

## Melbourne Law School research explores the practical impact of personal insolvency

Researchers at Melbourne Law School are currently completing the Personal Insolvency Project, a major empirical study of Australia's personal insolvency system funded by the Australian Research Council. This project has been carried out in partnership with three leading non-profit organisations: Consumer Action Law Centre, Financial Counselling Australia and Good Shepherd Australia New Zealand. Drawing on the expertise and practical experience of these organisations, the researchers have explored the tangible impact of Australia's personal insolvency system on the lives of people experiencing financial stress.

Over three years, this study has entailed major online surveys of individual debtors, financial counsellors, community solicitors and members of the public. The researchers have conducted focus groups and consultations with financial counsellors, consumer solicitors and various industry stakeholders, including a debt agreement administrator and a large debt collection firm. They have studied the experiences of debtors responding to creditors' petitions in the Federal Circuit Court. They have also liaised with the Australian Financial Security Authority (AFSA) to obtain a large data set containing de-identified records of nearly 29,000 individual bankruptcies initiated between 2006 and 2017. This multi-faceted research strategy has afforded a unique insight into the Australian personal insolvency system and the characteristics of insolvent debtors.

To date, the Personal Insolvency Project has produced articles on a wide range of topics, including:

- **Recent trends in Australian personal bankruptcy.**  
This article analyses the records of 29,000 individual bankruptcies, provided by AFSA. It demonstrates a marked decline in Australian bankruptcy rates, since a peak in 2009, and a consistent rise in levels of unsecured debt among bankrupts. It identifies a number of distinct cohorts within the bankrupt population, and important differences between men and women, younger and older people, and professional and blue-collar workers. It finds that the debts of bankrupt individuals tend to fall into two distinct categories: a combination of taxation debts and legal liabilities; or a mixture of personal loan, overdraft and credit card debts, often linked to consumer spending.
- **The role of financial counselling in the bankruptcy system.**  
This article presents an empirical analysis of an innovative financial counselling service offered to self-represented debtors in the Bankruptcy List of the Federal Circuit Court. This pilot service offered on-site financial counselling to debtors who attended the court without legal representation, in response to a creditor's petition. To evaluate the success of this service, the research team conducted surveys of self-represented debtors and creditors' solicitors. They interviewed financial counsellors and court Registrars,

and drew upon unique data compiled by court staff. The study finds that on-site financial counselling services improve the efficiency of the Bankruptcy List. They also enable debtors to navigate the bankruptcy system more effectively, in some cases helping them to avoid bankruptcy.

- **The interrelationship between bankruptcy, reliance on social security and long-term poverty.**  
This article is based upon a survey of financial counsellors and consumer solicitors who specialise in assisting people in financial hardship. It explores the practical impact of bankruptcy for clients of these services. It finds that bankruptcy offers many tangible benefits, including relief from debtor harassment and immediate improvements in health and wellbeing. At the same time, it finds that bankruptcy is an inadequate solution to financial hardship for many social security recipients. It finds that many debtors in this category experience ongoing, entrenched poverty because their incomes do not meet the basic costs of living.
- **The long term impact of bankruptcy on individuals' finances, health, social relationships and general quality of life.**  
This article reports the results of a major survey of current and former Australian bankrupts, as well as the survey of financial counsellors and consumer solicitors described above. It finds that, for many Australian debtors, bankruptcy results in genuine improvements to financial stability, health, relationships and general well-being, but that these outcomes vary significantly according to the underlying reasons for a debtor's financial hardship. It presents evidence that debtors whose problems relate to unemployment are less likely to achieve favourable outcomes, since their post-bankruptcy incomes are simply 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.
- **Bankruptcy stigma.**  
This article draws upon parliamentary debates, court judgments, media reports and other sources to provide an historical account of bankruptcy stigma in Australia and other common law jurisdictions. It outlines key aspects of the United Kingdom's Enterprise Act (2002), which sought to combat bankruptcy stigma by introducing formal distinctions between 'honest' and 'culpable' bankrupts. The article concludes that such legislative measures are likely to have little influence on public attitudes to bankruptcy. It calls for a wider public discussion about rising levels of household debt—one that would reframe bankruptcy as a social issue, rather than purely a matter of personal morality.

# GENERAL NEWS

March 2018, Volume 16, Issue 1

- **Attitudes to bankruptcy in Australia.**

Building on the researchers' earlier study of bankruptcy stigma, this article reports the results of an online survey of 2,000 members of the public. It finds that bankruptcy arouses considerable public disapproval in Australia, since it is frequently associated with greedy and dishonest corporate 'high flyers'. At the same time, it finds evidence of widespread sympathy for individuals who go bankrupt due to unemployment, illness or other unforeseeable events.

- **The debt agreement system.**

This study draws upon AFSA's statistics, a survey of debtors and consultations with consumer advocates, a major creditor and a debt agreement administrator. It considers the extent to which debt agreements are achieving their objectives and examines concerns that debt agreements may be causing harm, particularly to vulnerable debtors on low incomes. It argues that fresh measures are needed in order to protect vulnerable debtors from harm and to enhance the efficiency of the system. These include more rigorous disclosure requirements, to ensure that debtors understand the risks and adverse consequences of debt agreements; a greater onus on administrators to demonstrate that agreements are suitable options for their clients; greater transparency regarding administrators' fees; and stricter eligibility rules, to target the debt agreement system more effectively towards those who can afford to repay their debts, while reducing the potential harm that debt agreements pose to low-income and vulnerable debtors.

These research findings are freely available online via the Social Science Research Network (<https://www.ssrn.com/>) and the Personal Insolvency Project website (<http://law.unimelb.edu.au/centres/cclsr/research/major-research-projects/personal-insolvency-project>).

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*AFSA notes that law reform—in relation to debt agreements and bankruptcy—is currently being considered by the Government and wide consultation is taking place. Any proposed law reform may also take into account and consider the issues raised in this article. Please also refer to the article 'Frequently asked questions about the Debt Agreement Reform Bill 2018' under 'Practice matters' in this edition.*