twenty-seven per cent of metropolitan respondents said that their careers were worse, compared with 10 per cent of rural and regional respondents (*). Forty-seven per cent of metropolitan respondents said that their access to credit was worse, compared with 30 per cent of rural and regional respondents (*).

113 This group includes those respondents who have not completed Year 12, the final year of high school in Australia.

114 Twenty-four per cent of degree holders said that their mental health had become worse, compared with eight per cent of early school leavers (*). Sixty per cent of degree holders said their access to credit had become worse, compared with 32 per cent of early school leavers (*). Twenty-one per cent of degree holders said that their general quality of life had become worse, compared with two per cent of early school leavers (**).

115 Various tests were run in an attempt to determine whether or not having children affected respondents' outcomes. In relation to the self-reported impacts of bankruptcy, there were no statistically significant differences between those respondents who had children and those

2 *Time Since Bankruptcy*

A comparison of current and discharged debtors revealed more significant differences. Demographically, respondents in their first, second or third year of bankruptcy[118] differed substantially from those who had already received a discharge. Those who were discharged were significantly older than those who were still bankrupt[119] and were much more likely to describe themselves as 'retired'.[120] They were more likely to live in a rural or regional area,[121] were far less likely to hold a postgraduate degree,[122] and were comparatively disadvantaged, when measured according to the SEIFA Index of Education and Occupation.[123] Despite this, the discharged bankrupts were far more likely to report positive outcomes from bankruptcy. They were much more likely to

who had none; between members of 'couple' relationships with and those without children; or between single people with children and those without children. One slight difference emerged when single mothers' outcomes were compared with those of single fathers: single fathers were more likely to report worse physical health after bankruptcy (25 per cent of single fathers, compared with zero per cent of single mothers) (*). In all other respects, however, there were no statistically significant differences in the impacts reported by single mothers and single fathers. While some of these results can be attributed to the relatively small sample size, they are consistent with the remarkable consistency in outcomes reported by respondents of varying demographic characteristics.

116 There were no statistically significant differences between the impacts reported by those who spoke only English and those who spoke a language other than English at home.

117 There were no statistically significant differences between impacts reported by those in professional occupations and those in blue collar occupations, except that professionals were more likely to report that their general quality of life was worse (21 per cent of professionals, compared with zero per cent of blue collar respondents) (*).

118 Seven per cent of respondents were in their first year of bankruptcy. Six per cent were in their second year and seven per cent were in their third year. Sixty-five per cent described themselves as discharged. Five per cent said that they did not know how long they had been bankrupt. A further 10 per cent said that they had been bankrupt for more than three years. Bankruptcy ends automatically three years after the lodgement of the debtor's statement of affairs: *Bankruptcy Act* s 149. While it is possible that these respondents delayed submitting a statement of affairs, or experienced a delay in obtaining discharge for some other reason, it is also possible that some misunderstood the question and had, in fact, received a discharge.

119 The current bankrupts were, on average, 41 years old, whereas the discharged bankrupts' average age was 48 (**).

120 Four per cent of current bankrupts were retired, compared with 18 per cent of discharged bankrupts (*).

121 Fifteen per cent of current bankrupts lived in a rural or regional area, compared with 36 per cent of discharged bankrupts (*).

122 Nineteen per cent of current bankrupts held a postgraduate degree, compared with five per cent of discharged bankrupts (*).

123 Current bankrupts were, on average, in the 61st percentile on the SEIFA Index of Education and Occupation, whereas discharged bankrupts were in the 43rd percentile (**).

report an improved capacity to manage their finances and meet their day-to-day living expenses,[124] as well as improvements in their careers[125] and in their access to credit.[126] These results contrasted starkly with the views of those respondents who were still in bankruptcy. Such respondents were much more likely to say that their access to credit, careers, and their ability to manage their finances and meet day-to-day living expenses had all grown worse since declaring bankruptcy.[127] While there was little difference between the two groups, in relation to mental or physical health, the discharged bankrupts were also more likely to report an improvement in their 'general quality of life' since declaring bankruptcy.[128]

3 *Causes of Debtors' Financial Problems*

(a) Job Loss

Other differences emerged when respondents were sorted into cohorts based upon the reasons they gave for their financial problems.[129] The most common

[124] Eighty-eight per cent of discharged bankrupts reported that their ability to manage their finances had become better since bankruptcy, compared with 61 per cent of current bankrupts (**). Eighty-one per cent reported an improvement in their ability to meet their day-to-day living expenses, compared with 54 per cent of current bankrupts (**).

[125] Forty-six per cent of discharged bankrupts said that their careers had become better since bankruptcy, compared with 21 per cent of current bankrupts (*).

[126] Thirty-seven per cent of discharged bankrupts reported that their access to credit had become better, compared with nine per cent of current bankrupts (**).

[127] Twenty-seven per cent of current bankrupts said that since declaring bankruptcy, their ability to manage their finances had grown worse (compared with two per cent of discharged bankrupts) (**); 37 per cent said that their careers were worse (compared with 17 per cent of discharged bankrupts) (*); and 61 per cent said that their access to credit had become worse (compared with 36 per cent of discharged bankrupts) (*). Current bankrupts were also more likely to say that their ability to meet their day-to-day living expenses had grown worse (17 per cent, compared with 10 per cent of discharged bankrupts), and that their relationships and family life had grown worse (16 per cent, compared with nine per cent of discharged bankrupts), but these differences were not statistically significant.

[128] Sixty-two per cent of current bankrupts said that their 'general quality of life' had become better since declaring bankruptcy, compared with 76 per cent of discharged bankrupts. Nineteen per cent of current bankrupts said that their 'general quality of life' had grown worse since declaring bankruptcy, compared with eight per cent of discharged bankrupts. These differences were not statistically significant.

[129] There was inevitably some overlap between these cohorts, as respondents were able to nominate up to 14 causes from a list provided (and were also invited to provide details of other causes not included in the list). Of the 121 respondents who nominated 'loss of my job', 'relationship breakdown' *or* 'excessive use of credit' among the top four causes of their financial problems, only three respondents included all three causes in their top four. Of the 63 who included 'job loss' in their top four options, 17 (27 per cent) also included 'excessive use

reason people cited was the loss of a job (selected by 29 per cent of respondents).[130] People who attributed their problems to job loss represented a significant cohort within the sample, almost twice the size of the next-largest cohort (with those who selected 'excessive use of credit' making up 15 per cent). This 'job loss' cohort revealed some distinct characteristics, being younger[131] and more highly educated[132] than those who selected other causes. In other respects, however, this cohort reflected the socio-economic background of the overall sample, and the Australian population more generally.[133] Even so, significant differences emerged when these respondents were asked about their source of income at the time they went bankrupt. The people in this cohort were more likely to have been reliant on savings or a redundancy for their main income at the time of bankruptcy; unsurprisingly, they were

of credit' in their top four. Of those who listed 'job loss' in their top four, 12 (19 per cent) also included 'relationship breakdown' in their top four. This modest degree of overlap does not affect the validity of the statistical analysis.

130 In this respect, the results of this study are consistent with several US empirical studies that cite unemployment (or 'job problems' more broadly) as the most significant cause of bankruptcy: see, eg, Sullivan, Warren and Westbrook, *Fragile*, above n 29, 78; Porter and Thorne, 'The Failure of Bankruptcy's Fresh Start', above n 7, 99.

131 The average age of this cohort was 41.3, compared with an average age of 47.3 among those who selected another primary cause (**). The average age of all respondents was 43.4.

132 Only 10 per cent of this cohort left school before completing Year 12, compared with 31 per cent of those who selected another primary cause (**). Thirty-one per cent held at least one tertiary degree, compared with 24 per cent of those who selected another cause; this difference was not statistically significant.

133 Compared with those who nominated other reasons for their financial problems, the members of the 'job loss' cohort were of a slightly higher SES; however, these differences were not statistically significant. On average, people in this cohort ranked in the 53rd percentile, according to the SEIFA Index of Education and Occupation (while those who selected other causes averaged in the 45th percentile); the 49th percentile, according to the SEIFA Index of Advantage and Disadvantage (compared with the 44th percentile for those who selected other causes); and the 43rd percentile according to the SEIFA Index of Economic Resources (compared with the 41st for the others). According to the SEIFA Index of Disadvantage, this cohort was also slightly advantaged, but both cohorts ranked in the 45th percentile. As noted above, the top quartile includes those with the highest SES, while the bottom quartile includes those with the lowest SES: see above n 111. The people in this cohort were more highly concentrated in the two middle quartiles than those who selected other causes, meaning that they were more consistently of 'medium SES', with fewer being classified as 'low SES' or 'high SES'. When measured according to the SEIFA Index of Advantage and Disadvantage, 67 per cent of this cohort were classified as being of 'medium' SES, compared with 44.9 per cent of those who selected another primary cause of their financial problems (**). Similarly, measured according to the SEIFA Index of Disadvantage, 61.1 per cent were of 'medium' SES, compared with 48.9 per cent of the other cohort (though this difference was not statistically significant). Conversely, when measured according to the SEIFA Index of Economic Resources, only 28.6 per cent were of 'medium' SES, compared with 45.1 per cent of the other cohort (*).

also less likely to have been earning wages at the time.[134] This cohort was also distinctive in reporting worse outcomes, overall, than those who selected other causes of their financial problems. People in this 'job loss' cohort were less likely to report an improvement in their capacity to meet day-to-day living expenses after declaring bankruptcy.[135] They were more likely to report a deterioration in their mental health,[136] relationships and family life[137] and capacity to manage their finances.[138] These poor outcomes are particularly striking, given that this cohort scored more highly than the overall sample on the Advice Issues Scale, meaning that it had higher-than-average access to advice and support when deciding whether or not to declare bankruptcy.[139] People in this cohort also scored lower on the Responsibility Issues Scale. Despite their above-average access to advice and support, the people in this cohort felt that they had less control over their decision to go bankrupt.[140] This sense of pessimism was reflected in this cohort's stated motives for declaring bankruptcy. Like most respondents in the sample, a significant majority of the 'job loss' cohort nominated debt relief as a significant reason for their decision to go bankrupt.[141] However, compared with those who

[134] Eleven per cent said that their main source of income was a redundancy payment, compared with one per cent of those who cited other causes (**). Sixteen per cent were reliant on savings, compared with five per cent of those who nominated other causes (*). Thirty-three per cent of this cohort reported that, at the time of bankruptcy, their main source of income was a Centrelink benefit, compared with 32 per cent of those citing other causes, though this difference was not statistically significant. Twenty-one per cent said that their main source of income was a wage, compared with 38 per cent of those who cited other causes (*).

[135] Sixty-three per cent reported an improvement in their capacity to meet day-to-day living expenses, compared with 78 per cent of people who nominated another primary cause (*).

[136] Twenty-eight per cent said that their mental health had grown worse, compared with 13 per cent of those who selected another primary cause (*).

[137] Twenty per cent said that their relationships and family life had become worse, compared with eight per cent of those who selected another primary cause (*).

[138] Twenty per cent said that their ability to manage their finances had become worse, compared with five per cent of those who selected another primary cause (**).

[139] Respondents in this cohort scored a mean rank of 2.9 on the Advice Issues Scale, compared with a mean rank of 2.5 for those who selected another primary cause (*), and 2.6 for the overall sample. For a discussion of these scales and the way in which they have been calculated, see above Part III(B)(1).

[140] Respondents in this cohort scored a mean rank of 3.7 on the Responsibility Issues Scale, compared with a mean rank of 4.2 for those who selected other causes (**), and 4.0 for the sample generally.

[141] Eighty-one per cent of the 'job loss' cohort cited getting rid of debt as a reason for declaring bankruptcy, compared with 79 per cent of those who selected other causes and 79 per cent of the overall sample. This difference was not statistically significant.

attributed their financial problems to other causes, people in this 'job loss' cohort were much less likely to say that they expected bankruptcy to improve their health, or allow them to 'make a fresh start'.[142]

A similar pattern emerged when respondents were grouped according to their 'top four' financial problems. Thirty-eight per cent of the sample listed job loss as one of the top four causes of their financial problems. Like those who selected job loss as the single most important cause, these people were younger, on average, than other respondents in the sample,[143] and more highly educated.[144] In other respects, however, they were broadly similar in socio-economic terms to those in the rest of the sample.[145] As with the previous cohort, the people in this cohort were distinctive in reporting a higher reliance on savings, and less reliance on wages, at the time of bankruptcy. They were also much more likely to report that they relied on Centrelink benefits at the time of bankruptcy.[146] Like those who nominated 'job loss' as

[142] Only 38 per cent of this cohort cited 'better mental health' as a reason, compared with 59 per cent of those who selected another primary cause (*). Twenty-two per cent cited 'better mental health', compared with 38 per cent of the other cohort (*). Fifty-two per cent said that they went bankrupt to 'put the past behind me and make a fresh start', compared with 72 per cent of the other cohort (*).

[143] The average age of people in this cohort was 42.4, compared with 47.5 for the overall sample (**).

[144] Only 16 per cent of this cohort left school before completing Year 12, compared with 31 per cent of the overall sample (*). As before, there was no statistically significant difference in rates of completion of tertiary study.

[145] The slight socio-economic advantage of the 'job loss top four' cohort was less pronounced than that of the 'job loss primary cause' cohort. They were, on average, in the 51st percentile according to the SEIFA Index of Education and Occupation (while those who did not include 'job loss' in their top four causes were, on average, in the 45th percentile) and in the 48th percentile according to the SEIFA Index of Advantage and Disadvantage (while those who did not select 'job loss' in their top four ranked on average in the 44th percentile). However, these differences were not statistically significant. The other two Indexes showed negligible differences between the two cohorts: both were in the 45th percentile, according to the SEIFA Index of Disadvantage, and in the 42nd percentile, according to the SEIFA Index of Economic Resources. Like the 'job loss primary cause' cohort, this cohort was highly concentrated in the middle of the socio-economic spectrum. When measured according to the SEIFA Index of Advantage and Disadvantage, 64.9 per cent of this cohort were classified as being of 'medium' SES compared with 43 per cent of those who did not select job loss as one of their 'top four' (**). Similarly, measured according to the SEIFA Index of Disadvantage, 62.5 per cent were of 'medium' SES, compared with 46.3 per cent of the other cohort (*).

[146] Forty-three per cent of this cohort reported that, at the time of bankruptcy, their main source of income was a Centrelink benefit, compared with 26 per cent of those citing other causes (*). Eighteen per cent said that their main source of income was a wage, compared with 42 per cent of those who cited other causes (**). Eight per cent said that their main source of income was a redundancy payment, compared with one per cent of those who cited other

the primary cause of their financial problems, this cohort reported fewer positive outcomes from the bankruptcy process than those who nominated other causes.[147] Compared with others, people in this cohort were more likely to report that their mental health and their ability to manage their finances had become worse after bankruptcy.[148] Compared with others, they scored more highly on the Advice Issues Scale, suggesting higher than average access to advice and support;[149] but again, scored lower on the Responsibility Issues Scale, suggesting less sense of control over the bankruptcy process and its outcomes.[150] Like those who cited 'job loss' as their primary cause, this cohort was also less optimistic about the likely effects of bankruptcy. Compared with others in the sample, the people in this cohort were less likely to say that they expected bankruptcy to result in benefits such as improved health or a 'fresh start'.[151]

(b) *Excessive Use of Credit*

The data revealed some important differences between those respondents who attributed their problems to 'job loss' and those who attributed their problems, at least in part, to 'excessive use of credit'. Thirty-six per cent of respondents cited excessive use of credit as one of the top four causes of their

causes (**). Twelve per cent nominated savings as their main source of income, compared with five per cent of those who cited other causes, though this difference was not statistically significant.

147 The people in this cohort were less likely than others in the sample to report that their careers, access to credit, general quality of life, mental health, ability to manage their finances, or ability to meet day-to-day living expenses were 'better' after bankruptcy; however, these differences were not statistically significant.

148 Twenty-six per cent said that their mental health had grown worse, compared with 13 per cent of those who did not select job loss as one of their 'top four' causes (*). Fifteen per cent said that their ability to manage their finances had become worse, compared with five per cent of those who selected other causes (*).

149 Respondents in this cohort scored a mean rank of 2.8 on the Advice Issues Scale, compared with a mean rank of 2.5 for those who selected another primary cause (*), and 2.6 for the overall sample.

150 Respondents in this cohort scored a mean rank of 3.8 on the Responsibility Issues Scale, compared with a mean rank of 4.2 for those who selected other causes (**), and 4.0 for the sample generally.

151 Twenty-four per cent of this cohort cited 'better physical health' as a reason for declaring bankruptcy, compared with 39 per cent of those who did not select 'job loss' as one of their 'top four' causes (*). Fifty-seven per cent said that they expected to 'put the past behind [them] and make a fresh start', compared with 72 per cent of the other cohort (*). Forty-four per cent said that they hoped that going bankrupt would improve their mental health, compared with 59 per cent of the other cohort; however, this difference was not statistically significant.

financial problems. Unlike the 'job loss top four' cohort, these people were on average older than those who selected other causes[152] and were more likely to hold a postgraduate degree, but in general, they were broadly comparable to others in the sample.[153] In some important respects, however, the members of this cohort differed significantly from the others in the sample. They were far less likely to report that they were unemployed at the time they went bankrupt.[154] They were more likely to nominate a wage as their main source of income, at the time of bankruptcy,[155] and much less likely to report that they relied on Centrelink payments at the time of bankruptcy.[156] Compared with other respondents, the people in this cohort were much more likely to attribute their bankruptcies to their own financial mismanagement, rather than misfortunes such as physical or mental health problems.[157] They were also much more likely to report a degree of optimism about the bankruptcy process, saying that they went bankrupt in order to 'put the past behind [them] and make a fresh start'.[158] On the whole, the people in this cohort also reported much better outcomes. They were more likely to report that their ability to manage their finances and day-to-day living expenses improved after

152 Those who selected 'excessive use of credit' as one of their top four causes were, on average, 48.3 years old, compared with 44.1 years for those who selected other causes (*).

153 Fifteen per cent held a postgraduate degree, compared with four per cent of those who selected other causes (*). There were no statistically significant socio-economic differences between this cohort and the others in the sample, measured according to the four SEIFA Indexes.

154 Only nine per cent of the 'credit top four' cohort were unemployed, compared with 26 per cent of those who selected other causes (*).

155 Fifty per cent said that, at the time of bankruptcy, their main source of income was a wage, compared with 23 per cent of those who cited other factors as the causes of their bankruptcy (**).

156 Twenty-one per cent said that, at the time of their bankruptcy, their main source of income was a Centrelink payment, compared with 38 per cent of those who cited other causes (*).

157 Fifty-three per cent selected 'poor financial management' as another cause of their financial problems, compared with 18 per cent of those who selected other causes (**). Only seven per cent nominated physical illness, compared with 29 per cent of the other cohort (**), and 12 per cent selected mental illness, compared with 27 per cent of the other cohort (*).

158 Ninety-two per cent of the 'credit top four' cohort said they went bankrupt to 'get rid of my debts', compared with 72 per cent of those who selected other causes within their top four (**). Seventy-three per cent said that they went bankrupt so that 'creditors would stop harassing me', compared with 55 per cent of the other cohort (*). Eighty-three per cent said that they did it to 'put the past behind [them] and make a fresh start', compared with 57 per cent of the others (**).

declaring bankruptcy.[159] They were also more likely to report an improvement in their 'general quality of life'.[160]

(c) Relationship Breakdown

Those who selected 'relationship breakdown' among their top four causes also reported better outcomes than those who linked their problems to job loss. Twenty per cent of the sample included relationship breakdown as one of the top four causes of their financial problems.[161] The people in this cohort were far more likely to be divorced or separated than those who selected other causes.[162] They were also more likely to have children.[163] They were more likely to hold a postgraduate degree, though in other respects, their educational background was broadly consistent with that of the sample more generally.[164] The people in this cohort were also distinctive in their experiences of bankruptcy. They scored more highly on the Health Issues Scale than others in the sample, meaning that they were more likely to have experienced mental or physical health problems, creditor harassment or relationship

[159] Eighty-seven per cent said that their ability to manage their finances improved, compared with 72 per cent of those who selected other causes (*). Eighty per cent said that their ability to manage their day-to-day living expenses improved, compared with 70 per cent of those who selected other causes, though this difference was not statistically significant. Only one per cent said that their ability to manage their finances had become worse, compared with 13 per cent of those who selected other causes (**). Five per cent said that their ability to manage their day-to-day living expenses had become worse, compared with 16 per cent of those who selected other causes (*).

[160] Seventy-six per cent said that their general quality of life improved after bankruptcy, compared with 67 per cent of those who selected other causes, though this difference was not statistically significant. Only four per cent said that their general quality of life worsened, compared with 14 per cent of those who selected other causes (*).

[161] Women were more likely than men to cite relationship breakdown as the single most significant cause of their financial problems. Eleven per cent of female respondents nominated 'relationship breakdown' as the top cause of their financial problems, compared with only three per cent of male respondents (*). The genders were more evenly represented among those who selected 'relationship breakdown' as one of the top four causes of their financial problems. Fifty-five per cent of these respondents were male and 45 per cent were female.

[162] Forty per cent of this cohort was divorced or separated, compared with 13 per cent of those who selected other causes within their top four (**).

[163] Seventy-five per cent of this cohort was divorced or separated, compared with 57 per cent of those who selected other causes (*).

[164] Sixteen per cent of this cohort held a postgraduate degree, compared with six per cent of those who selected other causes (*).

problems in the lead up to their bankruptcies.[165] They were also more likely to include mental illness among the top four causes of their financial problems,[166] and less likely to attribute their problems to 'poor financial management'.[167] While not as optimistic as those in the 'excessive use of credit' cohort, the people in this cohort revealed that they had relatively high expectations upon declaring bankruptcy. Several stated that when they decided to go bankrupt, they hoped it would lead to a 'fresh start', and many more said that they hoped it would improve their mental health.[168] Despite this, people in this cohort were more likely to report that they actually experienced a decline in their mental health after bankruptcy.[169] They were also more likely to report that their relationships and family life, and their quality of life more generally, were worse after declaring bankruptcy.[170] Interestingly, this cohort did not differ from the rest of the sample in reported financial outcomes: that is, capacity to manage finances, meet daily expenses, and access credit.[171] Overall, however, this cohort reported less positive outcomes than those who attributed their problems to excessive use of credit.

165 Respondents in this cohort scored a mean rank of 3.9 on the Health Issues Scale, compared with a mean rank of 3.4 for those who selected other causes (**), and 3.5 for the overall sample.

166 Forty-six per cent of people in this cohort also nominated mental health as one of the top four causes of their financial problems, compared with 16 per cent of the other cohort (ie, those who did not include relationship breakdown among their top four) (**).

167 Fifteen per cent of people in this cohort also nominated poor financial management as one of the top four causes of their financial problems, compared with 35 per cent of those who selected other causes (*).

168 Seventy per cent of this cohort said that they hoped to achieve better mental health by declaring bankruptcy, compared with 49 per cent of those who did not cite relationship breakdown (*). Sixty-nine per cent said that they hoped bankruptcy would enable them to 'put the past behind [them] and make a fresh start', compared with 65 per cent of those who selected other causes. This difference was not statistically significant.

169 Thirty per cent of this cohort said that their mental health grew worse, compared with 14 per cent of those who did not cite relationship breakdown (*).

170 Twenty-four per cent of this cohort said that their relationships and family life were worse, compared with nine per cent of those who did not cite relationship breakdown (*). Nineteen per cent of this cohort said that their general quality of life was worse, compared with nine per cent of those who did not cite relationship breakdown, though this difference was not statistically significant.

171 There were no statistically significant differences between the 'relationship breakdown' cohort and those who selected other causes, according to these measures. Only 64 per cent of this cohort reported having a better capacity to meet day-to-day living expenses after bankruptcy, compared with 76 per cent of those who nominated other causes; however, this difference was not statistically significant.

(d) Summary

The following Tables summarise the positive and negative outcomes of bankruptcy, as reported by the survey respondents. These respondents are grouped according to the causes of their financial problems.[172]

[172] Table 1 reflects the extent to which respondents felt that these aspects of their lives had improved since bankruptcy; that is, the proportion of those surveyed who said that these aspects of their lives had become 'better'. Table 2 reflects the extent to which respondents felt that these aspects of their lives had deteriorated; that is, the proportion of those surveyed who said that these aspects of their lives had become 'worse'. Neither Table reflects the views of those respondents who said that they 'ha[dn't] noticed any change': see above Part III(B)(1).

Table 1: Perceived Positive Effects of Bankruptcy, Linked to the Primary Causes of Respondents' Financial Problems

Reported outcome	Overall sample (%)	Job loss primary cause (%)	Job loss in top four causes (%)	Relationship breakdown in top four causes (%)	Excessive use of credit in top four causes (%)
Better capacity to meet day-to-day living expenses	74	63	66	64	80
Better financial management	77	68	71	78	87
Better physical health	55	55	55	48	53
Better mental health	61	54	59	60	66
Better relationships and family life	57	55	59	65	58
Better career	39	41	37	42	40
Better access to credit	29	27	27	32	34
Better general quality of life	70	68	67	75	76

Table 2: Perceived Negative Effects of Bankruptcy, Linked to the Primary Causes of Respondents' Financial Problems

Reported outcome	Overall sample (%)	Job loss primary cause (%)	Job loss in top four causes (%)	Relationship breakdown in top four causes (%)	Excessive use of credit in top four causes (%)
Worse capacity to meet day-to-day living expenses	12	16	14	19	5
Worse financial management	9	20	15	10	1
Worse physical health	15	21	16	25	16
Worse mental health	18	28	26	30	11
Worse relationships and family life	12	20	15	24	17
Worse career	21	31	29	24	18
Worse access to credit	42	49	50	48	44
Worse general quality of life	11	16	14	19	4

V The Advocate Survey

The advocates were generally positive about the impact of bankruptcy on their clients' health and general wellbeing. Ninety-one per cent agreed that clients who go bankrupt 'get relief from creditor harassment'.[173] Sixty-one per cent agreed that clients who went bankrupt 'enjoy[ed] better health and wellbeing'. In their extended responses, several advocates confirmed that bankruptcy has 'immediate positive effects' on their clients. 'Debt impacts on their quality of life', one wrote, whereas 'bankruptcy gives them a chance of a new start'. 'Most of the clients find a relief once the bankruptcy is done', wrote one; 'generally clients have better health and well-being due to the immediate financial crisis disappearing', wrote another. One advocate said:

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

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

At the same time, many advocates expressed the view that for people on persistently low incomes, bankruptcy does not facilitate permanent or substantial rehabilitation. Only 27 per cent agreed that their clients 'develop[ed] better financial management skills' after bankruptcy, while 38 per cent disagreed. Forty-four per cent agreed that their clients 'continue[d] to experience financial hardship' after bankruptcy, while 25 per cent disagreed and 31 per cent were unsure. In their extended comments, advocates stressed that bankruptcy generally did not address the underlying causes of financial hardship, meaning that for many clients, it was not an adequate or permanent solution. Some advocates attributed their clients' ongoing financial problems to a lack of financial literacy. One noted that if clients don't 'identify the key

[173] Respondents were asked to select one option from a Likert scale ('strongly agree', 'agree', 'unsure/don't know', 'disagree' and 'strongly disagree'). For the purposes of this discussion, the 'agree' and 'strongly agree' responses are combined to create a single category: 'agree'. Similarly, 'disagree' and 'strongly disagree' responses are treated as a single category: 'disagree'.

reasons behind going bankrupt, they are very likely to follow the same or similar patterns of spending and borrowing which necessitated going bankrupt' in the first place. In a similar vein, another observed that people who 'elect to apply for bankruptcy without financial counselling are more likely to experience financial hardship in the future.' Another said that '[s]ome clients do continue to experience financial hardship as they do not change behaviours.' One advocate linked this to creditors' lending practices, saying, '[s]ome clients go bankrupt more than once … due to the fact that companies allo[w] people to apply for credit cards very quickly after … be[ing] discharged from bankruptcy.'

By contrast, several advocates attributed their clients' persistent financial problems to inadequate income and high living costs, rather than purely individual factors. They pointed out that clients on low incomes, particularly those reliant on Centrelink, cannot escape from financial hardship merely by declaring bankruptcy. 'If they are only on a Centrelink benefit then they will continue to suffer from financial hardship', one wrote. Another noted bluntly, '[p]eople on Newstart[174] are still below the poverty line even if they go bankrupt.' 'Bankruptcy relieves pressures', one explained, 'but if low income is the cause life is still difficult'. For these clients, 'financial hardship is a fact of life', and while bankruptcy 'improved' some aspects of their immediate circumstances, 'their situation … is still grim'. One advocate stated explicitly that '[t]he main problem for our clients is inadequate income, rather than poor financial management skills.' Several advocates linked low income to other entrenched forms of disadvantage that impeded clients' rehabilitation. Bankruptcy 'stops creditor harassment,' one observed, 'however, other factors such as inadequate income, poor mental health or lack of access to supports may persist.'

VI Further Analysis and Policy Implications

This study demonstrates that while bankruptcy is a difficult process for many debtors, it also delivers many benefits, improving debtors' finances, health and wellbeing, relationships and general quality of life. These benefits are unevenly distributed, however, with some debtors continuing to suffer considerable hardship after bankruptcy. In this respect, the study bears out recent US

[174] 'Newstart' is the primary social security payment for unemployed people in Australia: see National Commission of Audit, *9.11 Unemployment Benefits and the Minimum Wage* (2014) <http://www.ncoa.gov.au/report/appendix-vol-1/9-11-unemployment-benefits-minimum-wage.html>.

research, suggesting that access to adequate income plays a critical role in post-bankruptcy rehabilitation.[175] In particular, it reveals a nexus between job loss, reliance on social security benefits and poor post-bankruptcy outcomes. The study suggests that access to better information, advice and ongoing support would help to promote the rehabilitation of debtors, and may also play a preventative role, by diverting some debtors away from the bankruptcy system. At the same time, it concludes that bankruptcy is an inadequate response to severe financial difficulties caused by unemployment. It suggests that a modest increase in the Newstart payment would relieve some of the immediate financial pressure on people who lose their jobs, while also increasing their prospects of meaningful rehabilitation.

A *The Benefits of Bankruptcy*

These survey results strongly indicate that bankruptcy offers real and significant benefits to many debtors. When asked about their physical and mental health, relationships, financial management and capacity to meet day-to-day expenses, a majority of current and former debtors consistently reported that their situations had become 'better' after bankruptcy. A striking 77 per cent said that their ability to manage their finances had improved since bankruptcy, while 70 per cent said that their 'general quality of life' had improved since declaring bankruptcy. Similarly, over 50 per cent of debtors reported improvements in their physical and mental health, relationships and family life, while relatively few (22 per cent) said that their bankruptcies had exposed them to social censure or discrimination, in the sense that someone had 'disapproved of' them or 'treated [them] differently'. Similarly, in their longer comments at the end of the survey, many debtors described bankruptcy as having brought about a significant improvement in their circumstances. Many credited the bankruptcy process with having 'saved [their] life' or allowing them to 'start a new and better life'. Several reported that bankruptcy enabled them to establish new financial habits, particularly by teaching them to manage their affairs without reliance on credit. Debtors also emphasised the stress and anxiety caused by overwhelming debt and creditors' collection activity. For many of these debtors, bankruptcy offered much-needed respite from this stress, leading to an immediate and profound improvement in their mental health. These sentiments were also reflected in the advocate survey, in which many advocates described the psychological benefits of bankruptcy for

[175] Porter and Thorne, 'The Failure of Bankruptcy's Fresh Start', above n 7, 94–9.

stressed and overwhelmed debtors. Several advocates agreed that by eliminating unmanageable debt, bankruptcy offers valuable relief to debtors in financial crisis.

B *Benefits Become More Apparent Over Time*

The personal insolvency survey results suggest that bankruptcy's rehabilitative effects become more apparent over time. The data from this survey revealed striking differences between current and discharged bankrupts, with discharged bankrupts reporting much more positive outcomes than current bankrupts. Discharged bankrupts were far more likely than current bankrupts to report that their financial management, capacity to meet daily expenses, careers and access to credit had improved since declaring bankruptcy. This result is consistent with the findings of Zagorsky and Lupicka[176] and suggests that bankruptcy enables many debtors to re-establish themselves financially, even if this process can take years.

C *The Negative Impacts of Bankruptcy*

At the same time, both the debtor and advocate surveys suggest that bankruptcy 'does not solve all … problems', and that, in some cases, it causes new and significant hardships. In the personal insolvency survey, a substantial minority said that their access to credit was worse after bankruptcy. In their extended comments, several debtors addressed this at length, explaining how their impaired credit records had powerfully affected their lives beyond bankruptcy. Several noted that they had found it impossible to obtain finance to buy a home several years after bankruptcy. The phenomenon of persistent debtor hardship assumed a slightly different complexion in the advocate survey. Many advocates expressed the view that their clients continued to experience financial hardship after bankruptcy, either because of persistent financial mismanagement, or because they relied on an inadequate income and had no realistic means of improving their situations. The advocates stressed that rehabilitation was especially problematic for people on social security incomes, particularly those receiving Newstart. Many debtors focussed heavily on the social impact of bankruptcy, suggesting that the experience had caused damage to relationships with 'old friends and relatives'. They also emphasised the psychological impact of bankruptcy, describing

[176] Zagorsky and Lupicka, above n 7, 314.

feelings of embarrassment, shame and humiliation, and a desire to keep their bankruptcies secret. In many cases, debtors revealed that their feelings of shame caused ongoing problems for their self-esteem and family relationships.

D *The Uneven Distribution of Benefits*

While this study indicates that bankruptcy generally has a very positive impact on debtors' financial circumstances, health and wellbeing, it also shows that these effects are unevenly distributed across the bankrupt population. Both surveys suggest that people's experiences of bankruptcy, and the benefits they derive from bankruptcy, can vary significantly according to the underlying causes of their financial problems. Many advocates said that bankruptcy provided important benefits, improving debtors' health and wellbeing as well as reducing financial pressures. At the same time, several stated that many of their clients failed to achieve lasting gains, with some experiencing ongoing hardship and a range of other social and health-related problems, even after declaring bankruptcy.

The survey of individual debtors yielded similar results, while providing a more detailed insight into the variation in debtors' outcomes. While a substantial majority of all debtors reported improvements in many aspects of their lives, these outcomes diverged considerably according to the underlying causes of their financial problems. Those debtors who linked their problems to excessive use of credit saw a very significant improvement in their situations after bankruptcy. Compared with others in the sample, these debtors were more likely to report improvements in their financial management, capacity to meet daily living expenses and general wellbeing. Those who cited a relationship breakdown also experienced considerable improvement, though their gains were less pronounced than those in the 'excessive use of credit' cohort. In relation to their financial management and capacity to meet day-to-day expenses, the people in this group experienced improvement to roughly the same extent as others in the sample. Beyond these strictly financial measures, however, they fared less well, being more likely to report a decline in their mental health and relationships than others in the sample.

In contrast to both these cohorts, debtors who linked their problems to the loss of a job were more likely to report declines in *both* their financial circumstances and their health and wellbeing. Like the 'relationship breakdown' cohort, people in this 'job loss' cohort were more likely than others in the sample to report a decline in their mental health. Unlike the 'relationship breakdown' cohort, however, those in the 'job loss' cohort were also more likely to report poor financial outcomes; specifically, a reduced capacity to manage their finances, after declaring bankruptcy. In this sense, while the 'job loss' cohort still reported gains from the bankruptcy process, these benefits appeared to be less pronounced, and less comprehensive, than those experienced by people in the other two cohorts.

E *The Importance of Income*

These results suggest a correlation between post-bankruptcy rehabilitation and access to reliable, adequate income.[177] Several advocates explicitly linked their clients' financial problems to inadequate income. Many pointed out that their clients' incomes were unlikely to rise after bankruptcy, making rehabilitation a remote prospect. The personal insolvency survey also suggests a connection between rehabilitation and adequate post-bankruptcy income, by showing that the impact of bankruptcy varies, according to the underlying causes of a debtor's financial problems. As noted above, the survey revealed that those whose problems relate to excessive use of credit achieve slightly better outcomes than those who experience relationship breakdown, and significantly better outcomes than those who experience job loss. These three circumstances occupy distinct points on a continuum, insofar as they are likely to involve a reduction in income.

There is no necessary correlation between excessive credit use and a reduction in income.[178] By making more judicious use of credit, in the context of a stable income, debtors in this situation stand the greatest chance of making permanent, positive changes to their financial lives, after receiving a one-off discharge of debt.[179] By contrast, relationship breakdown frequently involves both one-off costs and permanently higher expenses for many households.[180]

[177] See also Porter and Thorne's analysis which 'suggests that the key determinant of postbankrupcty financial health is income stability': Porter and Thorne, 'The Failure of Bankruptcy's Fresh Start', above n 7, 93–9.

[178] As noted above, those who linked their problems to 'excessive use of credit' were more likely than others in the sample to have been earning wages, at the time of their bankruptcy: see above n 155 and accompanying text.

[179] See also Porter, 'Life after Debt', above n 7, 32–9.

[180] Some of the costs associated with divorce or separation are one-off: for example, the costs of obtaining legal advice or selling shared assets. At the same time, relationship breakdown is also likely to entail permanent increases in living expenses, as separating parties lose the financial advantages of cohabitation and must establish two separate households. These cost increases will be particularly significant if the separating parties have children, and agree to joint custody, since they will need to establish two family sized households without any increase in their collective income: see Warren and Tyagi, above n 29, 109, 119.

For people in this cohort, bankruptcy offers some relief from immediate financial pressures; however, its benefits are less pronounced than for the 'excessive use of credit' cohort. In stark contrast to both cohorts, those who experience job loss are highly likely to encounter a sudden and potentially permanent reduction in income.[181] This offers a compelling explanation for the worse outcomes reported by the people who reported a job loss, in the personal insolvency survey. As noted above, this cohort experienced worse post-bankruptcy outcomes than either the 'relationship breakdown' or 'excessive use of credit' cohorts, particularly with regard to their mental health and their capacity to meet day-to-day expenses. They also reported far less optimism at the time of declaring bankruptcy. In particular, people in this cohort were much less likely to state that by going bankrupt, they expected to 'put the past behind [them] and make a fresh start'.[182] Taken together, the results of these surveys suggest that for people who lose their jobs, one-off debt relief offers only a temporary reprieve from financial crisis. It does not fully mitigate the substantial and ongoing problems caused by inadequate income.[183]

F *The Role of Social Security*

Both surveys strongly indicate that bankruptcy, on its own, is an inadequate remedy for the financial hardship caused by reliance on social security benefits. The debtor survey showed that people whose bankruptcies related to job loss were disproportionately reliant on social security benefits. It also showed that these people were far more likely than others in the sample to

[181] In September 2015, almost one quarter of unemployed Australians had been looking for work for more than 52 weeks. This figure does not include those who are not 'actively look[ing] for work' because they are studying, caring for someone, or retired. It also does not include those who are employed but seeking more hours, or more highly paid work, suggesting that the true extent of long term unemployment or underemployment in Australia may be far higher than official figures indicate: Penny Vandenbroek, *Long-Term Unemployment Statistics: A Quick Guide* (9 December 2015) Parliament of Australia <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Quick_Guides/LTUnemployed>.

[182] See above nn 142, 151 and accompanying text.

[183] See Matt Wade, 'Long-Term Unemployment: Sharp Rise Taking a Toll on Australia's Wellbeing', *The Sydney Morning Herald* (online), 6 June 2015 <http://www.smh.com.au/business/the-economy/longterm-unemployment-sharp-rise-taking-a-toll-on-australias-wellbeing-20150605-ghhp6i.html>; Bob Gregory and Peter Sheehan, 'Poverty and the Collapse of Full Employment' in Ruth Fincher and John Nieuwenhuysen (eds), *Australian Poverty: Then and Now* (Melbourne University Press, 1998) 103, 106.

experience poor outcomes from bankruptcy. The advocate survey provided similar evidence that bankruptcy, reliance on social security and poor outcomes are closely correlated. Several advocates bluntly stated that many of their clients were impoverished both before and after bankruptcy, and that this situation was unlikely to change. Many specifically referred to the inadequacy of the Newstart benefit as a significant cause of their clients' ongoing financial problems.

G *The Need for Better Information, Advice and Support for People in Financial Difficulty*

This study indicates that there is significant scope to improve the support, advice and information provided to debtors in financial crisis, particularly those considering bankruptcy. The personal insolvency survey results show that some individuals declare bankruptcy with a very limited understanding of its short and long term consequences. One debtor said that when she declared bankruptcy, she was not aware that her home would be sold, and a portion of the proceeds retained by AFSA to cover the costs of administering her bankruptcy. Others said that when they declared bankruptcy, they did not realise that doing so would limit their capacity to purchase a home in the future. Several stated that they would have tried harder to repay their debts, if they had been more aware of these long term consequences of declaring bankruptcy.

These results are important, not only because they illustrate the hardship endured by many former bankrupts, but because they represent losses to creditors that might, in some cases, have been avoidable. Most unsecured creditors receive nothing from the estate of a bankrupt debtor. Those who do typically receive less than 10 per cent of the monies owed to them.[184] Banks and finance companies represent 50 per cent of unsecured creditors in bankruptcy,[185] yet even if these large companies are able to absorb the cost of unrecovered debts, they do so in part by passing on the cost to other consumers. Also important is the fact that 38 per cent are described by AFSA as 'other' creditors, a category that includes 'trade creditors, store accounts, professional fees, medical bills, school fees, family loans and the like.'[186] In

[184] See ITSA, *Annual Report 2011–2012* (2012) 114.

[185] The Australian Taxation Office, utilities companies, and credit unions together make up another 13 per cent: ITSA, 'Profiles of Debtors', above n 97, 20.

[186] Ibid.

2011, 40 per cent of bankrupts' unsecured debt was owed to these creditors,[187] which include many small businesses. It is likely that some of these 'other creditors' experience hardship in their own right, when they are unable to recover debts owed to them.

In this context, there is a strong public policy argument for providing greater support, advice and information to debtors in crisis, to ensure that they fully understand the adverse consequences of bankruptcy, before deciding to take this course.[188] To achieve this, it may be necessary to introduce a requirement that all prospective bankrupts seek some form of advice or counselling, from an appropriately qualified individual or organisation, prior to lodging a debtor's petition. Such services could be provided by financial counsellors, community legal centres, private solicitors or accountants.[189]

More generally, both surveys suggest that there is considerable merit in preventative measures such as financial literacy education, and that it would be beneficial to increase debtors' access to individualised assistance from financial counsellors. The phrase, 'financial literacy', is widely understood to mean the 'knowledge and understanding of financial concepts and risks, and the skills, motivation and confidence to apply such knowledge and understanding in order to make effective decisions across a range of financial

[187] Ibid 21.

[188] A recent Australian study found that access to timely financial counselling can, in some circumstances, help people in financial difficulty to avoid bankruptcy: Paul Ali, Lucinda O'Brien and Ian Ramsay, 'Financial Counselling and the Self-Represented Debtor in the Federal Circuit Court Bankruptcy List: An Analysis of a Recent Pilot Service' (2015) 23 *Insolvency Law Journal* 161. See also Kumar, Mason and Ralston, above n 84, 26.

[189] To avoid causing undue hardship to debtors, or placing an excessive burden on non-profit services, AFSA could be empowered to waive this requirement in certain circumstances. The requirement could be waived for individuals who cannot afford the services of a private practitioner, and cannot reasonably access a free service such as a community legal centre or financial counselling service, either in person or by telephone. This element of flexibility would avoid some of the problems associated with mandatory counselling in the US and Canadian bankruptcy systems. As noted above, in these jurisdictions, all debtors must undertake (and pay for) a form of financial counselling both before and after filing for bankruptcy: *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 11 USC § 109 (2012); *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, ss 157.1(1), (3). The North American model of mandatory counselling has attracted criticism for being unduly punitive, inflexible and costly for debtors, and for making the unwarranted assumption that all financial failure is due to poor financial management, rather than misfortune: see Curnock, above n 12; Sousa, above n 12. Still, even critics of this model concede that 'there is a great need … for a rights-based debt counselling service … that can recommend the best course of action' to people in financial difficulty: Schwartz, above n 12, 18.

contexts'.[190] Some researchers and advocates caution against placing too much emphasis on financial literacy education, pointing out that it is not a 'panacea' for all forms of consumer hardship.[191] It is possible that an undue emphasis on financial literacy education may lead to adverse outcomes, such as 'a blame-the-consumer mentality'.[192] Nevertheless, there is a strong consensus in Australia that financial literacy can promote individual wellbeing and 'the economic health of society', when combined with robust consumer protections, effective market regulation and accessible advice and information services.[193] Measures to increase financial literacy, such as the publication of

[190] Organisation for Economic Co-Operation and Development, *PISA 2012 Assessment and Analytical Framework: Mathematics, Reading, Science, Problem Solving and Financial Literacy* (Report, 2013) 144, cited in Paul Ali et al, 'The Financial Literacy of Young Australians: An Empirical Study and Implications for Consumer Protection and ASIC's National Financial Literacy Strategy' (2014) 32 *Company and Securities Law Journal* 334, 336. The Commonwealth government is currently pursuing a National Financial Literacy Strategy, stewarded by the Australian Securities and Investments Commission ('ASIC'). The National Strategy aims to improve Australians' financial literacy by embedding financial education in the school curriculum; providing free educational resources and money management tools to the general community; providing 'targeted guidance and support', particularly to 'disadvantaged' and 'vulnerable groups'; and liaising with other government agencies, community organisations and the private sector, on the basis that promoting financial literacy is a 'shared responsibility' with far-reaching social and economic impacts: ASIC, 'National Financial Literacy Strategy 2014–17' (Report No 403, ASIC, 2014) 2–4. See also Ali et al, above n 190, 340–1.

[191] Gail Pearson, 'Reconceiving Regulation: Financial Literacy' (2008) 8 *Macquarie Law Journal* 45, 55, quoted in Ali et al, above n 190, 340–1. Some critics also point out that there is limited empirical evidence to support its effectiveness: see Robert S Adler and R David Pittle, 'Cajolery or Command: Are Education Campaigns an Adequate Substitute for Regulation?' (1984) 1 *Yale Journal on Regulation* 159, 161; Lauren E Willis, 'Against Financial-Literacy Education' (2008) 94 *Iowa Law Review* 197; Lauren E Willis, 'Evidence and Ideology in Assessing the Effectiveness of Financial Literacy Education' (2009) 46 *San Diego Law Review* 415; Sharon Taylor and Suzanne Wagland, 'The Solution to the Financial Literacy Problem: What is the Answer?' (2013) 7(3) *Australasian Accounting, Business and Finance Journal* 69, 71–2. Some empirical studies suggest that financial literacy education is most likely to benefit those consumers who are already motivated to learn, and are therefore, in some respects, less in need of assistance: see, eg, Lewis Mandell and Linda Schmid Klein, 'Motivation and Financial Literacy' (2007) 16 *Financial Services Review* 105.

[192] Willis, 'Against Financial-Literacy Education', above n 191, 277. Some critics also argue that financial literacy programmes can cultivate excessive self-confidence and thus encourage consumers to take unnecessary financial risks. These critics point out that consumers typically overestimate their financial knowledge and skills: at 237, 253. See also J Michael Collins and Collin M O'Rourke, 'Financial Education and Counseling — Still Holding Promise' (2010) 44 *Journal of Consumer Affairs* 483, 485; Ali et al, above n 190, 343–4.

[193] Ali et al, above n 190, 338; see also at 340–1.

accessible, interactive consumer education websites,[194] can play a part in reducing individuals' vulnerability to hardship and financial crisis. They can also be a valuable resource for former bankrupts as they seek to rehabilitate themselves after discharge.

There is also scope for financial counselling services to play a greater role in providing assistance to people both at risk of, and recovering from, bankruptcy. While financial counsellors currently offer a vital service to many debtors, the advocate survey suggests that most debtors do not seek financial counselling until they are in acute crisis, and lose contact with these services after a relatively short time. An expanded national network of financial counselling services might be able to engage in more proactive, preventative work, assisting people to adapt to changing circumstances, where, for example, their income has reduced due to unemployment, illness or relationship breakdown. Financial counsellors might also play a more substantial, ongoing role in assisting current and discharged bankrupts to develop new financial management strategies and spending habits.

These measures would inevitably rely upon public funding, but could also deliver considerable public benefits. By promoting debtor rehabilitation, they could decrease reliance on the social security system and promote economic activity.[195] By helping individuals to improve their financial literacy and financial management skills, they could reduce the bankruptcy rate, thus reducing the losses incurred by creditors. An expanded network of financial counselling services, one that maintained contact with individual clients over an extended period, could also become a valuable source of longitudinal data for policymakers.

H *A Stronger Social Safety Net for Those Who Lose Their Jobs*

This study indicates that those who go bankrupt after losing their jobs achieve worse outcomes than those who go bankrupt for other reasons. It is beyond the scope of this article to discuss the complex causes and effects of unemployment. It suffices to point out that both the personal insolvency survey and the advocate survey suggest that this disparity in outcomes is due at least in part to respondents' persistently low incomes; specifically, the low rate of the Newstart payment. As noted above, the advocate survey indicates that a large

194 ASIC's *MoneySmart* website includes videos, online calculators, budget templates, printable booklets and information sheets and links to the websites of financial counselling, legal and other support services: ASIC, *MoneySmart* (2017) <https://www.moneysmart.gov.au>.

195 Ali et al, above n 190, 338.

proportion of advocates' clients rely on social security payments, including Newstart, and that the insufficiency of these payments is a significant cause of ongoing financial distress. This finding is consistent with the data from the personal insolvency survey, which showed a correlation between job loss, reliance on Centrelink benefits and poorer prospects of financial rehabilitation. These findings must be viewed in the context of ongoing debate over the rate at which social security benefits are paid in Australia. This debate has focussed, in particular, upon the Newstart benefit, paid to individuals who are unemployed but seeking work. Newstart has been described as a 'poverty trap', with church groups, community advocates, academics, and even the Business Council of Australia pointing out that it has failed to keep up with the rising cost of living over recent years.[196] In 2012, in response to these widespread concerns, the Senate conducted an Inquiry into the adequacy of the Newstart payment and its effectiveness 'as a support into work'.[197] The Inquiry received nearly 80 submissions, the 'overwhelming majority' of which contended that the Newstart payment was 'inadequate, impeding recipients' ability to meet their basic costs of living in an acceptable manner.'[198] Several stated that the low rate of payment was counter-productive, in the sense that it is 'likely to erode the capacity of individuals to present themselves well [and] maintain their readiness for work.'[199]

This study suggests that a modest increase in the Newstart payment would improve the effectiveness of the bankruptcy system, by assisting those debtors whose financial problems are linked to unemployment. As business groups and other commentators have observed, a small increase in the Newstart

[196] Peter Whiteford, 'Paltry Newstart Allowance is Fast Becoming a Poverty Trap' *The Conversation* (online), 20 April 2012 <http://theconversation.com/paltry-newstart-allowance-is-fast-becoming-a-poverty-trap-6218>. See also ANGLICARE Sydney, Submission No 21 to Senate Education, Employment and Workplace Relations References Committee, Parliament of Australia, *The Adequacy of the Allowance Payment System for Jobseekers and Others, the Appropriateness of the Allowance Payment System as a Support into Work and the Impact of the Changing Nature of the Labour Market*, August 2012, 5; Business Council of Australia, Submission No 46 to Senate Education, Employment and Workplace Relations References Committee, Parliament of Australia, *The Adequacy of the Allowance Payment System for Jobseekers and Others, the Appropriateness of the Allowance Payment System as a Support into Work and the Impact of the Changing Nature of the Labour Market*, August 2012, 3.

[197] Senate Education, Employment and Workplace Relations References Committee, Parliament of Australia, *The Adequacy of the Allowance Payment System for Jobseekers and Others, the Appropriateness of the Allowance Payment System as a Support into Work and the Impact of the Changing Nature of the Labour Market* (2012) ('*Senate Inquiry*').

[198] Ibid 31 [3.5].

[199] Business Council of Australia, above n 196, 3.

payment would enhance these individuals' capacity to seek new employment.[200] This would greatly increase their prospects of restoring their incomes to their pre-bankruptcy levels, and therefore, of achieving lasting financial rehabilitation. A small increase in the rate of Newstart might also serve a preventative purpose, by alleviating some of the short term financial pressures on people who lose their jobs, reducing their risk of bankruptcy.[201] It must be conceded that this measure would require a significant shift in current government policy. In its final report, the 2012 Senate Committee stopped short of recommending an increase in Newstart payments.[202] It observed that such a move would intensify pressure on the national budget, and noted that the Newstart allowance 'was never intended to be a long term solution to unemployment.'[203] More recently, the Commonwealth government has in fact

[200] In its submission to the *Senate Inquiry*, the Australia Institute explained that:

> low payments can be one of the mechanisms perpetuating unemployment. The impact of poverty worsens the individual's job prospects. Gradually they present less well at interviews, they cannot afford transport to interviews, and others cannot obtain transport to work or training/education. Poverty can also force people into accommodation far from where employment is located.

Australia Institute, Submission No 28 to Senate Education, Employment and Workplace Relations References Committee, Parliament of Australia, *The Adequacy of the Allowance Payment System for Jobseekers and Others, the Appropriateness of the Allowance Payment System as a Support into Work and the Impact of the Changing Nature of the Labour Market*, August 2012, 10. See also Business Council of Australia, above n 196, 3.

[201] In 2009, the review into *Australia's Future Tax System* called for reform to the payment system, and a reduction in the gap between Newstart payments and other, higher, payments and pensions: Review Panel, *Australia's Future Tax System — Report to the Treasurer* (December 2009) vol 2, 520–1 ('*Henry Tax Review*'). In its 2010 report on Australia, the Organisation for Economic Co-Operation and Development ('OECD') also suggested an increase in the rate of Newstart: OECD, 'Activating Jobseekers: How Australia Does It' (Report, 2012) 29, 32. See also Allan Morris and Shaun Wilson, 'Struggling on the Newstart Unemployment Benefit in Australia: The Experience of a Neoliberal Form of Employment Assistance' (2014) 25 *Economic and Labour Relations Review* 202; Jacqueline Phillips, 'Payment Adequacy: A View from Those Relying on Social Security Payments' (Report, Australian Council of Social Service, 2015); Richard Denniss and David Baker, 'Are Unemployment Benefits Adequate in Australia?' (Policy Brief No 39, Australia Institute, April 2012) 1–3.

[202] Some members of the Committee tabled a supplementary report, expressing 'in-principle' support for an increase in the rate of Newstart payments: *Senate Inquiry*, above n 197, 85–6 [1.18]. These Senators noted at 85–6 [1.14]–[1.17]:

> the real value of Newstart Allowance has receded so significantly that it is exacerbating poverty and becoming an impediment to employment for many. … [T]his is counterproductive to the very objective of the allowance payment, which is to support people temporarily as they transition into paid employment.

[203] Ibid 54 [3.84]. In lieu of increasing the payment, the Committee recommended measures designed to 'help move people from Newstart and into paid employment', such as better

sought to lower income support for the unemployed, first in an unsuccessful bid to limit Newstart payments to jobseekers under the age of 30,[204] and, more recently, by announcing the cessation of 'carbon tax compensation' payments introduced by the former Labor government.[205] These measures will not assist the rehabilitation of bankrupt debtors and, indeed, will make their situations still more difficult. By increasing the financial pressure on people who lose their jobs, they may even push more unemployed people into bankruptcy. Such an outcome would impose additional costs on creditors, particularly the small businesses that account for much of the unsecured debt discharged in bankruptcy.[206]

VII Conclusion

This study suggests that bankruptcy offers real and substantial benefits to many debtors. These benefits are not limited to debt discharge, but include lasting improvements in financial management skills, physical and mental health, relationships and general wellbeing. In many respects, these benefits appear to be evenly spread across the bankrupt population, with gender, age, location and education levels appearing to have little effect on debtors' post-bankruptcy outcomes. They also appear to be consistent regardless of individuals' socio-economic background. In other respects, however, the study reveals that bankruptcy can have significant and lasting adverse consequences. It also shows that debtors' outcomes can vary widely according to the underlying reasons for their financial problems. In the personal insolvency survey, those who attributed their financial problems to an excessive use of credit or

targeted and more extensive support programmes for job seekers: at 54 [3.84], 68 [4.58]. In June 2013, the Senate Education, Employment and Workplace Relations Legislation Committee tabled a report regarding the Social Security Amendment (Supporting More Australians into Work) Bill 2013 (Cth). It recommended 'that the Government increase the base rate of Newstart Allowance': Senate Education, Employment and Workplace Relations Legislation Committee, *Social Security Amendment (Supporting More Australians into Work) Bill 2013 [Provisions]* (June 2013) vii (recommendation 1).

204 Ben Schneiders, 'More than 100 000 Young Unemployed to Go without Benefits', *The Sydney Morning Herald* (online), 21 May 2014 <http://www.smh.com.au/federal-politics/political-news/more-than-100000-young-unemployed-to-go-without-benefits-20140521-38ovo.html>.

205 Bridie Jabour, 'New Welfare Recipients to Get Less as Carbon Tax Compensation Dropped', *The Guardian* (online), 3 May 2016 <http://www.theguardian.com/australia-news/2016/may/03/new-welfare-recipients-to-get-less-as-carbon-tax-compensation-dropped>.

206 ITSA, 'Profiles of Debtors', above n 97, 21.

relationship breakdown tended to report an improvement in their finances, health, relationships and general quality of life. By contrast, those who cited job loss as the cause were less likely to report improvements in their lives after bankruptcy. This result correlates with the results of the advocate survey, which suggested that bankruptcy offered little benefit to people trapped on persistently low incomes, particularly Centrelink incomes. This finding is also consistent with the views of social policy experts, non-profit organisations and those in the business community who assert that Australia's social safety net does not provide an adequate standard of living for the unemployed.

On this basis, the study concludes that bankruptcy alone cannot offer meaningful rehabilitation for those in ongoing financial difficulty, particularly for unemployed debtors who rely on Newstart payments. It points to the need for a more comprehensive system of information, advice and support, not only for people at immediate risk of bankruptcy, but also for those in the early stages of financial distress and those who are attempting to rebuild their lives after bankruptcy. It also calls for a modest increase in the Newstart payment, on the grounds that an adequate, reliable income is a crucial factor in achieving rehabilitation after bankruptcy. By improving debtors' prospects of finding new employment, such a move could in fact alleviate pressure on the social security system. By reducing the number of unemployed people who declare bankruptcy, it could also reduce costs to business, in the form of unrecoverable debt. In these respects, a small increase in the Newstart benefit may offer far-reaching social and economic benefits, as well as providing individual debtors with a more meaningful chance at long term rehabilitation.